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

Form 8-K

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

Date of Report (Date of earliest event reported): February 25, 2021

EASTMAN KODAK COMPANY
(Exact name of registrant as specified in its charter)

NEW JERSEY	1-87	16-0417150
(State or other jurisdiction of incorporation)	(Commission File Number)	(IRS Employer Identification No.)

343 State Street
Rochester, NY 14650
(Address of principal executive offices with zip code)

(585) 724-4000
(Registrant's telephone number, including area code)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

☐ Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

☐ Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

☐ Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

☐ Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

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

Title of each class	Trading Symbol	Name of each exchange on which registered
Common Stock, $0.01 par value per share	**KODK**	**New York Stock Exchange**

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

Emerging growth company ☐

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

Item 1.01 Entry into a Material Definitive Agreement.

Repurchase and Exchange Agreement

On February 26, 2021, Eastman Kodak Company (the "Company"), Southeastern Asset Management, Inc. ("Southeastern") and Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust, which are investment funds managed by Southeastern (such investment funds, collectively, the "Purchasers"), entered into a Series A Preferred Stock Repurchase and Exchange Agreement (the "Repurchase and Exchange Agreement") pursuant to which the Company agreed to repurchase from the Purchasers, and the Purchasers agreed to sell to the Company, an aggregate of 1,000,000 shares of the Company's 5.50% Series A Convertible Preferred Stock, no par value per share (the "Series A Preferred Stock"), for an aggregate repurchase price of $100,641,667, representing the liquidation value of the repurchased Series A Preferred Stock plus accrued and unpaid dividends. In addition, the Company and the Purchasers agreed to exchange the remaining 1,000,000 shares of Series A Preferred Stock held by the Purchasers for shares of the Company's newly created 4.0% Series B Convertible Preferred Stock, no par value (the "Series B Preferred Stock") on a one-for-one basis.

The Repurchase and Exchange Agreement contains largely customary terms for private repurchases of preferred shares and private investments in public companies, including representations, warranties, covenants and closing conditions. The Repurchase and Exchange Agreement also provides for the Company to register for resale the shares of common stock of the Company, par value $0.01 per share (the "Common Stock"), issuable upon conversion of the Series B Preferred Stock and extends the terms of the existing Registration Rights Agreement between the Company and the Purchasers, dated as of November 15, 2016, to such shares of Common Stock.

On February 26, 2021, the Company and the Purchasers closed the transaction contemplated by the Repurchase and Exchange Agreement, and the Company repurchased 1,000,000 shares of the Series A Preferred Stock from the Holders for the repurchase price described above and issued to the Purchasers an aggregate of 1,000,000 shares of the Series B Preferred Stock in exchange for the remaining 1,000,000 shares of Series A Preferred Stock held by the Purchasers. In connection with the exchange, the Company paid the Purchasers $641,666, representing the accrued and unpaid dividends on the exchanged shares of Series A Preferred Stock.

Certificate of Designations of the Series B Preferred Stock

On February 25, 2021, the Company filed with the Department of Treasury of the State of New Jersey a Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company (the "Series B Certificate of Designations") creating the Series B Preferred Stock and establishing the designation, number of shares, rights, preferences and limitations of the Series B Preferred Stock. The Series B Certificate of Designations became effective upon filing. The Series B Preferred Stock ranks senior to the Common Stock and *pari passu* with the Series C Preferred Stock (defined below), with respect to dividend rights and rights on liquidation, winding-up and dissolution. The Series B Preferred Stock has a liquidation preference of $100 per share, and holders of Series B Preferred Stock are entitled to cumulative dividends payable quarterly in cash at a rate of 4.0% per annum. If dividends on any Series B Preferred Stock are in arrears for six or more consecutive or non-consecutive dividend periods, the holders of the Series B Preferred Stock will be entitled to nominate one director at the next annual shareholder meeting and all subsequent

shareholder meetings until all accumulated dividends on such Series B Preferred Stock have been paid or set aside. Holders of Series B Preferred Stock will have certain limited special approval rights, including with respect to the issuance of *pari passu* or senior equity securities of the Company.

Holders of the Series B Preferred Stock will have the right to elect at any time to convert their shares of Series B Preferred Stock into shares of Common Stock at the initial conversion rate of 9.5238 shares of Common Stock for each share of Series B Preferred Stock (equivalent to an initial conversion price of $10.50 per share of Common Stock). The initial conversion rate and the corresponding conversion price will be subject to certain customary anti-dilution adjustments. At any time after the initial issuance of the Series B Preferred Stock, if the closing price of the Common Stock has equaled or exceeded $14.50 (subject to adjustment in the same manner as the conversion price) for 45 trading days within a period of 60 consecutive trading days, the Company will have the right to cause the mandatory conversion of the Series B Preferred Stock into shares of Common Stock.

If a holder elects to convert any shares of Series B Preferred Stock during a specified period in connection with a fundamental change, the holder will be entitled to receive either (i) the number of shares of Common Stock it would otherwise receive upon a conversion of such shares plus an additional number of shares based on the date of such fundamental change and the price per share of the Common Stock in connection with such fundamental change (or cash payment in lieu of such additional shares) or (ii) a number of shares of Common Stock at a conversion rate based on the market value per share of the Common Stock during the 15 consecutive trading day period immediately prior to such fundamental change, subject to certain limitations. Such holder will also be entitled to a payment in respect of accumulated dividends. In addition, the Company will have the right to require holders to convert any shares of Series B Preferred Stock in connection with certain reorganization events at a conversion rate based on the market value per share of the Common Stock during the 15 consecutive trading day period immediately prior to such reorganization event, subject to certain limitations.

If any shares of Series B Preferred Stock have not been converted prior to 91 days following the fifth anniversary of the initial issuance of the Series B Preferred Stock, the Company will be required to redeem such shares at a redemption price equal to the liquidation preference of the redeemed shares plus the amount of accrued and unpaid dividends thereon.

Purchase Agreement

On February 26, 2021, the Company, and GO EK Ventures IV, LLC (the "Investor"), entered into a Series C Preferred Stock Purchase Agreement (the "Purchase Agreement") pursuant to which the Company agreed to sell to the Investor, and the Investor agreed to purchase from the Company, an aggregate of 1,000,000 shares of the Company's newly created 5.0% Series C Convertible Preferred Stock, no par value per share (the "Series C Preferred Stock"), for a purchase price of $100 per share, representing $100,000,000 of gross proceeds to the Company. The Investor is a fund managed by Grand Oaks Capital. The Company intends to use the proceeds from the sale of the Series C Preferred Stock for general corporate purposes including the funding of growth initiatives. No person will be entitled to a discount or commission in connection with the sale of the Series C Preferred Stock pursuant to the Purchase Agreement.

Pursuant to the Purchase Agreement, the Investor will have the right to nominate at the Company's annual or special shareholder meetings one member to the Company's board of directors (the "Board"). This nomination right expires upon the earlier to occur of the third anniversary of the initial issuance of the Series C Preferred Stock or the Investor ceasing to directly or indirectly hold at least a majority of the shares of Series C Preferred Stock purchased pursuant to the Purchase Agreement or the Common Stock received upon the conversion of such shares, and is exclusive to the Investor and does not transfer with the Series C Preferred Stock.

The Purchase Agreement contains largely customary terms for private investments in public companies, including representations, warranties, covenants and closing conditions.

On February 26, 2021, the Company and the Investor closed the initial portion of the transactions contemplated by the Purchase Agreement, and the Company issued to the Investor an aggregate of 750,000 shares of the Series C Preferred Stock for a purchase price of $75,000,000. The issuance and sale of the remaining 250,000 shares of Series C Preferred Stock to the Investor is subject to the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and the Company expects such issuance and sale to occur prior to April 12, 2021.

Certificate of Designations of the Series C Preferred Stock

On February 25, 2021, the Company filed with the Department of Treasury of the State of New Jersey a Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company (the "Series C Certificate of Designations") creating the Series C Preferred Stock and establishing the designation, number of shares, rights, preferences and limitations of the Series C Preferred Stock. The Series C Certificate of Designations became effective upon filing. The Series C Preferred Stock ranks senior to the Common Stock and *pari passu* with the Series B Preferred Stock with respect to dividend rights and rights on liquidation, winding-up and dissolution. The Series C Preferred Stock has an initial liquidation preference of $100 per share, and holders of Series C Preferred Stock will be entitled to cumulative dividends payable quarterly "in-kind" in the form of additional shares of Series C Preferred Stock at a rate of 5.0% per annum. If dividends on the Series C Preferred Stock are not declared and paid for any given fiscal quarter, the liquidation preference is automatically increased by the amount of such unpaid dividends. Holders of the Series C Preferred Stock will also be entitled to participate in any dividends paid on the Common Stock (other than stock dividends) on an as-converted basis, with such dividends on any shares of the Series C Preferred Stock being payable upon conversion of such shares of Series C Preferred Stock to Common Stock. Holders of Series C Preferred Stock are entitled to vote together with the holders of the Common Stock as a single class, in each case, on an as-converted basis, except where a separate class vote is required by law. Holders of Series C Preferred Stock will have certain limited special approval rights, including with respect to the issuance of *pari passu* or senior equity securities of the Company.

Holders of the Series C Preferred Stock have the right to elect at any time to convert their shares of Series C Preferred Stock into shares of Common Stock at the initial conversion price of $10 per share of Common Stock, corresponding to an initial conversion rate of 10 shares of Common Stock for each share of Series C Preferred Stock. The initial conversion price and the corresponding conversion rate will be subject to certain customary anti-dilution adjustments and to proportional increase in the event the liquidation preference of the Series C Preferred Stock is automatically increased as described above.

The Company will have the right to cause the mandatory conversion of the Series C Preferred Stock into shares of Common Stock (i) at any time after the second anniversary of the initial issuance of the Series C Preferred Stock, if the closing price of the Common Stock has equaled or exceeded 200% of the then-effective conversion price for 45 trading days within a period of 60 consecutive trading days, or (ii) at any time after the third anniversary of the initial issuance of the Series C Preferred Stock, if the closing price of the Common Stock has equaled or exceeded 150% of the then-effective conversion price for 45 trading days within a period of 60 consecutive trading days.

If a holder elects to convert any shares of Series C Preferred Stock during a specified period in connection with a fundamental change, the holder will be entitled to receive either (i) the number of shares of Common Stock it would otherwise receive upon a conversion of such shares plus an additional number of shares based on the date of such fundamental change and the price per share of the Common Stock in connection with such fundamental change (or cash payment in lieu of such additional shares) or (ii) a number of shares of Common Stock at a conversion rate based on the market value per share of the Common Stock during the 15 consecutive trading day period immediately prior to such fundamental change, subject to certain limitations. Such holder will also be entitled to a payment in respect of accumulated dividends and a payment based on the present value of all required remaining scheduled dividend payments in respect of the converted shares through the date that is 91 days following the fifth anniversary of the initial issuance of the Series C Preferred Stock. Such additional payments will be payable at the Company's option in cash or in additional shares of Common Stock. In addition, the Company will have the right to require holders to convert any shares of Series C Preferred Stock in connection with certain reorganization events at a conversion rate based on the market value per share of the Common Stock during the 15 consecutive trading day period immediately prior to such reorganization event, subject to certain limitations.

If any shares of Series C Preferred Stock have not been converted prior to 91 days following the fifth anniversary of the initial issuance of the Series C Preferred Stock, the Company will be required to redeem such shares at a redemption price equal to the liquidation preference of the redeemed shares plus the amount of accrued and unpaid dividends thereon; provided that the holders of the Series C Preferred Stock have the right to extend such redemption date by up to two years.

Series C Registration Rights Agreement

On February 26, 2021, the Company and the Investor entered into a Registration Rights Agreement (the "Series C Registration Rights Agreement") which provides the Investor with customary registration rights in respect of the shares of Common Stock issuable upon conversion of the Series C Preferred Stock. The Series C Registration Rights Agreement contains other customary terms and conditions, including certain customary indemnification obligations.

Amendment to ABL Credit Agreement

On February 26, 2021, the Company and certain of its domestic subsidiaries (the "Subsidiary Guarantors") entered into an amendment (the "ABL Amendment") to the Amended and Restated Credit Agreement, dated as of May 26, 2016, among the Company, the Subsidiary Guarantors, the lenders party thereto, Bank of America, N.A., as agent (the "Agent"), and Bank of America, N.A. and JPMorgan Chase Bank, N.A., as arrangers (the "ABL Credit Agreement" and, as amended by the ABL Amendment, the "Amended ABL Credit Agreement"), with the Agent and the Required Lenders as such term is defined in the ABL Credit Agreement.

The ABL Amendment amends the ABL Credit Agreement to, among other things, (i) extend the maturity date to February 26, 2024 or the date that is 90 days prior to the earliest scheduled maturity date or mandatory redemption date of any of the Company's Term Loan Credit Agreement (as defined below), Convertible Notes (as defined below), Series B Preferred Stock, Series C Preferred Stock or any refinancings of any of the foregoing and (ii) decrease the aggregate amount of commitments from $110,000,000 to $90,000,000. Commitments under the Amended ABL Credit Agreement continue to be able to be used in the form of revolving loans or letters of credit.

The revolving loans bear interest at the rate of LIBOR plus 3.50%-4.00% per annum (subject to provisions providing for a replacement benchmark rate upon the discontinuation of LIBOR) or a floating Base Rate (as defined in the Amended ABL Credit Agreement) plus 2.50%-3.00% per annum, based on Excess Availability (as defined in the Amended ABL Credit Agreement). The Company will pay an unused line fee of 37.5-50 basis points per annum, depending on whether the unused portion of the maximum commitments is less than or equal to 50% or greater than 50% of such commitments, respectively. The Company will pay a letter of credit fee of 3.50%-4.00% per annum, based on Excess Availability, on issued and outstanding letters of credit, in addition to a fronting fee of 25 basis points on such letters of credit.

Obligations under the Amended ABL Credit Agreement continue to be secured by: (i) a first priority lien on assets of the Company and the Subsidiary Guarantors constituting cash (other than L/C Cash Collateral, as defined below), accounts receivable, inventory, machinery and equipment and certain other assets (the "ABL Priority Collateral") and (ii) a second priority lien on substantially all assets of the Company and the Subsidiary Guarantors (subject to certain exceptions) other than the ABL Priority Collateral, including 100% of the stock of material U.S. subsidiaries and 65% of the stock of material foreign subsidiaries.

The Amended ABL Credit Agreement continues to limit, among other things, the ability of the Company and its Restricted Subsidiaries (as defined in the Amended ABL Credit Agreement) to (i) incur indebtedness, (ii) incur or create liens, (iii) dispose of assets, (iv) make restricted payments and (v) make investments. The Amended ABL Credit Agreement leaves in place customary affirmative covenants, including delivery of certain of the Company's financial statements set forth therein. The ABL Amendment also adds a requirement, tested quarterly, that the Company maintain Minimum Liquidity (as defined in the Amended ABL Credit Agreement) of at least $80,000,000.

Letter of Credit Facility Agreement

On February 26, 2021, the Company and the Subsidiary Guarantors entered into a Letter of Credit Facility Agreement (the "L/C Facility Agreement") among the Company, the Subsidiary Guarantors, the lenders party thereto (the "L/C Lenders"), Bank of America, N.A., as agent and Bank of America, N.A., as issuing bank. Pursuant to the L/C Facility Agreement, the L/C Lenders committed to issue letters of credit on the Company's behalf in an aggregate amount of up to $50,000,000, provided that the Company posts cash collateral in an amount greater than or equal to 103% of the aggregate amount of letters of credit issued and outstanding at any given time (the "L/C Cash Collateral"). The term of the L/C Facility Agreement is three years, subject to the same automatic springing maturity as the Amended ABL Credit Agreement. The current balance on deposit in the L/C Cash Collateral account is approximately $49,470,000, of which $14,200,000 was deposited into the L/C Cash Collateral account from proceeds of the financing transactions described herein and the remainder of which was cash collateral previously used to secure letters of credit under the ABL Credit Agreement.

The Company will pay an unused line fee of 37.5-50 basis points per annum, depending on whether the unused portion of the maximum commitments is less than or equal to 50% or greater than 50% of such commitments, respectively. The Company will pay a letter of credit fee of 3.75% per annum on issued and outstanding letters of credit, in addition to a fronting fee of 25 basis points on such letters of credit. Amounts drawn under any letter of credit will be reimbursed from the L/C Cash Collateral. If not so reimbursed, and not otherwise repaid by the Company to the applicable L/C Lenders, such amounts will accrue interest, to be paid monthly, at a floating Base Rate (as defined in the L/C Facility Agreement) plus 2.75% per annum until repaid.

The Company's obligations under the L/C Facility Agreement are guaranteed by the Subsidiary Guarantors, and are secured by (i) a first priority lien on the L/C Cash Collateral, (ii) a second priority lien on the ABL Priority Collateral and (iii) a third priority lien on the Term Loan Priority Collateral (as defined below).

The L/C Facility Agreement contains substantially the same customary affirmative and negative covenants as the Amended ABL Credit Agreement, including the Minimum Liquidity requirement.

Term Loan Credit Agreement

On February 26, 2021, the Company entered into a Credit Agreement (the "Term Loan Credit Agreement") with certain funds affiliated with Kennedy Lewis Investment Management LLC ("KLIM") as lenders (the "Term Loan Lenders") and Alter Domus (US) LLC, as administrative agent. Pursuant to the Term Loan Credit Agreement, the Term Loan Lenders provided the Company with (i) an initial term loan in the amount of $225,000,000, which was drawn in full on the same date, and (ii) a commitment to provide delayed draw term loans in an aggregate principal amount of up to $50,000,000 on or before February 26, 2023 (collectively, the "Term Loans"). The Term Loans have a five-year maturity and are non-amortizing.

The Term Loans bear interest at a rate of 8.5% per annum payable in cash and 4.0% per annum payable "in-kind" or in cash at the Company's option, for an aggregate interest rate of 12.5% per annum. The Term Loans are guaranteed by the Subsidiary Guarantors, and are secured by (i) a first priority lien on substantially all assets of the Company and the Subsidiary Guarantors (subject to certain exceptions) not constituting ABL Priority Collateral or L/C Cash Collateral, including 100% of the stock of material U.S. subsidiaries and 65% of the stock of material foreign subsidiaries (the "Term Loan Priority Collateral") and (ii) a third priority lien on the ABL Priority Collateral and L/C Cash Collateral. The Term Loan Credit Agreement limits, among other things, the ability of the Company and its Restricted Subsidiaries (as defined in the Term Loan Credit Agreement) to (i) incur indebtedness, (ii) incur or create liens, (iii) dispose of assets, (iv) make restricted payments and (v) make investments, and also contains customary affirmative covenants including delivery of certain of the Company's financial statements set forth therein. The Term Loan Credit Agreement does not include a financial maintenance covenant.

Board Rights Agreement

On February 26, 2021, in connection with the execution of the Term Loan Credit Agreement, the Company entered into a letter agreement with KLIM (the "Board Rights Agreement"). Pursuant to the Board Rights Agreement, the Company has agreed that the will appoint an individual designated by KLIM (who initially will be Darren L. Richman) as a member of the Board as soon as practicable after the date of the Board Rights Agreement and in any event on or prior to the next annual meeting of the Company's shareholders, subject to customary conditions. Thereafter, KLIM will have the right to nominate one (1) director at each annual or special meeting of the Company's shareholders until the third anniversary of the execution of the Board Rights Letter or until KLIM ceases to hold at least 50% of the original principal amount of the term loans and commitments under the Term Loan Credit Agreement, whichever is earlier.

Until KLIM ceases to hold at least 50% of the original principal amount of the term loans and commitments under the Term Loan Credit Agreement, at any time that KLIM's designated director is not serving on the Board, KLIM will have the right to designate a non-voting observer to the Board. Such observer will have the right to attend meetings of the Board and, under certain circumstances, committees and subcommittees of the Board and to receive information and materials made available to the Board, in each case, subject to certain restrictions and exceptions.

Securities Purchase Agreement

On February 26, 2021, the Company and the Term Loan Lenders (the "Buyers"), entered into a Securities Purchase Agreement (the "Securities Purchase Agreement") pursuant to which the Company agreed to sell to the Buyers, and the Buyers agreed to purchase from the Company, (i) an aggregate of 1,000,000 shares of Common Stock for a purchase price of $10.00 in cash per share for an aggregate purchase price of $10,000,000, and (ii) $25,000,000 aggregate principal amount of the Company's newly issued 5.0% unsecured convertible promissory notes due May 28, 2026 (the "Convertible Notes") in a private placement transaction. The issuance and sale of the Common Stock and Convertible Notes contemplated by the Securities Purchase Agreement were consummated on February 26, 2021.

Convertible Notes

The Convertible Notes bear interest at a rate of 5.0% per annum, which will be payable in cash on the maturity date and in additional shares of Common Stock on any conversion date. The maturity date of the Convertible Notes will be May 28, 2026.

The Buyers will have the right to elect at any time to convert the Convertible Notes into shares of Common Stock at a conversion rate equal to 100 shares of Common Stock per each $1,000 principal amount of the Convertible Notes (based on a conversion price equal to $10.00 per share of Common Stock). The conversion rate and conversion price will be subject to certain customary anti-dilution adjustments.

If the closing price of the Common Stock equals or exceeds $14.50 (subject to adjustment in the same manner as the conversion price) for 45 trading days within any period of 60 consecutive trading days, the Company will have the right to cause the mandatory conversion of the Convertible Notes into shares of Common Stock so long as a resale registration statement sufficient to cover such shares of Common Stock has been filed by the Company with the U.S. Securities and Exchange Commission and is effective prior to any such conversion.

In the event of certain fundamental transactions, the Buyers will have the right, within a period of 30 days following the occurrence of such transaction ("Holder Fundamental Transaction Election Period"), to elect to (i) require the prepayment of the Convertible Notes at par, plus accrued and unpaid interest, or (ii) convert all or a portion of the Convertible Notes into shares of Common Stock at the conversion rate then in effect plus an additional number of shares based on the date of such fundamental transaction and the price per share of the Common Stock in connection with such fundamental transaction. In addition, upon certain fundamental exchange transactions, the right to convert the Convertible Notes into shares of Common Stock of the Company will be converted into the right to receive the shares of a successor entity, if any, or the Company,

and any additional consideration receivable as a result of such fundamental exchange transaction. If the Convertible Notes have not been converted in connection with a fundamental transaction, the Company will have the option, for a period of 30 days after the expiration of the Holder Fundamental Transaction Election Period, to repay the Convertible Notes at par, plus accrued and unpaid interest.

Securities Registration Rights Agreement

On February 26, 2021, the Company and the Buyers entered into a Registration Rights Agreement (the "Securities Registration Rights Agreement") providing the Buyers with registration rights in respect of the purchased shares of Common Stock and the Common Stock issuable upon conversion of the Convertible Notes. The Securities Registration Rights Agreement contains other customary terms and conditions, including certain customary indemnification obligations; however, the Securities Registration Rights Agreement does not obligate the Company to facilitate an underwritten offering of the registered Common Stock by the Buyers.

Incorporation by Reference

The foregoing descriptions of the Repurchase and Exchange Agreement, the Purchase Agreement, the Series C Registration Rights Agreement, the ABL Amendment, the L/C Facility Agreement, the Term Loan Credit Agreement, the Board Rights Agreement, the Securities Purchase Agreement, the Securities Registration Rights Agreement, the Convertible Notes, the Series B Certificate of Designations and the Series C Certificate of Designations (collectively, the "Described Documents"), do not purport to be complete and are subject to, and qualified in their entirety by, the full text of the documents which are attached hereto as exhibits and incorporated herein by reference.

The Described Documents are being filed to provide investors and security holders with information regarding their terms. They are not intended to provide any other factual information about the Company, its business, assets, liabilities, performance or prospects, or the other parties thereto, as applicable. The representations, warranties and covenants of each party set forth in the Described Documents were made only for purposes of the Described Documents as of the specific dates set forth therein, were solely for the benefit of the parties to the Described Documents, may be subject to limitations agreed upon by the contracting parties, including being qualified by confidential disclosures made for the purposes of allocating contractual risk between the parties to the Described Documents instead of establishing these matters as facts, and may be subject to standards of materiality applicable to the contracting parties that differ from those applicable to investors. The Company's investors and security holders are not third-party beneficiaries under the Described Documents and should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the Company, its business, assets, liabilities, performance or prospects, or the other parties thereto. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Described Documents, which subsequent information may or may not be fully reflected in the Company's public disclosures.

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

The information contained in Item 1.01 of this Current Report on Form 8-K regarding the Repurchase and Exchange Agreement, the Purchase Agreement, the terms of the Series B Preferred Stock, the terms of the Series C Preferred Stock, the ABL Amendment, the Term Loan Credit Agreement, the Securities Purchase Agreement and the Convertible Notes is hereby incorporated into this Item 2.03 by reference.

Item 3.02. Unregistered Sales of Equity Securities.

The information contained in Item 1.01 of this Current Report on Form 8-K regarding the Repurchase and Exchange Agreement, the Purchase Agreement and the Securities Purchase Agreement is hereby incorporated into this Item 3.02 by reference. The repurchase and exchange of the Series A Preferred Stock and the issuance of the Series B Preferred Stock pursuant to the Repurchase and Exchange Agreement, the offer and sale of the Series C Preferred Stock pursuant to the Purchase Agreement and the offer and sale of the Common Stock and the Convertible Notes pursuant to the Securities Purchase Agreement are exempt from registration under the Securities Act of 1933, as amended (the "Securities Act"), pursuant to Section 4(a)(2) of the Securities Act. Each of the Purchasers, the Investor and the Buyers has represented to the Company that it is an "accredited investor" as defined in Rule 501 under the Securities Act and that the Series B Preferred Stock, Series C Preferred Stock, Common Stock and Convertible Notes are being acquired for investment purposes and not with a view to or for sale in connection with any distribution thereof.

Item 3.03. Material Modification to Rights of Security Holders.

The information contained in Item 1.01 of this Current Report on Form 8-K regarding the Series B Certificate of Designations, the Series C Certificate of Designations, the Series B Preferred Stock and the Series C Preferred Stock is hereby incorporated into this Item 3.03 by reference.

Item 5.03. Amendment to Articles of Incorporation or Bylaws; Change in Fiscal Year.

The information contained in Item 1.01 of this Current Report on Form 8-K regarding the Series B Certificate of Designations and the Series C Certificate of Designations is hereby incorporated into this Item 5.03 by reference.

Item 7.01. Regulation FD Disclosure.

The financing agreements and transactions described in Item 1.01 of this Current Report on Form 8-K (the "Financing Transactions") address the mandatory redemption of the Series A Preferred Stock required in November 2021, extend the maturity date of the ABL Credit Agreement, implement a new letter of credit facility, and provide the Company with up to $310,000,000 of incremental cash, $50,000,000 of which remains committed and undrawn under the Term Loan Credit Agreement. The term loan, convertible note and preferred share components of the Financing Transactions leverage the complementary components of term debt and convertible debt and preferred equity to balance equity dilution and the cost of capital (the weighted average interest/dividend rate of the term loan, convertible note and preferred shares that were issued is approximately 8.9% if fully drawn), and are designed to limit the amount of cash needed to service the capital while the instruments remain outstanding (up to $17,250,000 per year, or approximately 39%, of the interest and dividends are payable in kind, based on fully drawn amounts), thereby increasing the amount of cash available for the Company during this period. If all of the convertible debt and preferred shares that were issued in the Financing Transactions is converted at the end of their respective terms (i.e., after all dividends and interest payable in-kind have accumulated but assuming the mandatory redemption date for the Series C Preferred Stock is not extended, and no adjustments are made to conversion price or ratios), approximately 25.75 million shares of Common Stock would be issued at an average conversion price of $10.185.

The proceeds from the Financing Transactions not used to fund the repurchase of a portion of the Series A Preferred Stock, as described above, may be used for general corporate purposes, including strategic investments in growth opportunities in Kodak's core businesses of print and advanced materials and chemicals and continued restructuring investments in Kodak's existing operations designed to reduce costs and improve profitability. The Financing Transactions also provide the Company with additional liquidity that may be needed to continue to respond to the ongoing impact and uncertainties stemming from the COVID-19 pandemic and associated response efforts.

On March 1, 2021, the Company issued a press release relating to the items described in this Current Report on Form 8-K. A copy of the press release is furnished as Exhibit 99.1 hereto.

Cautionary Note Regarding Forward-Looking Statements

Certain information contained in this Current Report and the exhibits hereto may include "forward-looking statements" as that term is defined under the Private Securities Litigation Reform Act of 1995. Forward-looking statements include statements concerning the Company's plans, objectives, goals, strategies, future events, business trends and other information that is not historical information. When used in this Current Report and the exhibits hereto, the words "estimates," "expects," "anticipates," "projects," "plans," "intends," "believes," "predicts," "forecasts," "strategy," "continues," "goals," "targets" or future or conditional verbs, such as "will," "should," "could," or "may," and similar expressions, as well as statements that do not relate strictly to historical or current facts, are intended to identify forward-looking statements. All forward-looking statements are based upon the Company's expectations and various assumptions. The forward looking statements contained in this Current Report and the exhibits hereto include, without limitation, statements related to the availability of the delayed draw term loans and the issuance and sale of an additional $25,000,000 of Series C Preferred Stock to the Investor subject to HSR Act clearance, as well as expansion, investment and growth opportunities. These and other forward-looking statements are based on management's current views and assumptions and involve risks and uncertainties that could significantly affect expected results.

Future events or results may differ from those anticipated or expressed in the forward-looking statements. Important factors that could cause actual events or results to differ materially from the forward-looking statements include, among others, the risks and uncertainties described in more detail in the Company's Annual Report on Form 10-K for the year ended December 31, 2019 under the headings "Business," "Risk Factors," "Legal Proceedings" and/or "Management's Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources," in the corresponding sections of the Company's Quarterly Report on Form 10-Q for the quarter ended September 30, 2020, and in other filings the Company makes with the U.S. Securities and Exchange Commission from time to time. In addition, each of the issuance and sale of an additional $25,000,000 of Series C Preferred Stock to the Investor and the drawing of the delayed draw term loans is subject to certain conditions which may not be satisfied.

All forward-looking statements attributable to the Company or persons acting on its behalf apply only as of the date of this Current Report and are expressly qualified in their entirety by the cautionary statements included or referenced in this Current Report. The Company undertakes no obligation to update or revise forward-looking statements to reflect events or circumstances that arise after the date made or to reflect the occurrence of unanticipated events, except as required by law.

Item 9.01 Financial Statements and Exhibits

(d) Exhibits

(3.1) Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company, effective as of February 25, 2021 (the Series B Certificate of Designations).

(3.2) Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company, effective as of February 25, 2021 (the Series C Certificate of Designations).

(10.1) Series A Preferred Stock Repurchase and Exchange Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company, Southeastern Asset Management, Inc., Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited and Deseret Mutual Pension Trust.

(10.2) Series C Preferred Stock Purchase Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company and GO EK Ventures IV, LLC.

(10.3) Registration Rights Agreement, dated as of February 26, 2021, by and between Eastman Kodak Company and GO EK Ventures IV, LLC.

(10.4) Amendment No. 4 to Amended and Restated Credit Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company, the Lenders named therein, the Guarantors named therein and Bank of America, N.A., as agent.

(10.5) Letter of Credit Facility Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company, the Lenders named therein, the Guarantors named therein, Bank of America, N.A., as administrative agent and collateral agent and Bank of America, N.A., as issuing bank.

(10.6) Credit Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company, the Lenders named therein and Alter Domus (US) LLC, as Administrative Agent.

(10.7) Board Rights Agreement, dated as of February 26, 2021, by and between Eastman Kodak Company and Kennedy Lewis Investment Management LLC.

(10.8) Securities Purchase Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company, Kennedy Lewis Capital Partners Master Fund LP and Kennedy Lewis Capital Partners Master Fund II LP.

(10.9) Convertible Promissory Note, dated as of February 26, 2021, from Eastman Kodak Company to Kennedy Lewis Capital Partners Master Fund LP.

(10.10) Convertible Promissory Note, dated as of February 26, 2021, from Eastman Kodak Company to Kennedy Lewis Capital Partners Master Fund II LP.

(10.11) Registration Rights Agreement, dated as of February 26, 2021, by and among Eastman Kodak Company, Kennedy Lewis Capital Partners Master Fund LP and Kennedy Lewis Capital Partners Master Fund II LP.

(99.1) Press release, dated March 1, 2021, of Eastman Kodak Company.

SIGNATURE

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

EASTMAN KODAK COMPANY

Date: March 1, 2021

By: /s/ David E. Bullwinkle
Name: David E. Bullwinkle
Title: Chief Financial Officer and Senior Vice President

Exhibit 3.1

CERTIFICATE OF AMENDMENT TO THE

SECOND AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

EASTMAN KODAK COMPANY

(Pursuant to Section 14A:7-2(2) and (4) of the
New Jersey Business Corporation Act)

Pursuant to the provisions of N.J.S.A. 14A:7-2(2) and (4), the undersigned corporation executes the following Certificate of Amendment to its Second Amended and Restated Certificate of Incorporation:

1. The name of the corporation is Eastman Kodak Company, a corporation organized and existing under the laws of the State of New Jersey (hereinafter called the "Company").

2. The following amendment to the Second Amended and Restated Certificate of Incorporation (the "Certificate"), was approved by the Company's Board of Directors (the "Board") as required by Section 14A:7-2 of the New Jersey Business Corporation Act at a meeting duly called, convened and held on February 25, 2021.

3. Pursuant to the Repurchase and Exchange Agreement, to be dated as of February 26, 2021 (the "Repurchase and Exchange Agreement"), by and among the Company and the holders of the Company's 5.50% Series A Convertible Preferred Stock (the "Series A Preferred Stock"), the Company and the holders party thereto have agreed that (i) the Company shall repurchase 1,000,000 shares of the Company's 5.50% Series A Convertible Preferred Stock (the "Series A Preferred Stock") from the holders thereof and (ii) such holders shall transfer and deliver the remaining 1,000,000 shares of Series A Preferred Stock to the Company in exchange for shares of 4.0% Series B Convertible Preferred Stock to be issued by the Company in accordance with the terms set forth herein, in each case on the terms and subject to the conditions set forth in the Repurchase and Exchange Agreement.

4. Following the consummation of the transactions contemplated by the Repurchase and Exchange Agreement, all shares of Series A Preferred Stock shall be held by the Company and automatically cancelled.

5. The Board, in accordance with the Certificate, and Fourth Amended and Restated By-laws of the Company, as amended (the "By-laws"), and applicable law, at said meeting duly called, convened and held on February 25, 2021, duly adopted the following resolution authorizing the issuance and sale by the Company of up to $100 million in aggregate liquidation preference of shares of the Company's preferred stock, no par value per share ("Preferred Stock"), and created a series of 4.0% Series B Convertible Preferred Stock of the Company designated as "4.0% Series B Convertible Preferred Stock" on the terms set forth herein, and amended the Certificate to add the following terms to the end of Article III of the Certificate:

NOW, THEREFORE, BE IT RESOLVED, that in accordance with N.J.S.A. 14A:7-2(4) and Article III of the Certificate, the Board hereby establishes the terms of the 4.0% Series B Convertible Preferred Stock, no par value per share, and fixes and determines the authorized number of shares of the series, the dividend rate of shares of the series, the designations, and certain other powers, preferences, and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, with the Certificate hereby amended to add such terms to the end of Article III of the Certificate as follows:

III.A. 4.0% Series B Convertible Preferred Stock:

Section 1. Designation and Amount. There is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock designated as "4.0% Series B Convertible Preferred Stock" (the "Series B Preferred Stock") and the number of shares constituting the Series B Preferred Stock shall be 1,000,000.

Section 2. Dividends and Distributions.

(A) Holders of shares of Series B Preferred Stock shall be entitled to receive, on each share of Series B Preferred Stock and with respect to each Dividend Period, cash dividends in an amount equal to the Dividend Rate multiplied by the Liquidation Preference per share of Series B Preferred Stock. Dividends on the Series B Preferred Stock shall cumulate quarterly on each Dividend Payment Date at the Dividend Rate, and shall accumulate from the most recent date as to which dividends shall have been paid or, if no dividends have been paid, from the Original Issue Date, whether or not in any Dividend Period(s) there have been funds legally available for the payment of such dividends. Dividends shall be payable to holders of record as they appear on the Company's stock register on the immediately preceding Dividend Record Date (if such dividend has been declared). Accumulations of dividends on shares of Series B Preferred Stock do not bear interest. Dividends payable on the Series B Preferred Stock for any period other than a full Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month.

(B) The Company shall make each dividend payment on the Series B Preferred Stock in cash, with such cash dividends being paid only to the extent (i) the Company has funds legally available for payment and (ii) the Board, or an authorized committee thereof, declares such dividend payable.

(C) No dividend shall be declared or paid upon, or any sum set apart for the payment of dividends upon, any outstanding share of Series B Preferred Stock with respect to any Dividend Period unless all dividends for all preceding Dividend Periods have been declared and paid, or declared and a sufficient sum has been set apart for the payment of such dividend, upon all outstanding shares of Series B Preferred Stock.

(D) While any shares of Series B Stock remain outstanding, unless all accumulated and unpaid dividends on the Series B Preferred Stock for all past Dividend Periods shall have been paid in full, or a sum for such accumulated and unpaid dividends has been set apart for the payment of dividends upon the Series B Preferred Stock, the Company shall not:

(i) declare or pay any dividend or make any distribution of assets on any Junior Stock; or

(ii) redeem, purchase or otherwise acquire any shares of Junior Stock or pay or make any monies available for a sinking fund for such shares of Junior Stock, other than (1) upon conversion or exchange for other Junior Stock or (2) the purchase of fractional interests in shares of any Junior Stock pursuant to the conversion or exchange provisions of such shares of Junior Stock;

provided, however, that the foregoing limitations shall not apply to (x) redemptions, purchases or other acquisitions of shares of Junior Stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, managers or consultants of, or to, the Company or any of its subsidiaries; (y) an exchange, redemption, reclassification or conversion of any class or series of Junior Stock for any class or series of Junior Stock that ranks equal or junior to the applicable Junior Stock; or (z) any dividend in the form of stock, warrants, options or other rights where the dividended stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equal or junior to the applicable Junior Stock.

(E) Holders of shares of Series B Preferred Stock at the close of business on a Dividend Record Date will be entitled to receive the dividend payment on such shares on the corresponding Dividend Payment Date (if such dividend has been declared) notwithstanding the conversion of such shares following such Dividend Record Date or the Company's default in payment of the dividend due on such Dividend Payment Date. Holders of shares of Series B Preferred Stock will not be entitled to any dividend in excess of full cumulative dividends.

Section 3. Rank.

The Series B Preferred Stock will rank (i) senior, as to payment of dividends and distributions of assets upon the liquidation, dissolution or winding up of the Company, to the Company's Common Stock, (ii) either senior to or *pari passu* with all other preferred stock, (iii) *pari passu* with the Company's Series C Preferred Stock and (iv) junior to all shares of capital stock of the Company issued in the future, the terms of which expressly provide that such shares will rank senior to the Series B Preferred Stock.

Section 4. Mandatory Redemption. Subject to the New Jersey Business Corporation Act, unless no shares of the Series B Preferred Stock are outstanding, on the date that is ninety-one (91) days following the fifth (5th) anniversary of the Original Issue Date, the Company shall redeem all shares of Series B Preferred Stock at a redemption price equal to the Liquidation Preference plus accrued and unpaid dividends to, but excluding the redemption date (the "Mandatory Redemption Price").

Section 5. Conversion.

(A) Each Holder of Series B Preferred Stock shall have the right at any time, at its option, to convert, subject to the terms and provisions of this Section 5, any or all of such Holder's shares of Series B Preferred Stock at an initial conversion rate of 9.5238 shares of fully paid and non-assessable shares of Common Stock (subject to adjustment as provided in this Section 5, the "Conversion Rate") per share of Series B Preferred Stock. Upon conversion of any share of Series B Preferred Stock, the Company shall deliver to the converting Holder, in respect of each share of Series B Preferred Stock being converted, a number of shares of Common Stock equal to the Conversion Rate, together with a cash payment in lieu of any fractional share of Common Stock in accordance with Section 13 and any dividend pursuant to Section 2(E), as soon as practicable and in any event on or before the third Trading Day immediately following the relevant Conversion Date.

(B) Before any Holder shall be entitled to convert a share of Series B Preferred Stock as set forth above, such Holder shall (i) in the case of a beneficial interest in a Global Preferred Stock, comply with the procedures of the Depository in effect at that time and (ii) in the case of Certificated Preferred Stock (1) complete, manually sign and deliver an irrevocable notice to the office of the Transfer Agent as set forth in the Form of Notice of Conversion (or a facsimile thereof) substantially in the form of Exhibit B hereto (a "Notice of Conversion") and state in writing therein the number of shares of Series B Preferred Stock to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered to be registered, (2) surrender such shares of Series B Preferred Stock, at the office of the Transfer Agent and (3) if required, furnish appropriate endorsements and transfer documents. The Transfer Agent shall notify the Company of any conversion pursuant to this Section 5 on the Conversion Date for such conversion. The date on which a Holder complies with the procedures in this clause (B) is the "Conversion Date." If more than one share of Series B Preferred Stock shall be surrendered for conversion at one time by the same Holder, the number of shares of Common Stock to be delivered upon conversion of such shares of Series B Preferred Stock shall be computed on the basis of the aggregate number of shares of Series B Preferred Stock so surrendered.

(C) Immediately prior to the close of business on the Conversion Date with respect to a conversion, a converting Holder of Series B Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon conversion of such Holder's Series B Preferred Stock notwithstanding that the share register of the Company shall then be closed or that certificates representing such Common Stock shall not then be actually delivered to such Holder. On the date of any conversion, all rights with respect to the shares of Series B Preferred Stock so converted, including the rights, if any, to receive notices, will terminate, excepting only the rights of holders thereof to (i) receive certificates for the number of whole shares of Common Stock into which such shares of Series B Preferred Stock have been converted (with a cash payment in lieu of any fractional share of Common Stock in accordance with Section 13); (ii) exercise the rights to which they are thereafter entitled as holders of the Common Stock; and (iii) receive any dividend payable notwithstanding the conversion.

(D) The Conversion Rate shall be adjusted, without duplication, upon the occurrence of any of the following events:

(i) If the Company exclusively issues shares of Common Stock as a dividend or distribution on all shares of its Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as the case may be;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Effective Date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as the case may be; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this Section 5(D)(i) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as the case may be. If any dividend or distribution of the type described in this Section 5(D)(i) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(ii) If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period expiring not more than 45 days immediately following the announcement date of such distribution, to purchase or subscribe for shares of its Common Stock at a price per share that is less than the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the close of business on the Record Date for such distribution;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution.

Any increase made under this Section 5(D)(ii) shall be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the close of business on the Record Date for such distribution. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted, effective as of the date of such expiration, to the Conversion Rate that would then be in effect had the increase with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Rate shall be decreased, effective as of the date the Board determines not to make such distribution, to be the Conversion Rate that would then be in effect if such Record Date for such distribution had not occurred. If such rights, options or warrants are only exercisable upon the occurrence of certain triggering events, then the Conversion Rate shall not be adjusted until the triggering events occur.

For purposes of this Section 5(D)(ii), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board.

(iii) If the Company makes distributions to all or substantially all holders of its Common Stock consisting of shares of its Capital Stock, evidence of indebtedness or other assets or properties, excluding:

(1) dividends or other distributions (including share splits), rights, options or warrants as to which an adjustment is effected in clause (i) or (ii) above or in clause (vi) below:

(2) dividends or other distributions covered by clause (iv) below:

(3) dividends or other distributions that constitute Exchange Property following a Reorganization Event:

(4) Spin-offs to which the provisions set forth below in this Section 5(D)(iii) shall apply,

the Conversion Rate shall be increased based on the following the formula:

$$CR_1 = CR_0 \times \frac{M}{M - F}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such distribution;

M = the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such distribution; and

F = the fair market value, as determined by the Board, of the portion of those assets, securities, rights, warrants or options to be distributed in respect of each share of Common Stock immediately prior to the open of business on the Ex-Date for such distribution.

Any increase pursuant to this Section 5(D)(iii) shall become effective immediately after the close of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased, effective as of the date the Board determines not to pay or make such distribution, to be the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if "F" (as defined above) is equal to or greater than "M" (as defined above), in lieu of the foregoing increase, each Holder of Preferred Stock shall receive, for each share of Series B Preferred Stock, at the same time and upon the same terms as holders of the Common Stock, the amount of cash that such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such distribution.

With respect to an adjustment pursuant to this Section 5(D)(iii) where there has been a payment of a dividend or other distribution of the Common Stock in shares of capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, where such capital stock or similar equity interest is listed or quoted (or will be listed or quoted upon consummation of the spin-off) on a U.S. national securities exchange, which is referred to herein as a "**Spin-off**," the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{F + MP}{MP}$$

where:

CR_1 = the Conversion Rate in effect immediately after the open of business on the effective date for the Spin-off;

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the effective date for the Spin-off;

F = the average of the Closing Sale Prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the first 10 consecutive Trading Day period immediately following, and including, the effective date for the Spin-off (such period, the "Valuation Period"); and

MP = the average of the Closing Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 5(D)(iii) will become effective immediately after the open of business on the day after the last day of the Valuation Period. For purposes of determining the Conversion Rate in respect of any conversion during the 10 Trading Days commencing on the effective date for any Spin-off, references within the portion of this Section 5(D)(iii) related to Spin-offs to 10 consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the effective date for such Spin-off to, but excluding, the relevant Conversion Date.

(iv) If the Company makes any cash dividend or distribution to all or substantially all holders of its Common Stock, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the applicable Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or other distribution;

CR_1 = the applicable Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or other distribution;

SP_0 = the average of the Closing Sale Prices of the Company's Common Stock over the 10 consecutive Trading-Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such dividend or other distribution; and

C = the amount in cash per share the Company pays or distributes to holders of its Common Stock.

An adjustment on the Conversion Rate made pursuant to Section 5(D)(iv) shall become effective immediately after the close of business on the Record Date for the applicable dividend or other distribution. If any dividend or other distribution described in this Section 5(D)(iv) is declared but not so paid or made, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or other distribution had not been declared.

If "C" as set forth above is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing adjustment, each holder of Series B Preferred Stock shall receive, at the same time and upon the same terms as holders of the Company's Common Stock, the amount of cash that such holder would have received if such holder owned a number of shares of the Company's Common Stock equal to the applicable Conversion Rate in effect immediately prior to the close of business on the Record Date for such cash dividend or other distribution.

(v) If the Company or any of its subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock and the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Closing Sale Price of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC+(SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CR_1 = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The increase to the Conversion Rate under this Section 5(D)(v) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided that, for purposes of determining the Conversion Rate, in respect of any conversion during the 10 Trading Days immediately following, and including, the Trading Day next succeeding the date that any such tender or exchange offer expires, references within this Section 5(D)(v) to 10 consecutive Trading Days shall be deemed to be replaced with such lesser number of consecutive Trading Days as have elapsed between the date such tender or exchange offer expires and the relevant Conversion Date.

In the event that the Company or one of its subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall be readjusted to be such Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made. For the avoidance of doubt, this Section 5(D)(v) shall not apply if the Company otherwise acquires shares of Common Stock, including, but not limited to, through an open market purchase in compliance with Rule 10b-18 promulgated under the Exchange Act or through an "accelerated share repurchase" on customary terms.

(vi) All calculations and other determinations under this Section 5(D) shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. No adjustment to the Conversion Rate shall be made if it results in a Conversion Price that is less than the par value (if any) of the Common Stock. The Company shall not take any action that would result in the Conversion Price being less than the par value (if any) of the Common Stock pursuant to this Certificate of Amendment and without giving effect to the previous sentence.

(vii) In addition to those adjustments required by clauses (i), (ii), (iii), (iv) and (v) of this Section 5(D), and to the extent permitted by applicable law and subject to the applicable rules of the New York Stock Exchange, the Company from time to time may (but is not required to) increase the Conversion Rate by any amount for a period of at least 20 Business Days or any longer period permitted or required by law if the increase is irrevocable during that period and the Board determines that such increase would be in

the Company's best interest. In addition, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to any of the preceding two sentences, the Company shall mail to the Holder of each share of Series B Preferred Stock at its last address appearing on the stock register of the Company a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(E) If any applicable law requires the deduction or withholding of any tax from any payment or deemed dividend to a Holder on its Series B Preferred Stock or Common Stock, the Company or an applicable withholding agent may withhold on cash dividends, shares of Series B Preferred Stock or Common Stock or sale proceeds paid, subsequently paid or credited with respect to such Holder or such Holder's successors and assigns.

(F) The Company shall at all times reserve and keep available for issuance upon the conversion of the Series B Preferred Stock a number of its authorized but unissued shares of Common Stock equal to the aggregate Liquidation Preference divided by $8.75 (subject to adjustment in the same manner as the Conversion Rate as provided in this Section 5), and shall take all action required to increase the authorized number of shares of Common Stock if at any time there shall be insufficient unissued shares of Common Stock to permit such reservation or to permit the conversion of all outstanding shares of Series B Preferred Stock (including any Additional Shares in connection with a Fundamental Change).

(G) The issuance or delivery of certificates for Common Stock upon the conversion of shares of Series B Preferred Stock shall be made without charge to the converting holder or recipient of shares of Series B Preferred Stock for such certificates or for any documentary, stamp or similar issue or transfer tax in respect of the issuance or delivery of such certificates or the securities represented thereby, and such certificates shall be issued or delivered in the respective names of, or in such names as may be directed by, the holders of the shares of Series B Preferred Stock converted; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the holder of the shares of the relevant Series B Preferred Stock and the Company shall not be required to issue or deliver such certificate unless or until the Person or Persons requesting the issuance or delivery thereof shall have paid to the Company the amount of such tax or shall have established to the reasonable satisfaction of the Company that such tax has been paid.

(H) Notwithstanding Section 5(D)(ii), if the Company has a rights plan (including the distribution of rights pursuant thereto to all holders of the Common Stock) in effect while any shares of Series B Preferred Stock remain outstanding, Holders of Series B Preferred Stock will receive, upon conversion of Series B Preferred Stock, in addition to the Common Stock to which such Holder is entitled, a corresponding number of rights in accordance with the rights plan. If, prior to any conversion, such rights have separated from the shares of Common Stock in accordance with the provisions of the applicable rights plan so that Holders of Series B Preferred Stock would not be entitled to receive any rights in respect of the Common

Stock delivered upon conversion of Series B Preferred Stock, the Conversion Rate will be adjusted at the time of separation as if the Company had distributed to all holders of its Common Stock, shares of Capital Stock covered by the separated rights, subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 6. Mandatory Conversion.

(A) The Company shall have the right, at its option, to give notice of its election to cause all outstanding shares of Series B Preferred Stock to be automatically converted into that number of whole shares of Common Stock for each share of Series B Preferred Stock equal to the Conversion Rate in effect on the Mandatory Conversion Date, with cash in lieu of any fractional share pursuant to Section 13. The Company may exercise its right to cause a mandatory conversion pursuant to this Section 6 only if the Closing Sale Price of the Common Stock equals or exceeds $14.50 (subject to adjustment in the same manner as the Conversion Price) for at least 45 Trading Days (whether or not consecutive) in a period of 60 consecutive Trading Days, including the last Trading Day of such 60-day period, ending on, and including, the Trading Day immediately preceding the Business Day on which the Company issues a press release announcing the mandatory conversion as described in Section 6(B).

(B) To exercise the mandatory conversion right described in Section 6(A), the Company shall publish such information on the Company's website or through such other public medium as the Company may use at that time, prior to the open of business on the first Trading Day following any date on which the Company makes a conversion election pursuant to Section 6(A), announcing such a mandatory conversion. The Company shall also give notice by mail to the Holders of the Series B Preferred Stock (not later than three Business Days after the date of the press release) of the mandatory conversion announcing the Company's intention to convert the Series B Preferred Stock. The conversion date will be a date selected by the Company (the "Mandatory Conversion Date") and will be no later than 30 calendar days after the date on which the Company issues the press release described in this Section 6(B).

(C) In addition to any information required by applicable law or regulation, the press release and notice of a mandatory conversion described in Section 6(B) shall state, as appropriate: (i) the Mandatory Conversion Date; (ii) the number of shares of Common Stock to be issued upon conversion of each share of Series B Preferred Stock; and (iii) that dividends on the Series B Preferred Stock to be converted will cease to accrue on the Mandatory Conversion Date.

(D) On and after the Mandatory Conversion Date, dividends shall cease to accrue on the Series B Preferred Stock called for a mandatory conversion pursuant to this Section 6 and all rights of Holders of such Series B Preferred Stock shall terminate except for the right to receive the whole shares of Common Stock issuable upon conversion thereof with a cash payment in lieu of any fractional share of Common Stock in accordance with Section 13 and a partial payment of any accrued and unpaid dividend. The full amount of any dividend payment with respect to the Series B Preferred Stock called for a mandatory conversion pursuant to this Section 6 on a date during the period beginning at the close of business on any Dividend Record Date and ending on the close of business on the corresponding Dividend Payment Date shall be payable on such Dividend Payment Date to the record holder of such share at the close of

business on such Dividend Record Date if such share has been converted after such Dividend Record Date and prior to such Dividend Payment Date. Except as provided above with respect to a mandatory conversion pursuant to this Section 6, no payment or adjustment shall be made upon conversion of Series B Preferred Stock for accumulated dividends or dividends with respect to the Common Stock issued upon such conversion thereof.

(E) The Company may not authorize, issue a press release or give notice of any mandatory conversion pursuant to this Section 6 unless, prior to giving the conversion notice, all accumulated dividends on the Series B Preferred Stock (whether or not declared) for periods ended prior to the date of such conversion notice shall have been paid.

Section 7. Conversion upon a Fundamental Change.

(A) Upon any conversion during the period (the "Fundamental Change Conversion Period") beginning on a Fundamental Change Effective Date and ending on the date that is 30 days after such Fundamental Change Effective Date (the "Expiration Date"), each holder of Series B Preferred Stock shall receive, for each share of Series B Preferred Stock converted, either (i) a number of shares of the Company's Common Stock equal to the then-applicable Conversion Rate, plus a number of Additional Shares, if any, or (ii) a number of shares of Common Stock equal to the Conversion Rate which will be increased to equal the sum of the Liquidation Preference plus all accumulated and unpaid dividends to, but excluding, the settlement date for such conversion divided by the Market Value of the Common Stock. Notwithstanding the foregoing, the Conversion Rate as adjusted as described in clause (A)(ii) will not exceed 17.1428 shares of Common Stock per share of Series B Preferred Stock (subject to adjustment in the same manner as the Conversion Rate as provided in Section 5).

(B) In addition to the number of shares of the Company's Common Stock issuable upon conversion of each share of Series B Preferred Stock on any Conversion Date during the Fundamental Change Conversion Period, each converting holder shall have the right to receive an amount equal to all accrued, accumulated and unpaid dividends on such converted shares of Series B Preferred Stock, whether or not declared prior to that date, for all prior Dividend Periods ending on or prior to the Dividend Payment Date immediately preceding the Conversion Date (other than previously declared dividends on the Series B Preferred Stock payable to holders of record as of a prior date), provided that the Company is then legally permitted to pay such dividends. The amount payable in respect of such dividends shall be paid in cash.

(C) The Company must give notice (a "Fundamental Change Notice") of each Fundamental Change to all record holders of the Series B Preferred Stock by the later of 20 days prior to the anticipated Fundamental Change Effective Date (determined in good faith by the Board) and the first public disclosure by the Company of the anticipated Fundamental Change, if practicable, and otherwise by the earliest practicable date, of the anticipated Fundamental Change Effective Date. The Fundamental Change Notice shall be given by first-class mail to each record holder of shares of Series B Preferred Stock, at such holder's address as the same appears on the books of the Company or the Transfer Agent. Each such Fundamental Change Notice shall state (i) the anticipated Fundamental Change Effective Date; (ii) the Expiration Date based on the anticipated Fundamental Change Effective Date; (iii) the name and address of the Transfer Agent; (iv) whether accumulated and unpaid dividends will be paid in cash, shares of the Company's Common Stock or a combination thereof; and (v) the procedures that holders must follow to convert their shares of Series B Preferred Stock pursuant to this Section 7.

(D) On or before the Expiration Date, each holder of shares of Series B Preferred Stock wishing to exercise its conversion right pursuant to this Section 7 shall comply with the procedures set forth in Section 5(B), and on such date the shares of the Company's Common Stock and the payment for unpaid dividends due to such holder (if applicable) shall be delivered to the Person whose name appears on the surrendered certificate or certificates as the owner thereof. Notwithstanding anything herein to the contrary, Holders of the Series B Preferred Stock may make an election to convert the Series B Preferred Stock contingent on the consummation of the Fundamental Change.

Section 8. Make-Whole Premium for Conversion upon a Fundamental Change.

(A) For Holders who elect to convert shares of Series B Preferred Stock pursuant to Section 7(A)(i) during the Fundamental Change Conversion Period, the additional number of shares of the Company's Common Stock issuable for each share of Series B Preferred Stock so converted (the "Additional Shares" or the "Make-Whole Premium"), if any, is set forth below in this Section 8.

(B) The number of Additional Shares shall be determined by reference to the table below, based on the Fundamental Change Effective Date and the Fundamental Change Stock Price.

	Fundamental Change Stock Price				
Fundamental Change Effective Date	$ 8.75	$ 9.75	$ 10.50	$ 12.50	$ 14.50
February 26, 2021	1.9048	1.4534	1.1788	0.6294	0.0000
February 26, 2022	1.9048	1.4534	1.1788	0.6294	0.0000
February 26, 2023	1.9048	1.4534	1.1788	0.6294	0.0000
February 26, 2024	1.9048	1.4534	1.1788	0.6294	0.0000
February 26, 2025	1.9048	1.4534	1.1788	0.6294	0.0000
February 26, 2026	1.9048	0.7326	0.0000	0.0000	0.0000

(C) The Fundamental Change Stock Prices set forth in the first row of the foregoing table shall be adjusted as of any date on which the Conversion Rate is adjusted. The adjusted Fundamental Change Stock Prices shall equal the Fundamental Change Stock Prices applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Fundamental Change Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted.

(D) The exact Fundamental Change Stock Price and Fundamental Change Effective Dates may not be set forth on the table, in which case:

(i) if the Fundamental Change Stock Price is between two Fundamental Change Stock Price amounts on the table or the Fundamental Change Effective Date is between two Fundamental Change Effective Dates on the table, the Make-Whole Premium shall be determined by straight-line interpolation between the Make-Whole Premium amounts set forth for the higher and lower Fundamental Change Stock Price amounts and the two dates, as applicable, based on a 365-day year;

(ii) if the Fundamental Change Stock Price is in excess of $14.50 per share (subject to adjustment as described above), then no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Fundamental Change Stock Price is less than $8.75 per share (subject to adjustment as described above), then 1.9048 Additional Shares shall be added to the Conversion Rate.

(E) The Company shall only be required to deliver the Make-Whole Premium with respect to shares of Series B Preferred Stock surrendered for conversion during any Fundamental Change Conversion Period.

Section 9. Reorganization Events.

(A) In the event of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination);

(ii) any consolidation, merger or combination involving the Company;

(iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's subsidiaries substantially as an entirety; or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock is converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof), each of which is herein referred to as a "Reorganization Event," each share of the Series B Preferred Stock outstanding immediately prior to such Reorganization Event will become convertible into the kind and amount of securities, cash and other property or assets that a holder (that was not the counterparty to the Reorganization Event or an affiliate of such other party) of a number of shares of Common Stock equal to the Conversion Rate per share of the Series B Preferred Stock prior to the Reorganization Event would have owned or been entitled to receive upon the Reorganization Event (the "Exchange Property").

(B) Upon any conversion during the period following a Reorganization Event and ending on the date that is 30 days after such Reorganization Event, each Holder of Series B Preferred Stock may elect to receive, for each share of Series B Preferred Stock converted, a number of shares of Common Stock equal to the Conversion Rate which will be increased to equal the sum of the Liquidation Preference plus all accumulated and unpaid dividends to, but excluding, the settlement date for such conversion divided by the Market Value of the Common Stock, provided that such Conversion Rate set forth in this clause (B) will not exceed 17.1428 shares of Common Stock per share of Series B Preferred Stock (subject to adjustment in the same manner as the Conversion Rate as provided in Section 5).

(C) In addition, in any Reorganization Event where (i) the Exchange Price (as defined in Section 16) is below $8.75 and there is a Change of Control, or (ii) when there is a Fundamental Change, the Company will have the right to require Holders of the Series B Preferred Stock to convert each share of the Series B Preferred Stock outstanding immediately prior to such Reorganization Event into a number of shares of Common Stock equal to the Conversion Rate which will be increased to equal the sum of the Liquidation Preference plus all accumulated and unpaid dividends to, but excluding, the settlement date for such conversion divided by the Market Value of the Common Stock, provided that such Conversion Rate set forth in this clause (C) will not exceed 34.2856 shares of Common Stock per share of Series B Preferred Stock (subject to adjustment in the same manner as the Conversion Rate as provided in Section 5).

Section 10. Voting Rights.

(A) For so long any shares of Series B Preferred Stock remain outstanding, unless a greater percentage shall be required by law, the affirmative vote or consent of the Holders of more than 66 2/3% of the outstanding shares of Series B Preferred Stock, in person or by proxy, at an annual meeting of the Company's shareholders or at a special meeting called for such purpose, or by written consent in lieu of such meeting, shall be required to alter, repeal or amend, whether by merger, consolidation, combination, reclassification or otherwise, any provisions of the Second Amended and Restated Certificate of Incorporation, this Certificate of Amendment establishing the Series B Preferred Stock, or the Fourth Amended and Restated By-laws of the Company, as amended, if the amendment would amend, alter or affect the voting rights, dividend rights, preferences or special rights of the Series B Preferred Stock so as to adversely affect the Holders thereof, including, without limitation, (i) any change to the Series C Preferred Stock that adversely affects the Series B Preferred Stock or (ii) the creation of, increase in the authorized number of, or issuance of, shares of any class or series of stock *pari passu* with or senior to the Series B Preferred Stock, or security convertible into such capital stock; provided that the Company may issue, without obtaining the vote or consent of any Holder, up to $100,000,000 in aggregate liquidation preference outstanding from time to time (as may be increased by the amount of any dividends paid in kind thereon) of additional preferred stock that is *pari passu* with the Series B Preferred Stock, on such terms as the Company may designate (including the Series C Preferred Stock issued on the Original Issue Date).

(B) Whenever dividends on any Series B Preferred Stock shall be in arrears for six or more consecutive or non-consecutive Dividend Periods (a "Preferred Dividend Default"), the Holders shall be entitled to nominate one additional director of the Company (the "Preferred Director") for election at the next annual meeting of stockholders and at each subsequent meeting, until all dividends accumulated on such Series B Preferred Stock for the past Dividend Periods and the then current Dividend Period shall have been fully paid or declared and a sum sufficient for the payment thereof set aside for payment; provided that on or prior to the election of such Preferred Director, the Holders and such Preferred Director shall have agreed in writing with the Company that such Preferred Director shall resign immediately if and when all accumulated dividends shall have been paid on such Series B Preferred Stock. In

such case, should a Preferred Director be subsequently elected, the entire Board shall be increased by one director. If and when all accumulated dividends shall have been paid on such Series B Preferred Stock, the right of the holders of such securities to nominate a director shall immediately cease (subject to revesting in the event of each and every Preferred Dividend Default). So long as a Preferred Dividend Default shall continue, the Holders shall be entitled to nominate a director to fill any vacancy in the office of a Preferred Director.

(C) Except as set forth in this Section 10, Holders have no voting rights and their consent shall not be required for taking any corporate action.

Section 11. [Reserved].

Section 12. Information Rights.

(A) The Company shall provide Holders with, within 15 days after it has filed the same with the Commission, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the Commission may prescribe) that it may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act (other than confidential filings, documents subject to confidential treatment and correspondence with the Commission) ("Public Company Reports").

(B) The Company's obligation set forth in Section 12(A) to provide Holders with copies of Public Company Reports shall be satisfied if the Company files such Public Company Reports with the SEC on EDGAR or otherwise makes such reports publicly available on its website.

(C) To the extent the Company is not required to file Public Company Reports with the SEC, the Company shall, for so long as any shares of the Series B Preferred Stock are outstanding, furnish to Holders, upon their written request (and subject to such Holders entering into customary confidentiality agreements with the Company, consistent with any such agreements entered into generally by shareholders of the Company receiving such information, prior to receiving such information), quarterly reports and annual reports of the Company, which shall be similar in scope to a Form 10-Q and Form 10-K, respectively. In this circumstance, the Company shall furnish to Holders such information as soon as reasonably practicable after such information has been prepared by the Company.

Section 13. No Fractional Shares. No fractional shares of Common Stock or securities representing fractional shares of Common Stock shall be delivered upon conversion, whether voluntary or mandatory, of the Series B Preferred Stock. Instead, the Company will make a cash payment to each Holder that would otherwise be entitled to a fractional share based on the Closing Sale Price of the Common Stock on the relevant Conversion Date.

Section 14. Certificates.

(A) *Form and Dating.* In the event the Company elects to issue the Series B Preferred Stock in certificated form, the certificates representing the Series B Preferred Stock and the Transfer Agent's certificate of authentication shall be substantially in the form set forth in Exhibit A. The Series B Preferred Stock certificate may have notations, legends or endorsements required by law or stock exchange rules; provided that any such notation, legend or endorsement is in a form acceptable to the Company. Each Series B Preferred Stock certificate shall be dated the date of its authentication.

(i) Global Preferred Stock. The Series B Preferred Stock shall be issued initially in the form of one or more fully registered certificates substantially in the form of Exhibit A hereto issued in the name of the Holder ("Certificated Preferred Stock"). Following the Original Issue Date, the Company may, at the request of the Holders (and subject to each such Holder surrendering its Certificated Preferred Stock in accordance with Section 14(C)), cause the Series B Preferred Stock to be issued in the form of one or more fully registered global certificates with the global securities legend substantially in the form of Exhibit A hereto (the "Global Preferred Stock"), which shall be deposited on behalf of the purchasers represented thereby with the Transfer Agent, as custodian for DTC (or with such other custodian as DTC may direct), and registered in the name of Cede & Co. or other nominee of DTC, duly executed by the Company and authenticated by the Transfer Agent as hereinafter provided. The number of shares of Series B Preferred Stock represented by Global Preferred Stock may from time to time be increased or decreased by adjustments made on the records of the Transfer Agent and DTC or its nominee as hereinafter provided. All shares of Common Stock issued in respect of shares of Series B Preferred Stock on any Conversion Date shall be freely transferable without restriction under the Securities Act (other than by the Company's Affiliates), and such shares shall be eligible for receipt in global form through the facilities of DTC.

(ii) Book-Entry Provisions. In the event Global Preferred Stock is deposited with or on behalf of DTC, the Company shall execute and the Transfer Agent shall authenticate and deliver initially one or more Global Preferred Stock certificates that (a) shall be registered in the name of Cede & Co. as nominee for DTC as depository for such Global Preferred Stock or the nominee of DTC and (b) shall be delivered by the Transfer Agent to DTC or pursuant to DTC's instructions or held by the Transfer Agent as custodian for DTC. Members of, or participants in, DTC ("Agent Members") shall have no rights under this Certificate of Amendment with respect to any Global Preferred Stock held on their behalf by DTC or by the Transfer Agent as the custodian of DTC or under such Global Preferred Stock, and DTC may be treated by the Company, the Transfer Agent and any agent of the Company or the Transfer Agent as the absolute owner of such Global Preferred Stock for all purposes whatsoever. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Transfer Agent or any agent of the Company or the Transfer Agent from giving effect to any written certification, proxy or other authorization furnished by DTC or impair, as between DTC and its Agent Members, the operation of customary practices of DTC governing the exercise of the rights of a holder of a beneficial interest in any Global Preferred Stock.

(iii) Certificated Preferred Stock. Except as provided in this Section 14(A) or in Section 14(C), owners of beneficial interests in Global Preferred Stock will not be entitled to receive physical delivery of Certificated Preferred Stock.

(B) *Execution and Authentication*. The Chief Executive Officer or the President or a Vice President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Company shall sign the Series B Preferred Stock certificate for the Company by manual or facsimile signature.

If an Officer whose signature is on a Series B Preferred Stock certificate no longer holds that office at the time the Transfer Agent authenticates the Series B Preferred Stock certificate, the Series B Preferred Stock certificate shall be valid nevertheless.

A Series B Preferred Stock certificate shall not be valid until an authorized signatory of the Transfer Agent manually signs the certificate of authentication on the Series B Preferred Stock certificate. The signature shall be conclusive evidence that the Series B Preferred Stock certificate has been authenticated under this Certificate of Amendment.

The Transfer Agent shall authenticate and deliver certificates for up to 1,000,000 shares of Series B Preferred Stock for original issue upon a written order of the Company signed by an Officer of the Company (or such greater number as may be required by law). Such order shall specify the number of shares of Series B Preferred Stock to be authenticated and the Original Issue Date of the Series B Preferred Stock is to be authenticated.

The Transfer Agent may appoint an authenticating agent reasonably acceptable to the Company to authenticate the certificates for the Series B Preferred Stock. Unless limited by the terms of such appointment, an authenticating agent may authenticate certificates for the Series B Preferred Stock whenever the Transfer Agent may do so. Each reference in this Certificate of Amendment to authentication by the Transfer Agent includes authentication by such agent. An authenticating agent has the same rights as the Transfer Agent or agent for service of notices and demands.

(C) *Transfer and Exchange*.

(i) Transfer and Exchange of Certificated Preferred Stock. When Certificated Preferred Stock is presented to the Transfer Agent with a request to register the transfer of such Certificated Preferred Stock or to exchange such Certificated Preferred Stock for an equal number of shares of Certificated Preferred Stock, the Transfer Agent shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided that the Certificated Preferred Stock surrendered for transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Transfer Agent, duly executed by the Holder thereof or its attorney duly authorized in writing.

(ii) Restrictions on Transfer of Certificated Preferred Stock for a Beneficial Interest in Global Preferred Stock. Certificated Preferred Stock may not be exchanged for a beneficial interest in Global Preferred Stock except upon satisfaction of the requirements set forth below. Upon receipt by the Transfer Agent of Certificated Preferred Stock, duly endorsed or accompanied by appropriate instruments of transfer, in form reasonably satisfactory to the Company and the Transfer Agent, together with written instructions directing the Transfer Agent to make, or to direct DTC to make, an

adjustment on its books and records with respect to such Global Preferred Stock to reflect an increase in the number of shares of Series B Preferred Stock represented by the Global Preferred Stock, then the Transfer Agent shall cancel such Certificated Preferred Stock and cause, or direct DTC to cause, in accordance with the standing instructions and procedures existing between DTC and the Transfer Agent, the number of shares of Series B Preferred Stock represented by the Global Preferred Stock to be increased accordingly. If no Global Preferred Stock is then outstanding, the Company shall issue and the Transfer Agent shall authenticate, upon written order of the Company in the form of an Officers' Certificate, a new Global Preferred Stock representing the appropriate number of shares.

(iii) Transfer and Exchange of Global Preferred Stock. The transfer and exchange of Global Preferred Stock or beneficial interests therein shall be effected through DTC, in accordance with this Certificate of Amendment (including applicable restrictions on transfer set forth herein, if any) and the procedures of DTC therefor.

(iv) Transfer of a Beneficial Interest in Global Preferred Stock for Certificated Preferred Stock.

(1) If at any time:

(A) DTC notifies the Company that DTC is unwilling or unable to continue as depository for the Global Preferred Stock and a successor depository for the Global Preferred Stock is not appointed by the Company within 90 days after delivery of such notice; or

(B) DTC ceases to be a clearing agency registered under the Exchange Act and a successor depository for the Global Preferred Stock is not appointed by the Company within 90 days,

then the Company shall execute, and the Transfer Agent, upon receipt of a written order of the Company signed by two Officers of the Company requesting the authentication and delivery of Certificated Preferred Stock to the Persons designated by the Company, shall authenticate and deliver Certificated Preferred Stock equal to the number of shares of Series B Preferred Stock represented by the Global Preferred Stock, in exchange for such Global Preferred Stock. Subject to the foregoing, the beneficial interests in a Global Preferred Stock shall not be exchangeable for Certificated Preferred Stock.

(2) Certificated Preferred Stock issued in exchange for a beneficial interest in a Global Preferred Stock pursuant to this Section 14(C)(iv) shall be registered in such names and in such authorized denominations as DTC, pursuant to instructions from its direct or indirect participants or otherwise, shall instruct the Transfer Agent. The Transfer Agent shall deliver such Certificated Preferred Stock to the Persons in whose names such Series B Preferred Stock are so registered in accordance with the instructions of DTC.

(v) Restrictions on Transfer of Global Preferred Stock. Notwithstanding any other provisions of this Certificate of Amendment (other than the provisions set forth in Section 14(C)(iv)), Global Preferred Stock may not be transferred as a whole except by DTC to a nominee of DTC or by a nominee of DTC to DTC or another nominee of DTC or by DTC or any such nominee to a successor depository or a nominee of such successor depository.

(vi) Cancellation or Adjustment of Global Preferred Stock. At such time as all beneficial interests in Global Preferred Stock have either been exchanged for Certificated Preferred Stock, converted or canceled, such Global Preferred Stock shall be returned to DTC for cancellation or retained and canceled by the Transfer Agent. At any time prior to such cancellation, if any beneficial interest in Global Preferred Stock is exchanged for Certificated Preferred Stock, converted or canceled, the number of shares of Series B Preferred Stock represented by such Global Preferred Stock shall be reduced and an adjustment shall be made on the books and records of the Transfer Agent with respect to such Global Preferred Stock, by the Transfer Agent or DTC, to reflect such reduction.

(vii) Obligations with Respect to Transfers and Exchanges of Series B Preferred Stock.

(1) To permit registrations of transfers and exchanges, the Company shall execute and the Transfer Agent shall authenticate Certificated Preferred Stock and Global Preferred Stock as required pursuant to the provisions of this Section 14(C).

(2) All Certificated Preferred Stock and Global Preferred Stock issued upon any registration of transfer or exchange of Certificated Preferred Stock or Global Preferred Stock shall be the valid Capital Stock of the Company, entitled to the same benefits under this Certificate of Amendment as the Certificated Preferred Stock or Global Preferred Stock surrendered upon such registration of transfer or exchange.

(3) Prior to due presentment for registration of transfer of any shares of Series B Preferred Stock, the Transfer Agent and the Company may deem and treat the Person in whose name such shares of Series B Preferred Stock are registered as the absolute owner of such Series B Preferred Stock and neither the Transfer Agent nor the Company shall be affected by notice to the contrary.

(4) No service charge shall be made to a Holder for any registration of transfer or exchange upon surrender of any Series B Preferred Stock certificate or Common Stock certificate at the office of the Transfer Agent maintained for that purpose. However, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Series B Preferred Stock certificates or Common Stock certificates, except as provided in Section 5(G).

(viii) No Obligation of the Transfer Agent.

(1) The Transfer Agent or the Company shall have no responsibility or obligation to any beneficial owner of Global Preferred Stock, a member of or a participant in, DTC or any other Person with respect to the accuracy of the records of DTC or its nominee or of any participant or member thereof, with respect to any ownership interest in the Series B Preferred Stock or with respect to the delivery to any participant, member, beneficial owner or other Person (other than DTC) of any notice or the payment of any amount, under or with respect to such Global Preferred Stock. All notices and communications to be given to the Holders and all payments to be made to Holders under the Series B Preferred Stock shall be given or made only to the Holders (which shall be DTC or its nominee in the case of the Global Preferred Stock). The rights of beneficial owners in any Global Preferred Stock shall be exercised only through DTC subject to the applicable rules and procedures of DTC. The Transfer Agent may rely and shall be fully protected in relying upon information furnished by DTC with respect to its members, participants and any beneficial owners.

(2) The Transfer Agent or the Company shall have no obligation or duty to monitor, determine or inquire as to compliance with any restrictions on transfer imposed under this Certificate of Amendment or under applicable law with respect to any transfer of any interest in any Series B Preferred Stock (including any transfers between or among DTC participants, members or beneficial owners in any Global Preferred Stock) other than to require delivery of such certificates and other documentation or evidence as are expressly required by, and to do so if and when expressly required by, the terms of this Certificate of Amendment, and to examine the same to determine substantial compliance as to form with the express requirements hereof.

(D) *Replacement Certificates*. If any of the Certificated Preferred Stock certificates shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated Certificated Preferred Stock certificate, or in lieu of and substitution for the Certificated Preferred Stock certificate lost, stolen or destroyed, a new Certificated Preferred Stock certificate of like tenor and representing an equivalent number of shares of Series B Preferred Stock, but only upon receipt of evidence of such loss, theft or destruction of such Certificated Preferred Stock certificate and indemnity, if requested, satisfactory to the Company and the Transfer Agent.

(E) *Temporary Certificates*. Until definitive Certificated Preferred Stock certificates are ready for delivery, the Company may prepare and the Transfer Agent shall authenticate temporary Certificated Preferred Stock certificates. Any temporary Certificated Preferred Stock certificates shall be substantially in the form of definitive Preferred Stock certificates but may have variations that the Company considers appropriate for temporary Certificated Preferred Stock certificates. Without unreasonable delay, the Company shall prepare and the Transfer Agent shall authenticate definitive Certificated Preferred Stock certificates and deliver them in exchange for temporary Certificated Preferred Stock certificates.

(F) *Cancellation*. In the event the Company shall purchase or otherwise acquire Certificated Preferred Stock, the same shall thereupon be delivered to the Transfer Agent for cancellation.

(i) At such time as all beneficial interests in Global Preferred Stock have either been exchanged for Certificated Preferred Stock, converted, repurchased or canceled, such Global Preferred Stock shall thereupon be delivered to the Transfer Agent for cancellation.

(ii) The Transfer Agent and no one else shall cancel and destroy all Certificated Preferred Stock certificates surrendered for transfer, exchange, replacement or cancellation and deliver a certificate of such destruction to the Company unless the Company directs the Transfer Agent to deliver canceled Certificated Preferred Stock certificates to the Company. The Company may not issue new Certificated Preferred Stock certificates to replace Certificated Preferred Stock certificates to the extent they evidence Series B Preferred Stock which the Company has purchased or otherwise acquired.

(G) *Legends*. All certificates or other instruments representing shares of Series B Preferred Stock or Common Stock issuable upon conversion thereof will bear a legend in substantially the following form (excluding in the case of any such Series B Preferred Stock or such Common Stock for which a registration statement covering the resale of such Series B Preferred Stock or such Common Stock has been declared effective by the SEC and that has been disposed of pursuant to such effective registration statement; or sold under circumstances in which all of the applicable conditions of Rule 144 (or any similar provisions then in force) under the Securities Act are met):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY NON-U.S. OR STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH. THIS SECURITY IS ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER AS SET FORTH IN A REGISTRATION RIGHTS AGREEMENT, AS AMENDED FROM TIME TO TIME, COPIES OF WHICH MAY BE OBTAINED UPON REQUEST FROM EASTMAN KODAK COMPANY OR ANY SUCCESSOR THERETO, AND THIS SECURITY MAY NOT BE VOTED OR OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH. THIS SECURITY MAY BE TRANSFERRED IN ACCORDANCE WITH RULE 144A UNDER THE SECURITIES ACT WITHOUT THE DELIVERY OF AN OPINION OF COUNSEL.

Section 15. Other Provisions.

(A) With respect to any notice to a Holder of shares of Series B Preferred Stock required to be provided hereunder, neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular Holder shall affect the sufficiency of the notice or the validity of the proceedings referred to in such notice with respect to the other Holders or

affect the legality or validity of any distribution, rights, warrant, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up, or the vote upon any such action. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Holder receives the notice.

(B) Shares of Series B Preferred Stock that have been issued and reacquired in any manner, including shares of Series B Preferred Stock that are purchased or exchanged or converted, shall (upon compliance with any applicable provisions of the New Jersey Business Corporation Act) have the status of authorized but unissued shares of preferred stock of the Company undesignated as to series and may be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Company; provided that any issuance of such shares as Series B Preferred Stock must be in compliance with the terms hereof.

(C) The shares of Series B Preferred Stock shall be issuable only in whole shares.

(D) All notice periods referred to herein shall commence on the date of the mailing of the applicable notice. Notice to any Holder shall be given to the registered address set forth in the Company's or the Transfer Agent's records for such Holder, or for Global Preferred Stock, to the Depository in accordance with its procedures.

(E) Any payment required to be made hereunder on any day that is not a Business Day shall be made on the next succeeding Business Day and no interest or dividends on such payment will accrue or accumulate, as the case may be, in respect of such delay.

Section 16. Definitions.

(A) "Additional Shares" shall have the meaning set forth in Section 8(A).

(B) "Affiliate" means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with such other Person. For purposes of determining whether a Person is an Affiliate, the term "control" and its correlative forms "controlled by" and "under common control with" 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 ownership of securities, contract or otherwise.

(C) "Agent Members" shall have the meaning set forth in Section 14(A)(ii).

(D) "Business Day" means any day except Saturday, Sunday or any other day on which commercial banks located in New York, New York, New Jersey are authorized or required by law to be closed for business.

(E) "Capital Stock" shall mean, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

(F) “Certificated Preferred Stock” shall have the meaning set forth in Section 14(A)(iii).

(G) “Certificate of Amendment” shall have the meaning set forth in Section 5(A).

(H) “Change of Control” means a Fundamental Change as set forth in clause (i) of the definition of Fundamental Change.

(I) “close of business” means 5:00 p.m. (New York City time).

(J) “Closing Sale Price” of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported in composite transactions for the principal United States national or regional securities exchange on which the Common Stock is traded or, if the Common Stock is not listed for trading on a United States national or regional securities exchange on the relevant date, the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date, as reported by OTC Markets Group Inc. or a similar organization. In the absence of such a quotation, the Closing Sale Price shall be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

(K) “Common Stock” shall mean the Common Stock, par value $0.01 per share, of the Company.

(L) “Conversion Date” shall have the meaning specified in Section 5(B).

(M) “Conversion Price” shall mean, at any time, $100.00 (one hundred and 00/100 dollars) divided by the Conversion Rate in effect at such time.

(N) “Conversion Rate” shall have the meaning specified in Section 5(A).

(O) “DTC” or “Depository” shall mean The Depository Trust Company, or any successor depository.

(P) “Dividend Payment Date” shall mean January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2021.

(Q) “Dividend Period” means the period commencing on, and including, a Dividend Payment Date and ending on, and including, the day immediately preceding the next succeeding Dividend Payment Date, with the exception that the first Dividend Period shall commence on, and include, the Original Issue Date and end on and include April 14, 2021.

(R) “Dividend Rate” shall mean the rate per annum of 4.0% per share of Series B Preferred Stock on the Liquidation Preference.

(S) “Dividend Record Date” shall mean, with respect to any Dividend Payment Date, the January 1, April 1, July 1 or October 1, as the case may be, immediately preceding such Dividend Payment Date.

(T) “Effective Date” shall mean the date on which a Fundamental Change event occurs or becomes effective, except that, as used in Section 5(D), Effective Date shall mean the first date on which the shares of the Common Stock trade on the applicable exchange or market, regular way, reflecting the relevant share split or share combination, as applicable.

(U) “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(V) “Exchange Price” shall mean the Exchange Property divided by the Market Value of the Common Stock.

(W) “Exchange Property” shall have the meaning set forth in Section 9(A).

(X) “Ex-Date,” when used with respect to any issuance, dividend or distribution on the Common Stock, means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

(Y) “Expiration Date” shall have the meaning set forth in Section 7(A).

(Z) “Fundamental Change” shall be deemed to have occurred at any time after the Series B Preferred Stock is originally issued if any of the following occurs:

(i) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than (1) the Company, its subsidiaries or the employee benefit plans of the Company and its subsidiaries and (2) Permitted Holders, becomes the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of more than 50% of the Voting Stock, provided that a Fundamental Change will be deemed to have occurred if a Permitted Holder Group becomes the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of more than 70% of the Voting Stock;

(ii) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its subsidiaries, taken as a whole, to any Person other than one of the Company’s subsidiaries; provided, however, that any merger solely for the purpose of changing the Company’s jurisdiction of incorporation to the United States of America, any State

thereof or the District of Columbia, and resulting in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of Common Stock of the surviving entity, shall not be a Fundamental Change; provided further that any transaction described in this clause (ii) in which the holders of the Company's Common Stock immediately prior to such transaction own, directly or indirectly, more than 50% of the common stock of the continuing corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (ii);

(iii) the Common Stock ceases to be listed or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors); or

(iv) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;

provided, however, that a transaction or transactions described in clause (i) or (ii) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the Common Stock of the Company, excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions the Series B Preferred Stock becomes convertible into such consideration pursuant to the terms hereof.

(AA) "Fundamental Change Conversion Period" shall have the meaning set forth in Section 7(A).

(BB) "Fundamental Change Effective Date" means, with respect to the occurrence of any Fundamental Change, the effective date of such Fundamental Change.

(CC) "Fundamental Change Notice" shall have the meaning set forth in Section 7(C).

(DD) "Fundamental Change Stock Price" means, for any Fundamental Change, the price paid (or deemed paid) per share of Common Stock in the Fundamental Change, which shall equal (i) if all holders of Common Stock receive only cash in exchange for their Common Stock in such Fundamental Change, the amount of cash paid per share of Common Stock in such Fundamental Change, and (ii) in all other cases, the Market Value per share of Common Stock determined as of the Trading Day immediately preceding the Fundamental Change Effective Date.

(EE) "Global Preferred Stock" shall have the meaning specified in Section 14(A)(i).

(FF) “Holder” or “holder” shall mean a holder of record of the Series B Preferred Stock.

(GG) “Junior Stock” means all classes of the Company’s Common Stock and any other class of capital stock or series of preferred stock of the Company established after the issue date of the Series B Preferred Stock, the terms of which do not expressly provide that such class or series ranks senior to or *pari passu* with the Series B Preferred Stock as to dividend rights or rights upon the Company’s liquidation, winding-up or dissolution.

(HH) “Liquidation Preference” means, with respect to each share of Series B Preferred Stock, $100.00 per share.

(II) “Make-Whole Premium” shall have the meaning set forth in Section 8(A).

(JJ) “Mandatory Conversion Date” shall have the meaning specified in Section 6(B).

(KK) “Mandatory Redemption Price” shall have the meaning specified in Section 4.

(LL) “Market Value” shall mean the average of the per share volume-weighted average prices of the Common Stock for each day during a 15 consecutive Trading Day period ending immediately prior to the date of determination, as displayed under the heading “Bloomberg VWAP” on Bloomberg page “KODK Equity VWAP” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on each such Trading Day (or if such volume-weighted average price is unavailable on any such Trading Day, the Closing Sale Price shall be used for such Trading Day). The per share volume-weighted average price on each such Trading Day shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

(MM) “Notice of Conversion” shall have the meaning set forth in Section 5(B).

(NN) “Officer” shall mean the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company.

(OO) “Officers’ Certificate” shall mean a certificate signed by two Officers.

(PP) “open of business” means 9:00 a.m. (New York City time).

(QQ) “Original Issue Date” shall mean the first date on which the Series B Preferred Stock is issued.

(RR) “Permitted Holders” shall mean, at any time, each of Southeastern Asset Management, Inc., Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited, Deseret Mutual Pension Trust, George Karfunkel, Renee Karfunkel, GKarfunkel Family LLC, Congregation Chemdas Yisroel, Chesed Foundation of America, Marneu Holding Company,

Moses Marx, Phillippe Katz, K.F. Investors LLC, United Equities Commodities Company, Momar Corporation, 111 John Realty Corporation, GO EK Ventures IV, LLC, Kennedy Lewis Investment Management, LLC and any Affiliate of the foregoing and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) the members of which include any of the Permitted Holders specified above and that, directly or indirectly, holds or acquires beneficial ownership of the Voting Stock (a "Permitted Holder Group"), so long as (1) each member of the Permitted Holder Group has voting rights proportional to the percentage of ownership interests held or acquired by such member and (2) no Person or other "group" (other than Permitted Holders specified above) beneficially owns more than 50% on a fully diluted basis of the Voting Stock held by the Permitted Holder Group (without giving effect to any attribution rules).

(SS) "Person" shall mean any individual, corporation, general partnership, limited partnership, limited liability partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.

(TT) "Preferred Dividend Default" shall have the meaning set forth in Section 10(C).

(UU) "Preferred Director" shall have the meaning set forth in Section 10(C).

(VV) "Record Date" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board, statute, contract or otherwise).

(WW) "Reorganization Event" shall have the meaning set forth in Section 9(A).

(XX) "SEC" or "Commission" shall mean the Securities and Exchange Commission.

(YY) "Securities Act" shall mean the Securities Act of 1933, as amended.

(ZZ) "Series B Preferred Stock" shall have the meaning set forth in Section 1.

(AAA) "Series C Preferred Stock" shall mean any Series C Preferred Stock that may be designated by the Company.

(BBB) "Spin-off" shall have the meaning specified in Section 5(D)(iii).

(CCC) "Stock Price" shall mean (i) if holders of the Common Stock receive in exchange for their Common Stock only cash in the transaction constituting a Fundamental Change, the cash amount paid per share or (ii) otherwise, the average of the Closing Sale Prices of the Common Stock on the five Trading Days preceding, but excluding the Effective Date of the Fundamental Change.

(DDD) “Trading Day” shall mean a day during which trading in the Common Stock generally occurs on the New York Stock Exchange or, if the Common Stock is not listed on the New York Stock Exchange, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading. If the Common Stock is not so listed or traded, Trading Day means a Business Day.

(EEE) “Transfer Agent” shall mean Computershare Inc. and Computershare Trust Company N.A., together acting as the Company’s duly appointed transfer agent, registrar, conversion agent and dividend disbursing agent for the Series B Preferred Stock. The Company may, in its sole discretion, remove the Transfer Agent with 10 days’ prior notice to the Transfer Agent and Holders; provided that the Company shall appoint a successor Transfer Agent who shall accept such appointment prior to the effectiveness of such removal.

(FFF) “Valuation Period” shall have the meaning specified in Section 5(D)(iii).

(GGG) “Voting Stock” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board.

EXHIBIT A

FORM OF SERIES B PREFERRED STOCK CERTIFICATE

FACE OF SECURITY

UNLESS THIS CERTIFICATE IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY TRUST COMPANY, A NEW YORK CORPORATION ("DTC"), NEW YORK, NEW YORK, TO THE COMPANY OR ITS AGENT FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY CERTIFICATE ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC (AND ANY PAYMENT IS MADE TO CEDE & CO., OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF DTC) ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

TRANSFERS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS IN WHOLE, BUT NOT IN PART, TO NOMINEES OF DTC OR TO A SUCCESSOR THEREOF OR SUCH SUCCESSOR'S NOMINEE AND TRANSFERS OF PORTIONS OF THIS GLOBAL SECURITY SHALL BE LIMITED TO TRANSFERS MADE IN ACCORDANCE WITH THE RESTRICTIONS SET FORTH IN THE CERTIFICATE OF AMENDMENT REFERRED TO BELOW.

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY NON-U.S. OR STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH. THIS SECURITY IS ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER AS SET FORTH IN A REGISTRATION RIGHTS AGREEMENT, AS AMENDED FROM TIME TO TIME, COPIES OF WHICH MAY BE OBTAINED UPON REQUEST FROM EASTMAN KODAK COMPANY OR ANY SUCCESSOR THERETO, AND THIS SECURITY MAY NOT BE VOTED OR OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH. THIS SECURITY MAY BE TRANSFERRED IN ACCORDANCE WITH RULE 144A UNDER THE SECURITIES ACT WITHOUT THE DELIVERY OF AN OPINION OF COUNSEL.

Certificate Number [ ]

Number of Shares of Preferred Stock [ ]

CUSIP No.: [ ]
ISIN No. [ ]

4.0% Series B Convertible Preferred Stock
of
EASTMAN KODAK COMPANY

EASTMAN KODAK COMPANY, a New Jersey corporation (the "Company"), hereby certifies that [ ] (the "Holder") is the registered owner of [ ] fully paid and non-assessable shares of preferred stock, no par value, of the Company designated as the 4.0% Series B Convertible Preferred Stock (the "Series B Preferred Stock"). The shares of Series B Preferred Stock are transferable on the books and records of the Transfer Agent, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Series B Preferred Stock represented hereby are as specified in, and the shares of Series B Preferred Stock are issued and shall in all respects be subject to the provisions of, the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company, dated February 25, 2021, as the same may be amended from time to time (the "Certificate of Amendment"). Capitalized terms used herein but not defined shall have the meaning given them in the Certificate of Amendment. The Company will provide a copy of the Certificate of Amendment to a Holder without charge upon written request to the Company at its principal place of business.

Reference is hereby made to the Certificate of Amendment, which shall for all purposes have the same effect as if set forth at this place.

Upon receipt of this certificate, the Holder is bound by the Certificate of Amendment and is entitled to the benefits thereunder.

Unless the Transfer Agent's Certificate of Authentication hereon has been properly executed, these shares of Series B Preferred Stock shall not be entitled to any benefit under the Certificate of Amendment or be valid for any purpose.

IN WITNESS WHEREOF, the Company has executed this certificate this day of [ ], 2021.

EASTMAN KODAK COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

TRANSFER AGENT'S CERTIFICATE OF AUTHENTICATION

These are shares of Series B Preferred Stock referred to in the within-mentioned Certificate of Amendment.

Dated:

COMPUTERSHARE SHAREOWNER SERVICES, as Transfer Agent

By: _____
Authorized Signatory

REVERSE OF SECURITY

The Company is authorized to issue 4.0% Series B Convertible Preferred Stock (the "Series B Preferred Stock") and common stock. The Series B Preferred Stock is convertible preferred stock, with a dividend and liquidation preference over the common stock.

The Company will furnish without charge and upon written request to each Holder the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock and the qualifications, limitations or restrictions of such preferences and/or rights.

The Company will furnish to any shareholder, upon request and without charge, a full statement of the authority of its Board of Directors to divide shares of its capital stock into classes or series and to determine and change the relative rights, preferences and limitations of any class or series.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of Series B Preferred Stock evidenced hereby to:

_____

_____

(Insert assignee's social security or tax identification number)

_____

(Insert address and zip code of assignee)

and irrevocably appoints:

_____

_____

_____

agent to transfer the shares of Series B Preferred Stock evidenced hereby on the books of the Transfer Agent. The agent may substitute another to act for him or her.

Date: _____

Signature: _____

(Sign exactly as your name appears on the other side of this Series B Preferred Stock Certificate)

Signature Guarantee: _____[1]

1 (Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Transfer Agent, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Transfer Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

EXHIBIT B

NOTICE OF CONVERSION

(To be Executed by the Holder in order to Convert the Series B Preferred Stock)

The undersigned hereby irrevocably elects to convert (the "Conversion") shares of 4.0% Series B Preferred Stock (the "Series B Preferred Stock") of Eastman Kodak Company (the "Company"), represented by stock certificate No(s) (the "Preferred Stock Certificates"), into shares of Common Stock ("Common Stock") of the Company according to the conditions of the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company, dated February 25, 2021, establishing the Series B Preferred Stock (the "Certificate of Amendment"). The Company will pay any documentary, stamp or similar issue or transfer tax on the issuance of the shares of the Company's Common Stock upon conversion of the Series B Preferred Stock, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder's name, in which case the Holder will pay the tax. A copy of each Preferred Stock Certificate is attached hereto (or evidence of loss, theft or destruction thereof).

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in or pursuant to the Certificate of Amendment.

Number of shares of Series B Preferred Stock to be converted:

Name or Names (with addresses) in which the certificate or certificate for any shares of Common Stock to be issued are to be registered:[2]

Signature:

Name of registered Holder:

Fax No.:

Telephone No.:

2 The Company is not required to issue shares of Common Stock until you (a) if required, furnish appropriate endorsements and transfer documents and (b) if required, pay funds equal to interest payable on the next Dividend Payment Date to which such Holder is not entitled.

IN WITNESS WHEREOF, this Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company is executed on behalf of the Company by its Chief Executive Officer and attested by its Secretary this 25th day of February, 2021.

By: /s/ James V. Continenza

Name: James V. Continenza

Title: Chief Executive Officer

Attest:

By: /s/ Roger W. Byrd

Name: Roger W. Byrd

Title: Secretary

STATEMENT

With regard to the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company, Exhibits A and B to the Certificate of Amendment are a part of the Certificate of Amendment but cannot be completed in full at this time and thus should be filed in blank form.

Exhibit 3.2

CERTIFICATE OF AMENDMENT TO THE

SECOND AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

EASTMAN KODAK COMPANY

(Pursuant to Section 14A:7-2(2) and (4) of the
New Jersey Business Corporation Act)

Pursuant to the provisions of N.J.S.A. 14A:7-2(2) and (4), the undersigned corporation executes the following Certificate of Amendment to its Second Amended and Restated Certificate of Incorporation:

1. The name of the corporation is Eastman Kodak Company, a corporation organized and existing under the laws of the State of New Jersey (hereinafter called the "Company").

2. The following amendment to the Second Amended and Restated Certificate of Incorporation (the "Certificate"), was approved by the Company's Board of Directors (the "Board") as required by Section 14A:7-2 of the New Jersey Business Corporation Act at a meeting duly called, convened and held on February 25, 2021.

3. The Board, in accordance with the Certificate, and Fourth Amended and Restated By-laws of the Company, as amended (the "By-laws"), and applicable law, at said meeting duly called, convened and held on February 25, 2021, duly adopted the following resolution authorizing the issuance and sale by the Company of up to $100 million in aggregate liquidation preference of shares of the Company's preferred stock (and such increases in liquidation preference as will occur in connection with the issuance of PIK Shares or accumulation of Additional Liquidation Preference from time to time in accordance herewith), no par value per share ("Preferred Stock"), and created a series of 5.0% Series C Convertible Preferred Stock of the Company designated as "5.0% Series C Convertible Preferred Stock" on the terms set forth herein.

NOW, THEREFORE, BE IT RESOLVED, that in accordance with N.J.S.A. 14A:7-2(4) and Article III of the Certificate, the Board hereby establishes the terms of the 5.0% Series C Convertible Preferred Stock, no par value per share, and fixes and determines the authorized number of shares of the series, the dividend rate of shares of the series, the designations, and certain other powers, preferences, and relative, participating, optional or other rights, and the qualifications, limitations and restrictions thereof, with the Certificate hereby amended to add such terms to the end of Article III, following Article III.A., of the Certificate as follows:

III.B. 5.0% Series C Convertible Preferred Stock:

Section 1. Designation and Amount. There is hereby created out of the authorized and unissued shares of preferred stock of the Company a series of preferred stock designated as "5.0% Series C Convertible Preferred Stock" (the "Series C Preferred Stock") and the number of shares constituting the Series C Preferred Stock shall be 1,435,000.

Section 2. Dividends and Distributions.

(A) Holders of shares of Series C Preferred Stock shall be entitled to receive, (i) on each share of Series C Preferred Stock and with respect to each Dividend Period, dividends in the form of PIK Shares (as defined below), which shall be payable as set forth below, in an amount equal to the product of (x) Dividend Rate multiplied by (y) the Liquidation Preference of each such share of Series C Preferred Stock (the "Preferred Dividends") and (ii) as and if

declared by the Board, out of any funds legally available therefor, dividends and distributions (other than (x) dividends payable in Common Stock and (y) any dividend or distribution to the extent such dividend or distribution will result in an adjustment to the Conversion Rate under Section 5(D)) per share of Series C Preferred Stock which will be payable on the number of shares of Common Stock into which such share of Series C Preferred Stock are convertible on the applicable Record Date for such dividend or distribution; *provided* that such dividends and distributions will be payable or made, as applicable, only upon redemption or conversion of such share of Series C Preferred Stock into Common Stock (the "Participating Dividends" and, together with the Preferred Dividends, the "Dividends"). Preferred Dividends shall be cumulative and accrue from the date of issue of each share of Series C Preferred Stock (and, in the case of any PIK Shares, from the date such PIK Shares are issued, except as provided in Section 2(B)).

(B) If Preferred Dividends are not declared and paid on any Dividend Payment Date, the unpaid amount shall be added to the Liquidation Preference (the "Additional Liquidation Preference"); *provided* that if such Preferred Dividends are subsequently paid with respect to Series C Preferred Stock prior to its conversion, the Additional Liquidation Preference shall be reduced by the Original Purchase Price for each PIK Shares issued as payment of such Preferred Dividends and such PIK Shares shall accrue Dividends from the applicable Dividend Payment Date.

(C) Dividends shall be payable to holders of record as they appear on the Company's stock register on the immediately preceding Dividend Record Date (if such dividend has been declared). Preferred Dividends payable on the Series C Preferred Stock for any period other than a full Dividend Period shall be computed on the basis of a 360-day year consisting of twelve 30-day months and, for partial months, on the basis of the number of days actually elapsed in a 30-day month.

(D) The Company shall make each Preferred Dividend payment on the Series C Preferred Stock by issuance and delivery of additional non-assessable shares of Series C Preferred Stock (the "PIK Shares") in an amount of PIK Shares for each Holder equal to the quotient of (x) the aggregate dollar amount of the Preferred Dividend payable to such Holder divided by (y) the Original Purchase Price. Preferred Dividends shall be payable only to the extent the Board, or an authorized committee thereof, declares such Preferred Dividends payable. All PIK Shares shall be duly and validly issued and free and clear of all liens and other claims. To the extent any PIK Shares pursuant to the preceding paragraph are prohibited as a result of any legal prohibition, the Company shall use its commercially reasonable efforts to remove any such legal prohibition and shall pay any such Preferred Dividend in PIK Shares at such time and to the extent any such legal prohibition is removed unless and to the extent that the Holders of the Series C Preferred Stock with respect to which the PIK Shares could not be issued and in lieu thereof had the Liquidation Preference for the shares of Series C Preferred Stock held by them in increased in the same amount by the Additional Liquidation Preference.

(E) No Preferred Dividend shall be declared or paid upon any outstanding share of Series C Preferred Stock with respect to any Dividend Period unless Preferred Dividends are declared and paid upon all outstanding shares of Series C Preferred Stock for such Dividend Period.

(F) While any shares of Series C Preferred Stock remain outstanding, unless all accumulated and unpaid dividends on the Series C Preferred Stock for all past Dividend Periods shall have been paid in full in the form of PIK Shares or Additional Liquidation Preference or if at any time the Company has not fully performed its obligation to redeem in full all outstanding shares of the Series C Preferred Stock pursuant to Section 5, the Company shall not:

(i) declare or pay any dividend or make any distribution of assets on any Junior Stock; or

(ii) redeem, purchase or otherwise acquire any shares of Junior Stock or pay or make any monies available for a sinking fund for such shares of Junior Stock, other than (1) upon conversion or exchange for other Junior Stock or (2) the purchase of fractional interests in shares of any Junior Stock pursuant to the conversion or exchange provisions of such shares of Junior Stock;

provided, however, that the foregoing limitations shall not apply to (x) redemptions, purchases or other acquisitions of shares of Junior Stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, managers or consultants of, or to, the Company or any of its subsidiaries; (y) an exchange, redemption, reclassification or conversion of any class or series of Junior Stock for any class or series of Junior Stock that ranks equal or junior to the applicable Junior Stock; or (z) any dividend in the form of stock, warrants, options or other rights where the dividended stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equal or junior to the applicable Junior Stock.

(G) Holders of shares of Series C Preferred Stock at the close of business on a Dividend Record Date will be entitled to receive the Preferred Dividend payment on such shares on the corresponding Dividend Payment Date (if such dividend has been declared) notwithstanding the conversion of such shares following such Dividend Record Date or the Company's default in payment of the Preferred Dividend due on such Dividend Payment Date; *provided* that any Preferred Dividend payable in respect of any shares of Series C Preferred Stock that have been converted following the Dividend Record Date shall be payable in either cash or a number of additional shares of Common Stock equal to the product of (x) the Conversion Rate multiplied by (y) the Liquidation Preference in respect of such shares of Series C Preferred Stock being converted, as the Company may elect. Holders of shares of Series C Preferred Stock will not be entitled to any Preferred Dividend in excess of full cumulative Preferred Dividends.

Section 3. Rank. The Series C Preferred Stock will rank, as to payment of dividends and distributions of assets upon the liquidation, dissolution or winding up of the Company, (i) senior to the Company's Common Stock, (ii) either senior to or *pari passu* with all other preferred stock, (iii) *pari passu* with the Company's Series B Preferred Stock and (iv) junior to all shares of capital stock of the Company issued in the future, the terms of which expressly provide that such shares will rank senior to the Series C Preferred Stock.

Section 4. Mandatory Redemption.

(A) Subject to the New Jersey Business Corporation Act, unless no shares of the Series C Preferred Stock are outstanding, on the date that is ninety-one (91) days following the fifth (5th) anniversary of the Original Issue Date (the "Mandatory Redemption Date"), the Company shall redeem from funds legally available therefor all shares of Series C Preferred Stock at a redemption price equal to the Liquidation Preference plus accrued and unpaid Preferred Dividends and accrued and unpaid Participating Dividends to, but excluding the redemption date (the "Mandatory Redemption Price") which shall be payable in cash to the Holders of the Series C Preferred Stock; *provided* that, at any time prior to the Mandatory Redemption Date, the Holders of at least a majority of the Series C Preferred Stock may unilaterally extend the Mandatory Redemption Date by up to two (2) years after the originally scheduled Mandatory Redemption Date by submitting notice to the Company substantially in the form of Exhibit C attached hereto specifying the length of such extension.

Section 5. Voluntary Conversion.

(A) Each Holder of Series C Preferred Stock shall have the right at any time, at its option, to convert, subject to the terms and provisions of this Section 5, any or all of such Holder's shares of Series C Preferred Stock into the number of fully paid and non-assessable shares of Common Stock equal to the product of (x) the Conversion Rate multiplied by (y) the Liquidation Preference per share of Series C Preferred Stock (such number of Common Shares into which a share of Series C Preferred Stock may be converted, the "Conversion Shares"). Upon conversion of any share of Series C Preferred Stock, the Company shall deliver to the converting Holder, in respect of each share of Series C Preferred Stock being converted, the Conversion Shares, together with a (i) cash payment in lieu of any fractional share of Common Stock in accordance with Section 13, (ii) any Preferred Dividend payable pursuant to Section 2(G) and (iii) any Participating Dividends accrued in respect of the shares of Series C Preferred Stock being converted, as soon as practicable and in any event on or before the third Trading Day immediately following the relevant Conversion Date, which in the case of clause (ii) shall be payable in either cash or a number of additional shares of Common Stock equal to the product of (x) the Conversion Rate multiplied by (y) the amount of the Dividend payable, as the Company may elect, and in the case of clause (iii) shall be payable in the same form as the dividend or distribution that was paid to the holders of Common Stock that gave rise to such Participating Dividends.

(B) Before any Holder shall be entitled to convert a share of Series C Preferred Stock as set forth above, such Holder shall (i) complete, manually sign and deliver an irrevocable notice to the Company (or such other conversion or transfer agent as the Company may designate to the Holders from time to time) as set forth in the Form of Notice of Conversion

(or a facsimile thereof) substantially in the form of Exhibit B hereto (a "Notice of Conversion") and state in writing therein the number of shares of Series C Preferred Stock to be converted and the name or names (with addresses) in which such Holder wishes the certificate or certificates for any shares of Common Stock to be delivered to be registered, and (ii) (a) in the case of Series C Preferred Stock in fully registered certificated form ("Certificated Preferred Stock"), surrender such shares of Series C Preferred Stock at the office of the Transfer Agent, together with any required appropriate endorsements and transfer documents or (b) in the case of a non-certificated book entry interest in the Series C Preferred Stock, comply with such other customary policies and procedures as the Company or its Transfer Agent may require from time to time. The date on which a Holder complies with the procedures in this clause (B) is the "Conversion Date." If more than one share of Series C Preferred Stock shall be surrendered for conversion at one time by the same Holder, the number of shares of Common Stock to be delivered upon conversion of such shares of Series C Preferred Stock shall be computed on the basis of the aggregate number of shares of Series C Preferred Stock so surrendered.

(C) Immediately prior to the close of business on the Conversion Date with respect to a conversion, a converting Holder of Series C Preferred Stock shall be deemed to be the holder of record of the Common Stock issuable upon conversion of such Holder's Series C Preferred Stock notwithstanding that the share register of the Company shall then be closed or that certificates representing such Common Stock shall not then be actually delivered to such Holder or book entry positions be created. On the date of any conversion, all rights with respect to the shares of Series C Preferred Stock so converted, including the rights, if any, to receive notices, will terminate, excepting only the rights of holders thereof to (i) receive certificates for the number of whole shares of Common Stock into which such shares of Series C Preferred Stock have been converted (with a cash payment in lieu of any fractional share of Common Stock in accordance with Section 13); (ii) exercise the rights to which they are thereafter entitled as holders of the Common Stock; (iii) receive any Preferred Dividend payable notwithstanding the conversion; and (iv) receive any Participating Dividends payable upon conversion.

(D) The Conversion Rate shall be adjusted, without duplication, upon the occurrence of any of the following events:

(i) If the Company exclusively issues shares of Common Stock as a dividend or distribution on all shares of its Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as the case may be;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Effective Date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the open of business on the Effective Date of such share split or share combination, as the case may be; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this Section 5(D)(i) shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Effective Date for such share split or share combination, as the case may be. If any dividend or distribution of the type described in this Section 5(D)(i) is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

(ii) If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period expiring not more than 45 days immediately following the announcement date of such distribution, to purchase or subscribe for shares of its Common Stock at a price per share that is less than the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the close of business on the Record Date for such distribution;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution.

Any increase made under this Section 5(D)(ii) shall be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the close of business on the Record Date for such distribution. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted, effective as of the date of such expiration, to the Conversion Rate that would then be in effect had the increase with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Rate shall be decreased, effective as of the date the Board determines not to make such distribution, to be the Conversion Rate that would then be in effect if such Record Date for such distribution had not occurred. If such rights, options or warrants are only exercisable upon the occurrence of certain triggering events, then the Conversion Rate shall not be adjusted until the triggering events occur.

For purposes of this Section 5(D)(ii), in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board.

(iii) If the Company makes distributions to all or substantially all holders of its Common Stock consisting of shares of its Capital Stock, evidence of indebtedness or other assets or properties, excluding:

(1) dividends or other distributions (including share splits), rights, options or warrants as to which an adjustment is effected in clause (i) or (ii) above or in clause (iv) below;

(2) dividends or other distributions that constitute Exchange Property following a Reorganization Event;

(3) dividends or distributions in cash or other dividends or other distributions in respect of which the Holders will be entitled to receive a Participating Dividend upon the conversion of their shares of Series C Preferred Stock pursuant to Section 2(A); and

(4) spin-offs to which the provisions set forth below in this Section 5(D)(iii) shall apply,

the Conversion Rate shall be increased based on the following the formula:

$$CR_1 = CR_0 \times \frac{M}{M - F}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such distribution;

M = the average of the Closing Sale Prices of the Common Stock for the 10 consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such distribution; and

F = the fair market value, as determined by the Board, of the portion of the evidence of indebtedness or other assets or properties to be distributed in respect of each share of Common Stock immediately prior to the open of business on the Ex-Date for such distribution.

Any increase pursuant to this Section 5(D)(iii) shall become effective immediately after the close of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased, effective as of the date the Board determines not to pay or make such distribution, to be the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if "F" (as defined above) is equal to or greater than "M" (as defined above), in lieu of the foregoing increase, each Holder of Preferred Stock shall receive, for each share of Series C Preferred Stock, at the same time and upon the same terms as holders of the Common Stock, the amount of cash that such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such distribution.

With respect to an adjustment pursuant to this Section 5(D)(iii) where there has been a payment of a dividend or other distribution of the Common Stock in shares of capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, where such capital stock or similar equity interest is listed or quoted (or will be listed or quoted upon consummation of the spin-off) on a U.S. national securities exchange, which is referred to herein as a "**Spin-off**," the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{F + MP}{MP}$$

where:

CR_1 = the Conversion Rate in effect immediately after the open of business on the effective date for the Spin-off;

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the effective date for the Spin-off;

F = the average of the Closing Sale Prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the first 10 consecutive Trading Day period immediately following, and including, the effective date for the Spin-off (such period, the "Valuation Period"); and

MP = the average of the Closing Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 5(D)(iii) will become effective immediately after the open of business on the day after the last day of the Valuation Period. For purposes of determining the Conversion Rate in respect of any conversion during the 10 Trading Days commencing on the effective date for any Spin-off, references within the portion of this Section 5(D)(iii) related to Spin-offs to 10 consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the effective date for such Spin-off to, but excluding, the relevant Conversion Date.

(iv) If the Company or any of its subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock and the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Closing Sale Price of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CR_1 = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the average of the Closing Sale Prices of the Common Stock over the 10 consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The increase to the Conversion Rate under this Section 5(D)(iv) shall occur at the close of business on the 10th Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided that, for purposes of determining the Conversion Rate, in respect of any conversion during the 10 Trading Days immediately following, and including, the Trading Day next succeeding the date that any such tender or exchange offer expires, references within this Section 5(D)(iv) to 10 consecutive Trading Days shall be deemed to be replaced with such lesser number of consecutive Trading Days as have elapsed between the date such tender or exchange offer expires and the relevant Conversion Date.

In the event that the Company or one of its subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall be readjusted to be such Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made. For the avoidance of doubt, this Section 5(D)(iv) shall not apply if the Company otherwise acquires shares of Common Stock, including, but not limited to, through an open market purchase in compliance with Rule 10b-18 promulgated under the Exchange Act or through an "accelerated share repurchase" on customary terms.

(v) All calculations and other determinations under this Section 5(D) shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. No adjustment to the Conversion Rate shall be made if it results in a Conversion Price that is less than the par value (if any) of the Common Stock. The Company shall not take any action that would result in the Conversion Price being less than the par value (if any) of the Common Stock pursuant to this Certificate of Amendment and without giving effect to the previous sentence.

(vi) In addition to those adjustments required by clauses (i), (ii), (iii) and (iv) of this Section 5(D), and to the extent permitted by applicable law and subject to the applicable rules of the New York Stock Exchange, the Company from time to time may (but is not required to) increase the Conversion Rate by any amount for a period of at least 20 Business Days or any longer period permitted or required by law if the increase is irrevocable during that period and the Board determines that such increase would be in the Company's best interest. In addition, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to any of the preceding two sentences, the Company shall mail to the Holder of each share of Series C Preferred Stock at its last address appearing on the stock register of the Company a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

(E) If any applicable law requires the deduction or withholding of any tax from any payment or deemed dividend to a Holder on its Series C Preferred Stock or Common Stock, the Company or an applicable withholding agent may withhold on cash dividends, shares of Series C Preferred Stock or Common Stock or sale proceeds paid, subsequently paid or credited with respect to such Holder or such Holder's successors and assigns.

(F) The Company shall at all times have authorized and reserve and keep available for issuance (i) 435,000 shares of Series C Preferred Stock to issue PIK Shares, less the number of PIK Shares issued from time to time following the Original Issue Date and (ii) such maximum number of its authorized but unissued and otherwise unreserved shares of Common Stock as will from time to time be sufficient to permit the conversion of 120% of all outstanding shares of Series C Preferred Stock, and all PIK Shares reserved pursuant to clause (i) above) together with any Additional Shares in connection with a Fundamental Change) and shall take all action required to increase the authorized number of shares of Series C Preferred Stock and Common Stock if at any time there shall be insufficient unissued shares of Series C Preferred Stock or Common Stock to permit such reservation.

(G) The issuance or delivery of certificates for Common Stock upon the conversion of shares of Series C Preferred Stock shall be made without charge to the converting holder or recipient of shares of Series C Preferred Stock for such certificates or for any documentary, stamp or similar issue or transfer tax in respect of the issuance or delivery of such certificates or the securities represented thereby, and such certificates shall be issued or delivered in the respective names of, or in such names as may be directed by, the holders of the shares of Series C Preferred Stock converted; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such certificate in a name other than that of the holder of the shares of the relevant Series C Preferred Stock and the Company shall not be required to issue or deliver such certificate unless or until the Person or Persons requesting the issuance or delivery thereof shall have paid to the Company the amount of such tax or shall have established to the reasonable satisfaction of the Company that such tax has been paid.

(H) Notwithstanding Section 5(D)(ii), if the Company has a rights plan (including the distribution of rights pursuant thereto to all holders of the Common Stock) in effect while any shares of Series C Preferred Stock remain outstanding, Holders of Series C Preferred Stock will receive, upon conversion of Series C Preferred Stock, in addition to the Common Stock to which such Holder is entitled, a corresponding number of rights in accordance with the rights plan. If, prior to any conversion, such rights have separated from the shares of Common Stock in accordance with the provisions of the applicable rights plan so that Holders of Series C Preferred Stock would not be entitled to receive any rights in respect of the Common Stock delivered upon conversion of Series C Preferred Stock, the Conversion Rate will be adjusted at the time of separation as if the Company had distributed to all holders of its Common Stock, shares of Capital Stock covered by the separated rights, subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 6. Mandatory Conversion.

(A) At any time on or after the second (2nd) anniversary of the Original Issue Date, the Company shall have the right, at its option, to give notice of its election to cause all outstanding shares of Series C Preferred Stock to be automatically converted into that number of whole shares of Common Stock for each share of Series C Preferred Stock equal to the Conversion Shares (based on the Conversion Rate in effect on the Mandatory Conversion Date), with cash in lieu of any fractional share pursuant to Section 13. The Company may exercise its right to cause a mandatory conversion pursuant to this Section 6 only if the Closing Sale Price of the Common Stock equals or exceeds (i) at any time on or after the second (2nd) anniversary of the Original Issue Date but before the third (3rd) anniversary of the Original Issue Date, 200% of the Conversion Price or (ii) at any time on or after the third (3rd) anniversary of the Original Issue Date, 150% of the Conversion Price, in each case, for at least 45 Trading Days (whether or not consecutive) in a period of 60 consecutive Trading Days, including the last Trading Day of such 60-day period, ending on, and including, the Trading Day immediately preceding the Business Day on which the Company issues a press release announcing the mandatory conversion as described in Section 6(B).

(B) To exercise the mandatory conversion right described in Section 6(A), the Company shall publish such information on the Company's website or through such other public medium as the Company may use at that time, prior to the open of business on the first Trading Day following any date on which the Company makes a conversion election pursuant to Section 6(A), announcing such a mandatory conversion. The Company shall also give notice by mail to the Holders of the Series C Preferred Stock (not later than three Business Days after the date of the press release) of the mandatory conversion announcing the Company's intention to convert the Series C Preferred Stock. The conversion date will be a date selected by the Company (the "Mandatory Conversion Date") and will be no later than 30 calendar days after the date on which the Company issues the press release described in this Section 6(B).

(C) In addition to any information required by applicable law or regulation, the press release and notice of a mandatory conversion described in Section 6(B) shall state, as appropriate: (i) the Mandatory Conversion Date; (ii) the number of shares of Common Stock to be issued upon conversion of each share of Series C Preferred Stock; and (iii) that Dividends on the Series C Preferred Stock to be converted will cease to accrue on the Mandatory Conversion Date.

(D) On and after the Mandatory Conversion Date, Dividends shall cease to accrue on the Series C Preferred Stock called for a mandatory conversion pursuant to this Section 6 and all rights of Holders of such Series C Preferred Stock shall terminate except for the right to receive the Conversion Shares, together with a (i) cash payment in lieu of any fractional share of Common Stock in accordance with Section 13, (ii) any Preferred Dividend payable pursuant to Section 2(G) and (iii) any Participating Dividends accrued in respect of the shares of Series C Preferred Stock being converted, which, in the case of clause (ii) shall be payable in either cash or a number of additional shares of Common Stock equal to the product of (x) the Conversion Rate multiplied by (y) the amount of the Dividend payable, as the Company may elect, and in the case of clause (iii) shall be payable in the same form as the dividend or distribution that was paid to the holders of Common Stock that gave rise to such Participating Dividends. Except as provided above with respect to a mandatory conversion pursuant to this Section 6, no payment or adjustment shall be made upon mandatory conversion of Series C Preferred Stock for accumulated Dividends or dividends with respect to the Common Stock issued upon such mandatory conversion thereof.

(E) The Company may not authorize, issue a press release or give notice of any mandatory conversion pursuant to this Section 6 unless, prior to giving the conversion notice, all accumulated Preferred Dividends on the Series C Preferred Stock (whether or not declared) for periods ended prior to the date of such conversion notice shall have been paid in the form of PIK Shares or Additional Liquidation Preference.

(F) On the Mandatory Conversion Date, each Holder shall (a) in the case of Certificated Preferred Stock, surrender the certificates representing such shares of Series C Preferred Stock at the office of the Transfer Agent, together with any required appropriate endorsements and transfer documents or (b) in the case of a non-certificated book entry interest in the Series C Preferred Stock, comply with such other customary policies and procedures as the Company or its Transfer Agent may require from time to time.

Section 7. Conversion upon a Fundamental Change.

(A) Upon any conversion during the period (the "Fundamental Change Conversion Period") beginning on a Fundamental Change Effective Date and ending on the date that is 30 days after such Fundamental Change Effective Date (the "Expiration Date"), each Holder of Series C Preferred Stock shall receive, for each share of Series C Preferred Stock converted, either, at its election, (i) a number of shares of the Company's Common Stock equal to the product of (x) the Liquidation Preference in respect of such share multiplied by (y) the Conversion Rate, plus (a) a number of Additional Shares, if any, per $100 of Liquidation Preference or (b) cash in an amount equal to the value of such Additional Shares based on the Market Value of the Common Stock, or (ii) a number of shares of the Company's Common Stock equal to the product of (x) the Liquidation Preference in respect of such share multiplied by (y) the Conversion Rate, which Conversion Rate will be increased to equal the quotient

obtained by dividing (A) one by (B) the Market Value of the Common Stock. Notwithstanding the foregoing, the Conversion Rate as adjusted as described in clause (A)(ii) will not exceed 18.00 shares of Common Stock per share of Series C Preferred Stock (subject to adjustment in the same manner as the Conversion Rate as provided in Section 5).

(B) In addition to the number of shares of the Company's Common Stock issuable upon conversion of each share of Series C Preferred Stock on any Conversion Date during the Fundamental Change Conversion Period, each converting Holder shall have the right to receive additional dividends equal to the sum of:

(i) all accrued, accumulated and unpaid Dividends on such converted shares of Series C Preferred Stock, whether or not declared prior to that date, for all prior Dividend Periods ending on or prior to the Dividend Payment Date immediately preceding the Conversion Date (other than previously declared Dividends on the Series C Preferred Stock payable to holders of record as of a prior date) plus

(ii) an amount equal to the present value at the Conversion Date of all required remaining scheduled Preferred Dividend Payments on such share of Series C Preferred Stock (including any such Preferred Dividend Payments that would accrue with respect to any PIK Shares issuable after such Conversion Date) (and assuming that the Holders have not exercised their extension option pursuant to Section 4 hereof), computed using a discount rate equal to 5.0% per annum (the "Dividend Make-Whole Amount").

The amount payable in respect of such dividends shall be payable, at the Company's option in either cash or a number of additional shares of Common Stock equal to the product of (x) the Conversion Rate (which, if the Holder has elected to convert as set forth in Section 7(A)(ii) above, shall be as adjusted pursuant to Section 7(A)(ii) above) multiplied by (y) the amount of such dividends.

(C) The Company must give notice (a "Fundamental Change Notice") of each Fundamental Change to all record holders of the Series C Preferred Stock by the later of 20 days prior to the anticipated Fundamental Change Effective Date (determined in good faith by the Board) and the first public disclosure by the Company of the anticipated Fundamental Change, if practicable, and otherwise by the earliest practicable date, of the anticipated Fundamental Change Effective Date. The Fundamental Change Notice shall be given by first-class mail to each record holder of shares of Series C Preferred Stock, at such holder's address as the same appears on the books of the Company or the Transfer Agent. Each such Fundamental Change Notice shall state (i) the anticipated Fundamental Change Effective Date; (ii) the Expiration Date based on the anticipated Fundamental Change Effective Date; (iii) the amount of cash, securities and other consideration that would be paid per share of Common Stock or Series C Preferred Stock, respectively, as a result of the Fundamental Change, (iv) the adjusted Conversion Rate applicable to Section 7(B)(ii) if Holders elected to receive shares pursuant thereto, (v) the name and address of the Transfer Agent; (vi) whether accumulated and unpaid Dividends will be paid in cash, shares of the Company's Common Stock or a combination thereof; and (vii) the procedures that holders must follow to convert their shares of Series C Preferred Stock pursuant to this Section 7.

(D) On or before the Expiration Date, each holder of shares of Series C Preferred Stock wishing to exercise its conversion right pursuant to this Section 7 shall comply with the procedures set forth in Section 5(B), and on such date the shares of the Company's Common Stock and the payment for unpaid Dividends due to such holder (if applicable) shall be delivered to the Person whose name appears on the surrendered certificate or certificates as the owner thereof. Notwithstanding anything herein to the contrary, Holders of the Series C Preferred Stock may make an election to convert the Series C Preferred Stock contingent on the consummation of the Fundamental Change

Section 8. Additional Shares upon a Fundamental Change.

(A) For Holders who elect to convert shares of Series C Preferred Stock pursuant to Section 7(A)(i) during the Fundamental Change Conversion Period, the additional number of shares of the Company's Common Stock issuable for each share of Series C Preferred Stock so converted (the "Additional Shares"), if any, is set forth below in this Section 8.

(B) The number of Additional Shares shall be determined by reference to the table below, based on the Fundamental Change Effective Date and the Fundamental Change Stock Price.

Fundamental Change Stock Price

Fundamental Change Effective Date	$ 8.25	$ 9.25	$ 10.00	$ 12.50	$ 15.00	$ 17.50	$ 20.00	$ 22.50	$ 25.00	$ 27.50	$ 30.00	$ 32.50
February 26, 2021	2.1212	1.7309	1.5056	1.0128	0.7407	0.5776	0.4732	0.4023	0.3516	0.3136	0.2839	0.2600
February 26, 2022	2.1212	1.6057	1.3615	0.8342	0.5497	0.3865	0.2904	0.2325	0.1962	0.1718	0.1544	0.1410
February 26, 2023	2.1212	1.6057	1.3569	0.7616	0.4516	0.2660	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
February 26, 2024	2.1212	1.5785	1.2757	0.6175	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
February 26, 2025	2.1212	1.4488	1.1254	0.5183	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000
February 26, 2026	2.1212	0.8108	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000	0.0000

(C) The Fundamental Change Stock Prices set forth in the first row of the foregoing table (and the corresponding price set forth in clauses 8(D)(ii) and (iii) below) shall be adjusted as of any date on which the Conversion Rate is adjusted. The adjusted Fundamental Change Stock Prices (and the corresponding price set forth in clauses 8(D)(ii) and (iii) below) shall equal the Fundamental Change Stock Prices applicable immediately prior to such adjustment multiplied by a fraction, the numerator of which is the Conversion Rate immediately prior to the adjustment giving rise to the Fundamental Change Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted.

(D) The exact Fundamental Change Stock Price and Fundamental Change Effective Dates may not be set forth on the table, in which case:

(i) if the Fundamental Change Stock Price is between two Fundamental Change Stock Price amounts on the table or the Fundamental Change Effective Date is between two Fundamental Change Effective Dates on the table, the number of Additional Shares shall be determined by straight-line interpolation between the Additional Shares amounts set forth for the higher and lower Fundamental Change Stock Price amounts and the two dates, as applicable, based on a 365-day year;

(ii) if the Fundamental Change Stock Price is in excess of $32.50 per share (subject to adjustment as described above), then no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Fundamental Change Stock Price is less than $8.25 per share (subject to adjustment as described above), then 2.1212 Additional Shares shall be added to the Conversion Rate.

(E) The Company shall only be required to deliver the Additional Shares and the Dividend Make-Whole Amount with respect to shares of Series C Preferred Stock surrendered for conversion during any Fundamental Change Conversion Period.

Section 9. Reorganization Events.

(A) In the event of:

(i) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination);

(ii) any consolidation, merger or combination involving the Company;

(iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's subsidiaries substantially as an entirety; or

(iv) any statutory share exchange,

in each case, as a result of which the Common Stock is converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof), each of which is herein referred to as a "Reorganization Event," each share of the Series C Preferred Stock outstanding immediately prior to such Reorganization Event will become convertible into the kind and amount of securities, cash and other property or assets that a holder (that was not the counterparty to the Reorganization Event or an affiliate of such other party) of a number of shares of Common Stock equal to the product of (x) Conversion Rate multiplied by (y) the Liquidation Preference per share of the Series C Preferred Stock prior to the Reorganization Event would have owned or been entitled to receive upon the Reorganization Event (the "Exchange Property").

(B) Upon any conversion during the period following a Reorganization Event and ending on the date that is 30 days after such Reorganization Event, each Holder of Series C Preferred Stock may elect to receive, for each share of Series C Preferred Stock converted, a number of shares of Common Stock equal to product of (x) the Liquidation Preference in respect of such share multiplied by (y) the Conversion Rate, which will be increased to equal the quotient obtained by dividing (A) one by (B) the Market Value of the Common Stock, provided that such Conversion Rate set forth in this clause (B) will not exceed 18.00 shares of Common Stock per share of Series C Preferred Stock (subject to adjustment in the same manner as the Conversion Rate as provided in Section 5).

(C) In addition, in any Reorganization Event where (i) the Exchange Price (as defined in Section 16) is below $9.19 and there is a Change of Control, or (ii) when there is a Fundamental Change, the Company will have the right to require Holders of the Series C Preferred Stock to convert each share of the Series C Preferred Stock outstanding immediately prior to such Reorganization Event into a number of shares of Common Stock equal to the product of (x) the Liquidation Preference in respect of such share multiplied by (y) the Conversion Rate, which will be increased to equal the quotient obtained by dividing (A) one by (B) the Market Value of the Common Stock, provided that the Conversion Rate set forth in this clause (C) will not exceed 27.00 shares of Common Stock per share of Series C Preferred Stock (subject to adjustment in the same manner as the Conversion Rate as provided in Section 5).

Section 10. Voting Rights.

(A) For so long as the Initial Purchaser holds more than fifty percent (50%) of the shares of Series C Preferred Stock initially issued to the Initial Purchaser, the prior approval of the Initial Purchaser shall be required for repayments and redemptions with respect to Junior Stock or shares of any class or series of stock *pari passu* with or senior to the Series C Preferred Stock (including the Series B Preferred Stock); provided that repayments and redemptions shall be permitted to the extent that the Holders are afforded the opportunity to participate in such repayment or redemption on a pro rata as-converted basis with the Common Stock and the Series B Preferred Stock, as applicable, as at the time of such repayment or redemption; provided, further that the prior approval of the Initial Purchaser shall not be required for (i) redemptions, purchases or other acquisitions of shares of Junior Stock or shares of any class or series of stock *pari passu* with or senior to the Series C Preferred Stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, managers or consultants of, or to, the Company or any of its subsidiaries, (ii) an exchange, reclassification or conversion of any class or series of Junior Stock or shares of any class or series of stock *pari passu* with or senior to the Series C Preferred Stock for any class or series of Junior Stock that ranks equal or junior to the applicable Junior Stock or (iii) any dividend in the form of stock, warrants, options or other rights where the dividended stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equal or junior to the applicable Junior Stock.

(B) For so long any shares of Series C Preferred Stock remain outstanding, unless a greater percentage shall be required by law, the affirmative vote or consent of the Holders of more than 66 2/3% of the outstanding shares of Series C Preferred Stock, in person or by proxy, at an annual meeting of the Company's shareholders or at a special meeting called for such purpose, or by written consent in lieu of such meeting, shall be required to alter, repeal or amend, whether by merger, consolidation, combination, reclassification or otherwise, any provisions of the Second Amended and Restated Certificate of Incorporation, this Certificate of Amendment establishing the Series C Preferred Stock, or the Fourth Amended and Restated By-laws of the Company, as amended, if the amendment would amend, alter or affect the voting rights, dividend rights, preferences or special rights of the Series C Preferred Stock so as to adversely affect the Holders thereof, including, without limitation, (i) any change to the Series B Preferred Stock that adversely affects the Series C Preferred Stock or (ii) the creation of, increase in the authorized number of, or issuance of, shares of any class or series of stock *pari passu* with

or senior to the Series C Preferred Stock, or security convertible into such capital stock; provided that the Company may issue, without obtaining the vote or consent of any Holder, up to $100,000,000 in aggregate liquidation preference outstanding from time to time (as may be increased by the amount of any dividends paid in kind thereon) of additional preferred stock that is *pari passu* with the Series C Preferred Stock, on such terms as the Company may designate (including the Series B Preferred Stock issued on the Original Issue Date).

(C) Except to the extent expressly provided herein, no vote or consent of the Holders of the Series C Preferred Stock shall be required to alter, repeal or amend, whether by merger, consolidation, combination, reclassification or otherwise, any provisions of the Second Amended and Restated Certificate of Incorporation, this Certificate of Amendment establishing the Series C Preferred Stock, or the Fourth Amended and Restated By-laws of the Company.

(D) Holders of shares of Series C Preferred Stock shall be entitled to vote as a single class with the holders of the Common Stock and the holders of any other class or series of Capital Stock of the Company then entitled to vote with the Common Stock as a single class on all matters submitted to a vote of the holders of Common Stock (and, if applicable, holders of any other class or series of Capital Stock of the Corporation). The holders of the Series C Convertible Preferred Stock shall be entitled to notice of all stockholders' meetings in accordance with the Company's bylaws in the election of directors and as otherwise required by applicable law. Holders of Series C Preferred Stock shall be entitled to the number of votes equal to the number of full shares of Common Stock into which such shares of Series C Preferred Stock could be converted at the record date for the determination of shareholders entitled to vote on such matters, or if no such record date is established, at the date such vote is taken or any written consent of the shareholders is solicited.

(E) Except as set forth in this Section 10, Holders have no voting rights and their consent shall not be required for taking any corporate action.

Section 11. [Reserved].

Section 12. [Reserved].

Section 13. No Fractional Shares. No fractional shares of Common Stock or securities representing fractional shares of Common Stock shall be delivered upon conversion, whether voluntary or mandatory, of the Series C Preferred Stock. Instead, the Company will either (i) make a cash payment to each Holder that would otherwise be entitled to a fractional share based on the Conversion Price of the Common Stock on the relevant Conversion Date or (ii) round up to the nearest whole share, at the Company's option.

Section 14. Certificates. Notwithstanding any reference above or elsewhere herein to any certificates representing the Series C Preferred Stock, the Series C Preferred Stock may be recorded solely in book entry form, and in such case any references hereto to certificates representing the Series C Preferred Stock being required to be delivered or provided in certain instances shall be deemed automatically waived, and such book entry records shall take the place thereof.

(A) *Form and Dating.* In the event the Company elects to issue the Series C Preferred Stock in certificated form, the certificates representing the Series C Preferred Stock and the Transfer Agent's certificate of authentication shall be substantially in the form set forth in Exhibit A. The Series C Preferred Stock certificate may have notations, legends or endorsements required by law or stock exchange rules; provided that any such notation, legend or endorsement is in a form acceptable to the Company. Each Series C Preferred Stock certificate shall be dated the date of its authentication.

(B) *Execution and Authentication*. The Chief Executive Officer or the President or a Vice President and the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Company shall sign the Series C Preferred Stock certificate for the Company by manual or facsimile signature.

If an Officer whose signature is on a Series C Preferred Stock certificate no longer holds that office at the time the Transfer Agent authenticates the Series C Preferred Stock certificate, the Series C Preferred Stock certificate shall be valid nevertheless.

A Series C Preferred Stock certificate shall not be valid until an authorized signatory of the Transfer Agent manually signs the certificate of authentication on the Series C Preferred Stock certificate. The signature shall be conclusive evidence that the Series C Preferred Stock certificate has been authenticated under this Certificate of Amendment.

The Transfer Agent shall authenticate and deliver certificates for up to 1,435,000 shares of Series C Preferred Stock for original issue and the issuance of PIK Shares upon a written order of the Company signed by an Officer of the Company (or such greater number of Officers as may be required by law). Such order shall specify the number of shares of Series C Preferred Stock to be authenticated and the issuance date of the Series C Preferred Stock to be authenticated.

The Transfer Agent may appoint an authenticating agent reasonably acceptable to the Company to authenticate the certificates for the Series C Preferred Stock. Unless limited by the terms of such appointment, an authenticating agent may authenticate certificates for the Series C Preferred Stock whenever the Transfer Agent may do so. Each reference in this Certificate of Amendment to authentication by the Transfer Agent includes authentication by such agent. An authenticating agent has the same rights as the Transfer Agent or agent for service of notices and demands.

(C) *Transfer and Exchange*.

(i) Transfer and Exchange of Certificated Preferred Stock. When Certificated Preferred Stock is presented to the Transfer Agent with a request to register the transfer of such Certificated Preferred Stock or to exchange such Certificated Preferred Stock for an equal number of shares of Certificated Preferred Stock, the Transfer Agent shall register the transfer or make the exchange as requested if its reasonable requirements for such transaction are met; provided that the Certificated Preferred Stock surrendered for transfer or exchange shall be duly endorsed or accompanied by a written instrument of transfer in form reasonably satisfactory to the Company and the Transfer Agent, duly executed by the Holder thereof or its attorney duly authorized in writing.

(ii) Obligations with Respect to Transfers and Exchanges of Series C Preferred Stock.

(1) To permit registrations of transfers and exchanges, the Company shall execute and the Transfer Agent shall authenticate Certificated Preferred Stock as required pursuant to the provisions of this Section 14(C).

(2) All Certificated Preferred Stock issued upon any registration of transfer or exchange of Certificated Preferred Stock or Global Preferred Stock shall be the valid Capital Stock of the Company, entitled to the same benefits under this Certificate of Amendment as the Certificated Preferred Stock or Global Preferred Stock surrendered upon such registration of transfer or exchange.

(3) Prior to due presentment for registration of transfer of any shares of Series C Preferred Stock, the Transfer Agent and the Company may deem and treat the Person in whose name such shares of Series C Preferred Stock are registered as the absolute owner of such Series C Preferred Stock and neither the Transfer Agent nor the Company shall be affected by notice to the contrary.

(4) No service charge shall be made to a Holder for any registration of transfer or exchange upon surrender of any Series C Preferred Stock certificate or Common Stock certificate at the office of the Transfer Agent maintained for that purpose. However, the Company may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any registration of transfer or exchange of Series C Preferred Stock certificates or Common Stock certificates, except as provided in Section 5(G).

(D) *Replacement Certificates*. If any of the Certificated Preferred Stock certificates shall be mutilated, lost, stolen or destroyed, the Company shall issue, in exchange and in substitution for and upon cancellation of the mutilated Certificated Preferred Stock certificate, or in lieu of and substitution for the Certificated Preferred Stock certificate lost, stolen or destroyed, a new Certificated Preferred Stock certificate of like tenor and representing an equivalent number of shares of Series C Preferred Stock, but only upon receipt of evidence of such loss, theft or destruction of such Certificated Preferred Stock certificate and indemnity, if requested, satisfactory to the Company and the Transfer Agent.

(E) *Temporary Certificates*. Until definitive Certificated Preferred Stock certificates are ready for delivery, the Company may prepare and the Transfer Agent shall authenticate temporary Certificated Preferred Stock certificates. Any temporary Certificated Preferred Stock certificates shall be substantially in the form of definitive Preferred Stock certificates but may have variations that the Company considers appropriate for temporary Certificated Preferred Stock certificates. Without unreasonable delay, the Company shall prepare and the Transfer Agent shall authenticate definitive Certificated Preferred Stock certificates and deliver them in exchange for temporary Certificated Preferred Stock certificates.

(F) *Cancellation*. In the event the Company shall purchase or otherwise acquire Certificated Preferred Stock, the same shall thereupon be delivered to the Transfer Agent for cancellation.

(i) The Transfer Agent and no one else shall cancel and destroy all Certificated Preferred Stock certificates surrendered for transfer, exchange, replacement or cancellation and deliver a certificate of such destruction to the Company unless the Company directs the Transfer Agent to deliver canceled Certificated Preferred Stock certificates to the Company. The Company may not issue new Certificated Preferred Stock certificates to replace Certificated Preferred Stock certificates to the extent they evidence Series C Preferred Stock which the Company has purchased or otherwise acquired.

(G) *Legends*. All certificates or other instruments representing shares of Series C Preferred Stock or Common Stock issuable upon conversion thereof will bear a legend in substantially the following form (excluding in the case of any such Common Stock for which a registration statement covering the resale of such Common Stock has been declared effective by the SEC and that has been disposed of pursuant to such effective registration statement; or sold under circumstances in which all of the applicable conditions of Rule 144 (or any similar provisions then in force) under the Securities Act are met):

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY NON-U.S. OR STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH. THIS SECURITY IS ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER AS SET FORTH IN A REGISTRATION RIGHTS AGREEMENT, AS AMENDED FROM TIME TO TIME, COPIES OF WHICH MAY BE OBTAINED UPON REQUEST FROM EASTMAN KODAK COMPANY OR ANY SUCCESSOR THERETO, AND THIS SECURITY MAY NOT BE VOTED OR OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH. THIS SECURITY MAY BE TRANSFERRED IN ACCORDANCE WITH RULE 144A UNDER THE SECURITIES ACT WITHOUT THE DELIVERY OF AN OPINION OF COUNSEL.

Section 15. Other Provisions.

(A) With respect to any notice to a Holder of shares of Series C Preferred Stock required to be provided hereunder, neither failure to mail such notice, nor any defect therein or in the mailing thereof, to any particular Holder shall affect the sufficiency of the notice or the validity of the proceedings referred to in such notice with respect to the other Holders or affect the legality or validity of any distribution, rights, warrant, reclassification, consolidation, merger, conveyance, transfer, dissolution, liquidation or winding-up, or the vote upon any such action. Any notice which was mailed in the manner herein provided shall be conclusively presumed to have been duly given whether or not the Holder receives the notice.

(B) Shares of Series C Preferred Stock that have been issued and reacquired in any manner, including shares of Series C Preferred Stock that are purchased or exchanged or converted, shall (upon compliance with any applicable provisions of the New Jersey Business Corporation Act) have the status of authorized but unissued shares of preferred stock of the Company undesignated as to series and may be designated or redesignated and issued or reissued, as the case may be, as part of any series of preferred stock of the Company; provided that any issuance of such shares as Series C Preferred Stock must be in compliance with the terms hereof.

(C) The shares of Series C Preferred Stock shall be issuable only in whole shares.

(D) All notice periods referred to herein shall commence on the date of the mailing of the applicable notice. Notice to any Holder shall be given to the registered address set forth in the Company's or the Transfer Agent's records for such Holder, or for Global Preferred Stock, to the Depository in accordance with its procedures.

(E) Any payment required to be made hereunder on any day that is not a Business Day shall be made on the next succeeding Business Day and no interest or dividends on such payment will accrue or accumulate, as the case may be, in respect of such delay.

Section 16. Definitions.

(A) "Additional Liquidation Preference" shall have the meaning set forth in Section 2(B).

(B) "Additional Shares" shall have the meaning set forth in Section 8(A).

(C) "Affiliate" means, with respect to any Person, any Person directly or indirectly controlling, controlled by or under common control with such other Person. For purposes of determining whether a Person is an Affiliate, the term "control" and its correlative forms "controlled by" and "under common control with" 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 ownership of securities, contract or otherwise.

(D) "Agent Members" shall have the meaning set forth in Section 14(A)(ii).

(E) “Business Day” means any day except Saturday, Sunday or any other day on which commercial banks located in New York, New York, New Jersey are authorized or required by law to be closed for business.

(F) “Capital Stock” means, for any entity, any and all shares, interests, rights to purchase, warrants, options, participations or other equivalents of or interests in (however designated) stock issued by that entity.

(G) “Certificated Preferred Stock” shall have the meaning set forth in Section 5(B).

(H) “Certificate of Amendment” shall have the meaning set forth in Section 5(A).

(I) “Change of Control” means a Fundamental Change as set forth in clause (i) of the definition of Fundamental Change.

(J) “close of business” means 5:00 p.m. (New York City time).

(K) “Closing Sale Price” of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported in composite transactions for the principal United States national or regional securities exchange on which the Common Stock is traded or, if the Common Stock is not listed for trading on a United States national or regional securities exchange on the relevant date, the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date, as reported by OTC Markets Group Inc. or a similar organization. In the absence of such a quotation, the Closing Sale Price shall be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

(L) “Common Stock” means the Common Stock, par value $0.01 per share, of the Company.

(M) “Conversion Date” shall have the meaning specified in Section 5(B).

(N) “Conversion Price” means, at any time, the dollar price per share of Common Stock equal to the quotient of (x) one (1) divided by (y) the Conversion Rate in effect at such time. Until the Initial Conversion Rate is adjusted as provided, herein, the Conversion Price shall be $10.

(O) “Conversion Rate” mean the Initial Conversion Rate as may be adjusted from time to time in accordance with Section 5.

(P) “Conversion Shares” shall have the meaning set forth in Section 5(A).

(Q) “Dividends” shall have the meaning set forth in Section 2(A).

(R) “Dividend Make-Whole Amount” shall have the meaning set forth in Section 7(B)(ii).

(S) “Dividend Payment Date” shall mean January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2021.

(T) “Dividend Period” means the period commencing on, and including, a Dividend Payment Date and ending on, and including, the day immediately preceding the next succeeding Dividend Payment Date, with the exception that the first Dividend Period shall commence on, and include, the Original Issue Date and end on and include April 14, 2021.

(U) “Dividend Rate” means the rate per annum of 5.0% per share of Series C Preferred Stock on the Liquidation Preference.

(V) “Dividend Record Date” shall mean, with respect to any Dividend Payment Date, the January 1, April 1, July 1 or October 1, as the case may be, immediately preceding such Dividend Payment Date.

(W) “Effective Date” shall mean the date on which a Fundamental Change event occurs or becomes effective, except that, as used in Section 5(D), Effective Date shall mean the first date on which the shares of the Common Stock trade on the applicable exchange or market, regular way, reflecting the relevant share split or share combination, as applicable.

(X) “Exchange Act” shall mean the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(Y) “Exchange Price” means the dollar value (based, in the case of any listed securities, on the Market Value thereof) of Exchange Property per share of Common Stock.

(Z) “Exchange Property” shall have the meaning set forth in Section 9(A).

(AA) “Ex-Date,” when used with respect to any issuance, dividend or distribution on the Common Stock, means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

(BB) “Expiration Date” shall have the meaning set forth in Section 7(A).

(CC) “Fundamental Change” shall be deemed to have occurred at any time after the Series C Preferred Stock is originally issued if any of the following occurs:

(i) a “person” or “group” within the meaning of Section 13(d) of the Exchange Act, other than (1) the Company, its subsidiaries or the employee benefit plans of the Company and its subsidiaries and (2) Permitted Holders, becomes the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of more than 50% of the Voting Stock, provided that a Fundamental Change will be deemed to have occurred if a Permitted Holder Group becomes the direct or indirect “beneficial owner,” as defined in Rule 13d-3 under the Exchange Act, of more than 70% of the Voting Stock;

(ii) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its subsidiaries, taken as a whole, to any Person other than one of the Company's subsidiaries; provided, however, that any merger solely for the purpose of changing the Company's jurisdiction of incorporation to the United States of America, any State thereof or the District of Columbia, and resulting in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of Common Stock of the surviving entity, shall not be a Fundamental Change; provided further that any transaction described in this clause (ii) in which the holders of the Company's Common Stock immediately prior to such transaction own, directly or indirectly, more than 50% of the common stock of the continuing corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (ii);

(iii) the Common Stock ceases to be listed or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors); or

(iv) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;

provided, however, that a transaction or transactions described in clause (i) or (ii) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the Common Stock of the Company, excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions the Series C Preferred Stock becomes convertible into such consideration pursuant to the terms hereof.

(DD) "Fundamental Change Conversion Period" shall have the meaning set forth in Section 7(A).

(EE) "Fundamental Change Effective Date" means, with respect to the occurrence of any Fundamental Change, the effective date of such Fundamental Change.

(FF) “Fundamental Change Notice” shall have the meaning set forth in Section 7(C).

(GG) “Fundamental Change Stock Price” means, for any Fundamental Change, the price paid (or deemed paid) per share of Common Stock in such Fundamental Change, which shall equal (i) if all holders of Common Stock receive only cash in exchange for their Common Stock in such Fundamental Change, the amount of cash paid per share of Common Stock in such Fundamental Change, and (ii) in all other cases, the Market Value per share of Common Stock determined as of the Trading Day immediately preceding the Fundamental Change Effective Date.

(HH) “Holder” or “holder” means a holder of record of the Series C Preferred Stock.

(II) “Initial Conversion Rate” means 0.1, which is derived by dividing (i) the quotient of the Original Purchase Price divided by ten (10) dollars, by (ii) the Original Purchase Price.

(JJ) “Initial Purchaser” means the initial Holder of the Series C Preferred Stock on the Original Issue Date.

(KK) “Junior Stock” means all classes of the Company’s Common Stock and any other class of capital stock or series of preferred stock of the Company established after the issue date of the Series C Preferred Stock, the terms of which do not expressly provide that such class or series ranks senior to or *pari passu* with the Series C Preferred Stock as to dividend rights or rights upon the Company’s liquidation, winding-up or dissolution.

(LL) “Liquidation Preference” means, with respect to each share of Series C Preferred Stock, the Original Purchase Price plus the Additional Liquidation Preference.

(MM) “Mandatory Conversion Date” shall have the meaning set forth in Section 6(B).

(NN) “Mandatory Redemption Date” shall have the meaning set forth in Section

(OO) “Mandatory Redemption Price” shall have the meaning set forth in Section

(PP) “Market Value” means the average of the per share volume-weighted average prices of the Common Stock for each day during a 15 consecutive Trading Day period ending immediately prior to the date of determination, as displayed under the heading “Bloomberg VWAP” on Bloomberg page “KODK Equity VWAP” (or its equivalent successor if such page is not available) in respect of the period from the scheduled open of trading until the scheduled close of trading of the primary trading session on each such Trading Day (or if such volume-weighted average price is unavailable on any such Trading Day, the Closing Sale Price shall be used for such Trading Day). The per share volume-weighted average price on each such Trading Day shall be determined without regard to after-hours trading or any other trading outside of the regular trading session trading hours.

(QQ) “Notice of Conversion” shall have the meaning set forth in Section 5(B).

(RR) “Officer” means the Chief Executive Officer, the President, any Vice President, the Treasurer, any Assistant Treasurer, the Secretary or any Assistant Secretary of the Company.

(SS) “open of business” means 9:00 a.m. (New York City time).

(TT) “Original Issue Date” means the first date on which the Series C Preferred Stock is issued.

(UU) “Original Purchase Price” means $100.00 per share of Series C Preferred Stock.

(VV) “Participating Dividends” shall have the meaning set forth in Section 2(A).

(WW) “Permitted Holders” means at any time, each of GO EK Ventures IV, LLC, Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited, Deseret Mutual Pension Trust, George Karfunkel, Renee Karfunkel, GKarfunkel Family LLC, Congregation Chemdas Yisroel, Chesed Foundation of America, Marneu Holding Company, Moses Marx, Phillippe Katz, K.F. Investors LLC, United Equities Commodities Company, Momar Corporation, 111 John Realty Corporation, Kennedy Lewis Investment Management LLC and any Affiliate of any of the foregoing and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) the members of which include any of the Permitted Holders specified above and that, directly or indirectly, holds or acquires beneficial ownership of the Voting Stock (a “Permitted Holder Group”), so long as (1) each member of the Permitted Holder Group has voting rights proportional to the percentage of ownership interests held or acquired by such member and (2) no Person or other “group” (other than Permitted Holders specified above) beneficially owns more than 50% on a fully diluted basis of the Voting Stock held by the Permitted Holder Group (without giving effect to any attribution rules).

(XX) “Person” means any individual, corporation, general partnership, limited partnership, limited liability partnership, joint venture, association, joint-stock company, trust, limited liability company, unincorporated organization or government or any agency or political subdivision thereof.

(YY) “PIK Shares” shall have the meaning set forth in Section 2(D).

(ZZ) “Preferred Dividends” shall have the meaning set forth in Section 2(A).

(AAA) “Record Date” means, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board, statute, contract or otherwise).

(BBB) “Reorganization Event” shall have the meaning set forth in Section 9(A).

(CCC) “SEC” or “Commission” means the Securities and Exchange Commission.

(DDD) “Securities Act” means the Securities Act of 1933, as amended.

(EEE) “Series B Certificate of Amendment” means that certain Certificate of Amendment to the Second Amended and Restated Articles of Incorporation, filed on February 25, 2021 with the Department of Treasury of the State of New Jersey, entitled “III.A. 4.0% Series B Convertible Preferred Stock”, as amended from time to time as permitted herein.

(FFF) “Series B Preferred Stock” means the Series B Preferred Stock designated by the Company having the rights, preferences, privileges, restrictions and other matters relating to the Series B Preferred as are as set forth in the Series B Certificate of Amendment.

(GGG) “Series C Preferred Stock” shall have the meaning set forth in Section 1.

(HHH) “Spin-off” shall have the meaning specified in Section 5(D)(iii).

(III) “Stock Price” means (i) if holders of the Common Stock receive in exchange for their Common Stock only cash in the transaction constituting a Fundamental Change, the cash amount paid per share or (ii) otherwise, the average of the Closing Sale Prices of the Common Stock on the five Trading Days preceding, but excluding the Effective Date of the Fundamental Change.

(JJJ) “Trading Day” means a day during which trading in the Common Stock generally occurs on the New York Stock Exchange or, if the Common Stock is not listed on the New York Stock Exchange, on the principal other national or regional securities exchange on which the Common Stock is then listed or, if the Common Stock is not listed on a national or regional securities exchange, on the principal other market on which the Common Stock is then listed or admitted for trading. If the Common Stock is not so listed or traded, Trading Day means a Business Day.

(KKK) “Transfer Agent” means Computershare Inc. and Computershare Trust Company N.A., together acting as the Company’s duly appointed transfer agent, registrar, and dividend disbursing agent for the Series C Preferred Stock. The Company may, in its sole discretion, remove the Transfer Agent with 10 days’ prior notice to the Transfer Agent and Holders; provided that the Company shall appoint a successor Transfer Agent who shall accept such appointment prior to the effectiveness of such removal.

(LLL) “Valuation Period” shall have the meaning specified in Section 5(D)(iii).

(MMM) “Voting Stock” of any Person as of any date means the Capital Stock of such Person that is at the time entitled to vote in the election of the Board.

EXHIBIT A

FORM OF SERIES C PREFERRED STOCK CERTIFICATE

FACE OF SECURITY

THIS SECURITY HAS NOT BEEN REGISTERED UNDER THE U.S. SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR ANY NON-U.S. OR STATE SECURITIES LAWS AND MAY NOT BE OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH. THIS SECURITY IS ALSO SUBJECT TO ADDITIONAL RESTRICTIONS ON TRANSFER AS SET FORTH IN A REGISTRATION RIGHTS AGREEMENT, AS AMENDED FROM TIME TO TIME, COPIES OF WHICH MAY BE OBTAINED UPON REQUEST FROM EASTMAN KODAK COMPANY OR ANY SUCCESSOR THERETO, AND THIS SECURITY MAY NOT BE VOTED OR OFFERED, SOLD, PLEDGED OR OTHERWISE TRANSFERRED EXCEPT IN COMPLIANCE THEREWITH. THIS SECURITY MAY BE TRANSFERRED IN ACCORDANCE WITH RULE 144A UNDER THE SECURITIES ACT WITHOUT THE DELIVERY OF AN OPINION OF COUNSEL.

Certificate Number [ ]

Number of Shares of Preferred Stock [ ]

CUSIP No.: [ ]
ISIN No. [ ]

5.0% Series C Convertible Preferred Stock

of

EASTMAN KODAK COMPANY

EASTMAN KODAK COMPANY, a New Jersey corporation (the "Company"), hereby certifies that [ ] (the "Holder") is the registered owner of [ ] fully paid and non-assessable shares of preferred stock, no par value, of the Company designated as the 5.0% Series C Convertible Preferred Stock (the "Series C Preferred Stock"). The shares of Series C Preferred Stock are transferable on the books and records of the Transfer Agent, in person or by a duly authorized attorney, upon surrender of this certificate duly endorsed and in proper form for transfer. The designations, rights, privileges, restrictions, preferences and other terms and provisions of the Series C Preferred Stock represented hereby are as specified in, and the shares of Series C Preferred Stock are issued and shall in all respects be subject to the provisions of, the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company, dated February 25, 2021, as the same may be amended from time to time (the "Certificate of Amendment"). Capitalized terms used herein but not defined shall have the meaning given them in the Certificate of Amendment. The Company will provide a copy of the Certificate of Amendment to a Holder without charge upon written request to the Company at its principal place of business.

Reference is hereby made to the Certificate of Amendment, which shall for all purposes have the same effect as if set forth at this place.

Upon receipt of this certificate, the Holder is bound by the Certificate of Amendment and is entitled to the benefits thereunder.

Unless the Transfer Agent's Certificate of Authentication hereon has been properly executed, these shares of Series C Preferred Stock shall not be entitled to any benefit under the Certificate of Amendment or be valid for any purpose.

IN WITNESS WHEREOF, the Company has executed this certificate this day of [ ], 2021.

EASTMAN KODAK COMPANY

By: _____
Name:
Title:

By: _____
Name:
Title:

TRANSFER AGENT'S CERTIFICATE OF AUTHENTICATION

These are shares of Series C Preferred Stock referred to in the within-mentioned Certificate of Amendment.

Dated:

COMPUTERSHARE SHAREOWNER SERVICES, as Transfer Agent

By: _____
Authorized Signatory

REVERSE OF SECURITY

The Company is authorized to issue 5.0% Series C Convertible Preferred Stock (the "Series A Preferred Stock") and common stock. The Series C Preferred Stock is convertible preferred stock, with a dividend and liquidation preference over the common stock and voting rights identical to the voting rights of the common stock on an as converted basis that will vote together with the common stock as a single class.

The Company will furnish without charge and upon written request to each Holder the powers, designations, preferences and relative, participating, optional or other special rights of each class of stock and the qualifications, limitations or restrictions of such preferences and/or rights.

The Company will furnish to any shareholder, upon request and without charge, a full statement of the authority of its Board of Directors to divide shares of its capital stock into classes or series and to determine and change the relative rights, preferences and limitations of any class or series.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the shares of Series C Preferred Stock evidenced hereby to:

_____

_____

(Insert assignee's social security or tax identification number)

_____

(Insert address and zip code of assignee)

and irrevocably appoints:

_____

_____

_____

agent to transfer the shares of Series C Preferred Stock evidenced hereby on the books of the Transfer Agent. The agent may substitute another to act for him or her.

Date: _____

Signature: _____

(Sign exactly as your name appears on the other side of this Series C Preferred Stock Certificate)

Signature Guarantee: _____ [1]

[1] (Signature must be guaranteed by an "eligible guarantor institution" that is a bank, stockbroker, savings and loan association or credit union meeting the requirements of the Transfer Agent, which requirements include membership or participation in the Securities Transfer Agents Medallion Program ("STAMP") or such other "signature guarantee program" as may be determined by the Transfer Agent in addition to, or in substitution for, STAMP, all in accordance with the Securities Exchange Act of 1934, as amended.)

EXHIBIT B

NOTICE OF CONVERSION

(To be Executed by the Holder in order to Convert the Series C Preferred Stock)

The undersigned hereby irrevocably elects to convert (the "Conversion") shares of 5.0% Series C Preferred Stock (the "Series C Preferred Stock") of Eastman Kodak Company (the "Company"), represented by stock certificate No(s) (the "Preferred Stock Certificates"), into shares of Common Stock ("Common Stock") of the Company according to the conditions of the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company, dated February 25, 2021, establishing the Series C Preferred Stock (the "Certificate of Amendment"). The Company will pay any documentary, stamp or similar issue or transfer tax on the issuance of the shares of the Company's Common Stock upon conversion of the Series C Preferred Stock, unless the tax is due because the Holder requests such shares to be issued in a name other than the Holder's name, in which case the Holder will pay the tax. A copy of each Preferred Stock Certificate is attached hereto (or evidence of loss, theft or destruction thereof).

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in or pursuant to the Certificate of Amendment.

Number of shares of Series C Preferred Stock to be converted:

Name or Names (with addresses) in which the certificate or certificate for any shares of Common Stock to be issued are to be registered:[2]

Signature:

Name of registered Holder:

Fax No.:

Telephone No.:

2 The Company is not required to issue shares of Common Stock until you, if required, furnish appropriate endorsements and transfer documents.

EXHIBIT C

NOTICE OF EXTENSION

(To be Executed by Holders of at a Majority of the Outstanding Series C Preferred Stock in order to Extend the Mandatory Redemption Date)

The undersigned, representing the Holders of at least a majority of the outstanding shares of 5.0% Series C Preferred Stock (the "Series C Preferred Stock") of Eastman Kodak Company (the "Company"), hereby irrevocably elect to extend the Mandatory Redemption Date of the Series C Preferred Stock in accordance with the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company, dated February 25, 2021, establishing the Series C Preferred Stock (the "Certificate of Amendment").

Capitalized terms used but not defined herein shall have the meanings ascribed thereto in or pursuant to the Certificate of Amendment.

Extended Mandatory Redemption Date:[3]

Signature:

Name of registered Holder:

Fax No.:

Telephone No.:

Fundamental Change Election:[4]

3 The extended Mandatory Redemption Date shall be up to two (2) years from the originally scheduled Mandatory Redemption Date.65

4 In the event of a Fundamental Change Conversion, Holder to specify whether conversion shall be pursuant to Section 7(A)(i) or 7(A)(ii).

HOLDER[S]:

[ ]

By: _____
Name:
Title:

Class C Preferred Shares Held: [ ]

IN WITNESS WHEREOF, this Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company is executed on behalf of the Company by its Chief Executive Officer and attested by its Secretary this 25th day of February, 2021.

By: /s/ James V. Continenza

Name: James V. Continenza

Title: Chief Executive Officer

Attest:

By: /s/ Roger W. Byrd

Name: Roger W. Byrd

Title: Secretary

STATEMENT

With regard to the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of Eastman Kodak Company, Exhibits A, B and C to the Certificate of Amendment are a part of the Certificate of Amendment but cannot be completed in full at this time and thus should be filed in blank form.

Exhibit 10.1

EXECUTION VERSION

SERIES A PREFERRED STOCK REPURCHASE AND EXCHANGE AGREEMENT

THIS REPURCHASE AND EXCHANGE AGREEMENT (this "**Agreement**") is made and entered into as of the 26th day of February, 2021, by and among Eastman Kodak Company, a New Jersey corporation (the "**Company**"), Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited, and Deseret Mutual Pension Trust (each a "**Holder**" and collectively, the "**Holders**"), and Southeastern Asset Management, Inc. ("**Southeastern**").

RECITALS

WHEREAS, the Holders desire to sell to the Company, and the Company desires to repurchase and accept from the Holders, in the aggregate, 1,000,000 shares of the Company's 5.50% Series A Convertible Preferred Stock (the "**Series A Preferred Stock**") held by such Holders individually in the amounts identified on Exhibit A subject to the terms and conditions set forth in this Agreement; and

WHEREAS, the parties hereto intend to effect a further transaction by which the Holders will transfer and deliver to the Company all of the remaining 1,000,000 shares of the Series A Preferred Stock not repurchased by the Company (the "**Remaining Series A Preferred Stock**") held by each such Holder as identified on Exhibit B in exchange for shares of the 4.0% Series B Convertible Preferred Stock having the terms set forth with respect thereto in the Series B Certificate of Designations (the "**Series B Preferred Stock**") on a one-for-one basis (the "**Share Exchange**").

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements set forth herein, the Company and the Holders hereby agree as follows:

1. Repurchase. Upon the terms and subject to the conditions set forth in this Agreement, and in reliance on the representations, warranties and covenants contained herein, at the Closing (as defined below), each Holder identified on Exhibit A, severally and not jointly, agrees to sell, assign, convey, transfer and deliver to the Company, and the Company agrees to repurchase and accept from each such Holder, the shares of the Series A Preferred Stock (which total number of Series A Preferred Stock held by each such Holder to be repurchased by the Company in accordance with this Agreement is set forth opposite such Holder's name on Exhibit A), free and clear of any Liens, for a cash amount per share of the Series A Preferred Stock equal to the Closing Per Share Price (the "**Series A Repurchase**"). The aggregate cash amount equal to the product of (a) the Closing Per Share Price, *multiplied by* (b) one million (1,000,000) is referred to in this Agreement as the "**Purchase Price**."

2. Share Exchange. Upon the terms and subject to the conditions set forth in this Agreement, and in reliance on the representations, warranties and covenants contained herein, effective at the Closing, the Company hereby exchanges, transfers and delivers to each Holder identified on Exhibit B, and each Holder identified on Exhibit B hereby acquires from the Company, the shares of the Series B Preferred Stock in exchange for, on a one-for-one basis, each share of Remaining Series A Preferred Stock set forth opposite such Holder's name on Exhibit B.

3. Closing.

a. Time of Closing. Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the "**Closing**") shall be held at 10:00 a.m. New York time, as soon as reasonably practicable (which may be the date hereof) after the conditions set forth in Section 7 (other than those conditions that by their nature are to be satisfied at the Closing, but subject to their satisfaction) are satisfied or waived, or at such other date, time and place as the Company and the Holders mutually agree in writing (the "**Closing Date**").

b. Deliveries at Closing.

i. By Each Holder. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, each Holder shall deliver or cause to be delivered to the Company:

1. by DWAC, the shares of the Series A Preferred Stock held by DTC on behalf of each such Holder as set forth opposite each such Holder's name on Exhibit A to be repurchased by the Company, free and clear of all Liens, to an account designated in writing by the Company;

2. by DWAC, the shares of the Remaining Series A Preferred Stock held by DTC on behalf of each such Holder as set forth opposite each such Holder's name on Exhibit B to be exchanged for shares of the Series B Preferred Stock on a one-for-one basis, free and clear of all Liens, to an account designated in writing by the Company; and

3. an executed cross receipt with respect to (a) such Holder's receipt of (i) its respective portion of the Purchase Price, and (ii) its respective portion of the Series B Preferred Stock as contemplated by Section 3(b)(ii)(2), and (b) the Company's receipt of the shares of the Series A Preferred Stock as contemplated by Section 3(b)(i)(1) and the shares of the Remaining Series A Preferred Stock as contemplated by Section 3(b)(i)(2).

ii. By the Company. Upon the terms and subject to the conditions set forth in this Agreement, at the Closing, the Company shall deliver to each Holder:

1. cash, in an amount equal to the number of shares of Series A Preferred Stock set forth opposite the name of such Holder on Exhibit A multiplied by the Closing Per Share Price, by wire transfer of immediately available funds, pursuant to instructions given to the Company by such Holder in writing prior to the Closing Date;

2. the shares of the Series B Preferred Stock, in certificated form and registered in the names of the applicable Holder or its custodian or nominee as previously specified to the Company, exchanged in accordance with Section 2 for the Remaining Series A Preferred Stock held by such Holder as set forth opposite the name of such Holder on Exhibit B; provided that, at the Closing, the Company shall deliver electronic copies of such certificates in PDF format to the parties identified on Exhibit C hereto, and the physical certificates representing such shares may be delivered to each Holder or its custodian at the addresses previously specified to the Company within five (5) Business Days after the Closing;

3. cash, in an amount equal to the accrued and unpaid dividends on the Remaining Series A Preferred Stock held by each Holder as set forth opposite the name of such Holder on Exhibit B, by wire transfer of immediately available funds, pursuant to instructions given to the Company by such Holder in writing prior to the Closing Date;

4. evidence of the filing of the Series B Certificate of Designations with the New Jersey Department of Treasury;

5. the certificates referred to in Sections 7(a)(v) and 7(a)(vi) below; and

6. an executed cross receipt with respect to (a) the Holders' receipt of (i) their respective portion of the Purchase Price, and (ii) their respective portion of the Series B Preferred Stock as contemplated by Section 3(b)(ii)(2), and (b) the Company's receipt of the shares of the Series A Preferred Stock as contemplated by Section 3(b)(i)(1) and the shares of the Remaining Series A Preferred Stock as contemplated by Section 3(b)(i)(2).

4. Representations and Warranties of the Company. The Company hereby represents and warrants to the Holders that:

a. Organization. The Company has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation and has full power and capacity to enter into this Agreement and perform it obligations hereunder.

b. Capitalization. Immediately prior to the Closing, the authorized capital of the Company consists of 500,000,000 shares of Common Stock and 60,000,000 shares of Preferred Stock (the "**Preferred Stock**"). As of February 22, 2021, there were 77,364,845 shares of Common Stock issued and outstanding. All of the outstanding shares of Common Stock have been duly authorized, are fully paid and nonassessable and were issued in compliance with all applicable federal and state securities laws. The Company holds approximately 711,791 shares of Common Stock in its treasury. As of the Closing, 2,000,000 shares of Preferred Stock have been designated Series A Preferred Stock, all of which are issued and outstanding prior to the Closing; 1,000,000 shares of Preferred Stock have been designated Series B Preferred Stock, none of which is issued and outstanding prior to the Closing; and 1,435,000 shares of Preferred Stock have been designated as Series C Preferred Stock none of which is issued and outstanding prior to the Closing. As of the Closing, no other series of Preferred Stock have been designated. The rights, privileges and preferences of the Preferred Stock are as stated in the Certificate of Incorporation, including all amendments thereto, and as provided by the New Jersey Business Corporation Law. The Company holds no Preferred Stock in its treasury.

c. Authorization.

i. All corporate action required to be taken by the Board of Directors of the Company (the "**Board of Directors**") and shareholders in order to authorize the Company to enter into this Agreement and approve the Series A Repurchase and the Share Exchange, including the issuance of the Series B Preferred Stock at Closing, has been taken or will be taken prior to the Closing. All corporate action required to be taken by the Board of Directors

and shareholders in order to issue the Common Stock issuable upon conversion of the Series B Preferred Stock has been taken or will be taken prior to Closing. All action on the part of the officers of the Company necessary for the execution and delivery of this Agreement, the performance of all obligations of the Company under this Agreement to be performed as of the Closing has been taken or will be taken prior to the Closing.

ii. This Agreement, when or as executed and delivered by the Company, shall and does constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with its terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, or (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies (collectively, the "**Bankruptcy and Equity Exception**").

d. Valid Issuance of Shares.

i. The Series B Preferred Stock, when issued, exchanged and delivered in accordance with the terms and for the consideration set forth in this Agreement, will be validly issued, fully paid and nonassessable and free and clear of all Liens other than any liens or encumbrances created by or imposed by the Holders.

ii. Assuming the accuracy of the representations of the Holders in Section 5, and subject to the filings described in Section 4(e), below, the Series B Preferred Stock will be issued in compliance with all applicable federal and state securities laws. The Common Stock issuable upon conversion of the Series B Preferred Stock has been or will be duly reserved for issuance, and upon issuance in accordance with the terms of the Certificate of Incorporation, will be validly issued, fully paid and nonassessable and free and clear of all Liens other than any liens or encumbrances created by or imposed by the Holders.

iii. Assuming the accuracy of the representations of the Holders in Section 5, and subject to the filings described in Section 4(e), below, the Common Stock issuable upon conversion of the Series B Preferred Stock will be issued in compliance with all applicable federal and state securities laws.

iv. No Person has any right to purchase any of the Series B Preferred Stock being issued in accordance with this Agreement under the Company's governing instruments or any contract, agreement or arrangement to which the Company is a party.

e. Governmental Consents and Filings. Assuming the accuracy of the representations made by the Holders in Section 5, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Entity is required on the part of the Company in connection with the Series A Repurchase and the Share Exchange, except for (i) compliance with any applicable requirements of the Exchange Act, the Securities Act and any other applicable U.S. state or federal securities, takeover or "blue sky" laws and (ii) compliance with any applicable rules of the New York Stock Exchange.

f. Compliance. The Company is not in violation or default (i) of any provisions of the Certificate of Incorporation or the Fourth Amended and Restated By-laws of the Company (the "**Bylaws**"), (ii) of any instrument, judgment, order, writ or decree, (iii) under any note, indenture or mortgage, or (iv) under any lease, agreement, contract or purchase order to which it is a party or by which it is bound, or (v) of any provision of federal or state statute, rule or regulation applicable to the Company, except, in the case of clauses (ii), (iii) and (iv) above, for any such violation that would not have a material adverse effect on the ability of the Company to timely consummate the transactions contemplated by this Agreement (the "**Transactions**"). The execution, delivery and performance of this Agreement and the consummation of the Transactions will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either (i) a default under any such provision, instrument, judgment, order, writ, decree, contract or agreement, or (ii) an event which results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, forfeiture, or nonrenewal of any permit or license applicable to the Company, except as would not, individually or in the aggregate, have a material adverse effect on the ability of the Company to timely consummate the Transactions.

g. No Additional Representations. Except for the representations and warranties made by the Company in this Section 4, neither the Company nor any other person makes any express or implied representation or warranty with respect to the Company or any subsidiaries or their respective businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects, and the Company hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing disclaimer, neither the Company nor any other person makes or has made any representation or warranty to the Holders, or any of their Affiliates or Representatives, with respect to (i) any financial projection, forecast, estimate, budget or prospect information relating to the Company or any of its subsidiaries or their respective businesses, or (ii) any oral or written information presented to the Holders or any of their Affiliates or Representatives in the course of their due diligence investigation of the Company or the negotiation of this Agreement.

5. Representations and Warranties of the Holders. Each Holder hereby represents and warrants to the Company, severally and not jointly, that:

a. Organization. Such Holder is duly formed and validly existing and in good standing under the Laws of its jurisdiction of formation and has full power and capacity to enter into this Agreement and perform it obligations hereunder.

b. Authorization. This Agreement, when executed and delivered by such Holder, will constitute valid and legally binding obligations of such Holder, enforceable in accordance with its terms, subject to the Bankruptcy and Equity Exception.

c. Ownership of Series A Preferred Stock and Remaining Series A Preferred Stock. The shares of Series A Preferred Stock and Remaining Series A Preferred Stock owned by each such Holder as set forth opposite such Holder's name on Exhibit A and Exhibit B, respectively, are beneficially owned by each such Holder , free and clear of all Liens.

d. Registered Securities. Each Holder understand that the shares of Series B Preferred Stock it is acquiring pursuant to this Agreement are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such Series B Preferred Stock may be resold or otherwise transferred without registration under the Securities Act only in certain limited circumstances. In the absence of any effective registration statement covering the Series B Preferred Stock or an available exemption from registration under the Securities Act, the Series B Preferred Stock must be held indefinitely.

e. Legends. The Company may place appropriate and customary legends on the shares of the Series B Preferred Stock (and the Common Stock issuable upon conversion or pursuant to the terms thereof) held by each Holder setting forth the restrictions referred to in this Section 5 and any restrictions appropriate for compliance with U.S. federal securities Laws. Each Holder agrees with the Company that, other than to take into account any changes in applicable securities Laws, each share of the Series B Preferred Stock held by such Holder on the Closing Date may be notated with one or all of the following legends:

i. "THESE SECURITIES AND THE SECURITIES ISSUABLE UPON THE CONVERSION THEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. THE SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT (1) PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT RELATING TO SUCH SECURITIES UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE STATE SECURITIES LAWS AND THE SECURITIES LAWS OF OTHER JURISDICTIONS."

ii. Any legend required by the securities laws of any state to the extent such laws are applicable to the shares of the Series B Preferred Stock represented by the certificate, instrument, or book entry so legended.

f. Disclosure of Information. Such Holder has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the Series A Repurchase and the Share Exchange with the Company's management. The foregoing, however, does not limit or modify the representations and warranties of the Company in Section 4 or the right of such Holder to rely thereon.

g. Regulatory Approvals. No notices, reports or other filings are required to be made by such Holder with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by such Holder from, any Governmental Entity in connection with the execution, delivery and performance of this Agreement by such Holder or the consummation of the Closing, except (a) for compliance with any applicable requirements of the Exchange Act, or (b) where the failure to so make or obtain would not, individually or in the aggregate, reasonably be likely to prevent, materially delay or materially impair the consummation of the Closing.

h. No Additional Representation; Access to Information.

i. Each Holder acknowledges and agrees that except as expressly set forth in Section 4, the Company is not making and has not made any representation or warranty, express or implied, at Law or in equity, with respect to this Agreement, the Company, the Series A Preferred Stock (and the Common Stock issuable upon conversion or pursuant to the terms thereof), the Series B Preferred Stock (and the Common Stock issuable upon conversion or pursuant to the terms thereof), any other securities of the Company or the businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects of the Company or any information provided or made available to such Holder in connection therewith (including any forecasts, projections, estimates or budgets), the Transactions or the accuracy, completeness or adequacy of any publicly available information regarding the Company and its Affiliates, including any warranty with respect to merchantability or fitness for any particular purpose, and all other representations or warranties are hereby expressly disclaimed.

ii. Each Holder has relied solely on its own independent investigation in evaluating the Company and the value of the Series A Preferred Stock (and the Common Stock issuable upon conversion or pursuant to the terms thereof) and the Series B Preferred Stock (and the Common Stock issuable upon conversion or pursuant to the terms thereof) in determining to proceed with the Transactions and has not relied on any assertions made by the Company or its affiliates or any person acting on their behalf. Each Holder understands the disadvantage to which it is subject on account of the disparity of information as between the Company and the Holders with respect to the business and financial performance of the Company. Each Holder has access to all information that it believes to be necessary, sufficient or appropriate in connection with the Transactions. Each Holder has undertaken such independent investigation of the Company as in its judgment is appropriate to make an informed decision with respect to the Transactions, and has made its own decision to consummate the Transactions based on its own independent review and consultations with such investment, legal, tax, accounting and other advisers as it has deemed necessary and without reliance on any express or implied representation or warranty of the Company (except as expressly set forth herein). Each Holder understands that the Company has and may come into possession of material non-public information with respect to the Company not known to the Holders, including, without limitation, information with respect to the Company's financial performance for the year ended December 31, 2020. Each Holder acknowledges that any such material non-public information not known to it may impact the value of the Company, the Series A Preferred Stock (and the Common Stock issuable upon conversion or pursuant to the terms thereof) and the Series B Preferred Stock (and the Common Stock issuable upon conversion or pursuant to the terms thereof) or may otherwise be material to such Holder's decision to enter into this Agreement and to consummate the Transactions. Each Holder acknowledges that it is proceeding with the Transactions knowingly and voluntarily, without access to or the benefit of such information. Each Holder hereby waives any right to rescind or invalidate the repurchase and exchange of the Series A Preferred Stock (and the Common Stock issuable upon conversion or pursuant to the terms thereof) or the issuance of the Series B Preferred Stock (and the Common Stock issuable upon conversion or pursuant to the terms thereof) or to seek any damages or remuneration from the Company based on the Company's possession of any information regarding the Company or the lack of possession of any information regarding the Company by each Holder.

6. Additional Agreements.

a. Registration Statement. The Company shall use its commercially reasonable efforts to register the resale of the Common Stock issuable upon the conversion of the Series B Preferred Stock within six (6) months following the Closing, including, without limitation, by filing a new registration statement, a post-effective amendment to an existing registration statement or a prospectus supplement under an existing registration statement. From and after the Closing, the Registration Rights Agreement shall remain in full force and effect and the shares of Common Stock issuable upon the conversion of the Series B Preferred Stock shall constitute the Registrable Securities thereunder.

b. DTC Eligibility. The Company agrees to cooperate in good faith and use commercially reasonable efforts to (i) work with the Holders to take any actions reasonably necessary to cause the shares of the Series B Preferred Stock to be deposited in book-entry form by or on behalf of the Company and registered in the name of Cede & Co., as nominee of DTC and (ii) facilitate eligibility of the shares of the Series B Preferred Stock for clearance and settlement through DTC, in each case, within sixty (60) days after the Closing Date (or such later date as the Holders shall reasonably agree). Prior to such time, the shares of the Series B Preferred Stock will be evidenced in the form of certificates in the name of the initial Holders.

7. Closing Conditions.

a. Conditions to the Holders' Obligations at Closing. The obligations of the Holders to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or before the Closing, of each of the following conditions, unless otherwise waived by the Holders:

i. No Prohibition. No Order (whether temporary, preliminary or permanent) of a Governmental Entity of competent jurisdiction or other applicable Law shall be in effect which makes illegal, restrains, enjoins or otherwise prohibits or prevents the Closing.

ii. Qualifications. All authorizations, approvals or permits, if any, of any Governmental Entity that are required in connection with the lawful issuance and sale or exchange of the Series A Preferred Stock and Series B Preferred Stock pursuant to this Agreement shall have been obtained and be effective as of the Closing.

iii. Representations and Warranties of the Company. The representations of the warranties of the Company set forth in Section 4 shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of such date.

iv. Performance. The Company shall have performed and complied in all material respects with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by the Company on or before the Closing.

v. Compliance Certificate. The Company shall have delivered to the Holders a certificate of a duly authorized officer of the Company certifying that the conditions specified in Sections 7(a)(i)-(iv) have been fulfilled.

vi. Secretary's Certificate. The Secretary of the Company shall have delivered to the Holders a certificate certifying (A) the Certificate of Incorporation, including the Series B Certificate of Designations, (B) the Bylaws, (C) the resolutions of the Board of Directors approving the Series A Repurchase and the Share Exchange.

b. Conditions to the Company's Obligations at Closing. The obligations of the Company to consummate the transactions contemplated by this Agreement are subject to the fulfillment, on or before the Closing, of each of the following conditions, unless otherwise waived by the Company:

i. Other Financing. Prior to or concurrently with the Closing, the Company shall have closed on debt financing sufficient to pay in full the Purchase Price.

ii. No Prohibition. No Order (whether temporary, preliminary or permanent) of a Governmental Entity of competent jurisdiction or other applicable Law shall be in effect which makes illegal, restrains, enjoins or otherwise prohibits or prevents the Closing.

iii. Qualifications. All authorizations, approvals or permits, if any, of any Governmental Entity that are required in connection with the lawful issuance and sale or exchange of the Series A Preferred Stock and Series B Preferred Stock pursuant to this Agreement shall have been obtained and effective as of the Closing.

iv. Representations and Warranties of the Holders. The representations of the warranties of the Holders set forth in Section 5 shall be true and correct in all material respects as of the date of this Agreement and as of the Closing Date as though made on and as of such date.

v. Performance. The Holders shall have performed and complied in all material respects with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by the Holders on or before the Closing.

8. Costs. Each party to this Agreement shall bear its respective costs and expenses in connection with the transactions contemplated by this Agreement.

9. Definitions.

a. "**Affiliate**" means, with respect to any specified Person, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person.

b. "**Certificate of Incorporation**" means the Second Amended and Restated Certificate of Incorporation of the Company, as amended as of the date hereof and after giving effect to the filing of the Series B Certificate of Designations.

c. "**Closing Per Share Price**" means the quotient of (a) the aggregate Liquidation Preference of the 1,000,000 shares of the Series A Preferred Stock to be repurchased by the Company pursuant to this Agreement, *plus* all accrued and unpaid dividends on such 1,000,000 shares of the Series A Preferred Stock through the Closing Date, *divided by* (b) 1,000,000.

d. "**Common Stock**" means the Company's Common Stock, par value $0.01 per share.

e. "**DTC**" means the Depository Trust Company or any successor thereto.

f. "**DWAC**" means a deposit/withdrawal at custodian.

g. "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

h. "**Governmental Entity**" means any: (i) federal, state, local, municipal, foreign or other government; (ii) governmental, quasi-governmental, supranational or regulatory authority (including any governmental division, department, agency, commission, instrumentality, organization, unit or body and any court or other tribunal); or (iii) self-regulatory organization (including the New York Stock Exchange).

i. "**Law**" means any federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including common law).

j. "**Lien**" means any lien, charge, pledge, mortgage, easement, hypothecation, usufruct, deed of trust, security interest, claim or other encumbrance, other than, in each case, restrictions on transfer arising solely under applicable federal and state securities Laws.

k. "**Liquidation Preference**" means the Liquidation Preference of the Series A Preferred Stock as such term is defined in the Certificate of Incorporation.

l. "**Order**" means any judgment, order, decision, writ, injunction, decree, stipulation or legal or arbitration award of, or promulgated or issued by, any Governmental Entity.

m. "**Person**" means any individual, corporation, partnership, trust, limited liability company, association or other entity.

n. "**Registration Rights Agreement**" means that certain Registration Rights Agreement, dated as of November 15, 2016, between the Company, the Holders and Southeastern.

o. "**Representative**" means, with respect to any Person, the directors, officers, employees, investment bankers, financial advisors, attorneys, accountants or other advisors, agents or representatives of such Person.

p. "**Registrable Securities**" has the meaning assigned to it in the Registration Rights Agreement.

q. "**SEC**" means the U.S. Securities and Exchange Commission.

r. "**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

s. "**Series B Certificate of Designations**" means the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company in substantially the form of Exhibit D hereto.

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, the Company, the Holders and Southeastern have executed this Agreement as of the date first written above.

COMPANY:

EASTMAN KODAK COMPANY

By: /s/ David E. Bullwinkle

Name: David E. Bullwinkle

Title: Chief Financial Officer and Senior Vice President

SOUTHEASTERN ASSET MANAGEMENT, INC.

By: /s/ Andrew R. McCarroll

Name: Andrew R. McCarroll

Title: General Counsel

HOLDERS:

LONGLEAF PARTNERS SMALL-CAP FUND

By: SOUTHEASTERN ASSET MANAGEMENT, INC.
Acting as Investment Counsel

By: /s/ Andrew R. McCarroll

Name: Andrew R. McCarroll

Title: General Counsel

C2W PARTNERS MASTER FUND LIMITED

By: SOUTHEASTERN ASSET MANAGEMENT, INC.
Acting as Investment Advisor

By: /s/ Andrew R. McCarroll

Name: Andrew R. McCarroll

Title: General Counsel

DESERET MUTUAL PENSION TRUST

By: SOUTHEASTERN ASSET MANAGEMENT, INC.
Acting as Investment Adviser

By: /s/ Andrew R. McCarroll

Name: Andrew R. McCarroll

Title: General Counse

Exhibit 10.2

EXECUTION VERSION

SERIES C PREFERRED STOCK PURCHASE AGREEMENT

dated as of February 26, 2021

by and among

EASTMAN KODAK COMPANY

and

GO EK VENTURES IV, LLC

TABLE OF CONTENTS

SERIES C PREFERRED STOCK PURCHASE AGREEMENT

THIS SERIES C PREFERRED STOCK PURCHASE AGREEMENT (this "**Agreement**"), is made and entered into as of the 26th day of February, 2021, by and among Eastman Kodak Company, a New Jersey corporation (the "**Company**") and the investor listed on Exhibit A to this Agreement (the "**Purchaser**").

RECITALS

WHEREAS, the Company desires to sell and issue to the Purchaser, and the Purchaser desires to purchase and accept from the Company, in the aggregate, 1,000,000 preferred shares of the Company, designated as 5.00% Series C Convertible Preferred Stock, no par value per share (the "**Series C Preferred Stock**"), having the terms set forth in the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company, as amended (the "**Certificate of Incorporation**") in the form attached hereto as Exhibit B (the "**Series C Certificate of Amendment**"), subject to the terms and conditions set forth in this Agreement; and

WHEREAS, in connection with the issuance of the Series C Preferred Stock, the Company and the Purchaser will enter into the Registration Rights Agreement, to be dated as of the Closing Date (as defined below), in the form attached hereto as Exhibit C (the "**Series C Registration Rights Agreement**").

NOW, THEREFORE, in consideration of the premises, and of the representations, warranties, covenants and agreements set forth herein, the parties agree as follows:

ARTICLE I

DEFINITIONS

1.1 Definitions. As used in this Agreement, the following terms have the following meanings:

(a) "**Additional Liquidation Preference**" has the meaning assigned to it in the Series C Certificate of Amendment.

(b) "**Antitakeover Provisions**" means the provisions of any rights plan or agreement, poison pill (including any distribution under a rights plan or agreement), or any control share acquisition, business combination, interested stockholder, fair price, moratorium or similar anti-takeover provision under the Certificate of Incorporation, the Bylaws, or applicable law of the jurisdiction of incorporation of the Company.

(c) "**Affiliate**" means (i) with respect to any specified Person other than Purchaser, any other Person who, directly or indirectly, controls, is controlled by, or is under common control with such Person, including, without limitation, any general partner, managing member, officer or director of such Person or any venture capital fund now or hereafter existing that is controlled by one or more general partners or managing members of, or shares the same management company with, such Person and (ii) with respect to Purchaser, any other Person, directly or indirectly, at least a majority of the equity and voting interests of which are beneficially owned by B. Thomas Golisano or his heirs, legal representatives, successors.

(d) "**Closing**" means the Initial Closing or the Second Closing, as the context requires.

(e) "**Closing Date**" means the Initial Closing Date or the Second Closing Date, as the context requires.

(f) "**Code**" means the Internal Revenue Code of 1986, as amended.

(g) "**Company Reports**" means the Company's (i) Annual Report on Form 10-K filed with the U.S. Securities and Exchange Commission (the "**SEC**") on March 17, 2020 (including information specifically incorporated by reference into the Annual Report on Form 10-K from the Company's proxy statement on Schedule 14A filed with the SEC on April 9, 2020), (ii) Quarterly Report on Form 10-Q filed with the SEC on May 12, 2020, (iii) Quarterly Report on Form 10-Q filed with the SEC on August 11, 2020, (iv) Quarterly Report on Form 10-Q filed with the SEC on November 10, 2020 and (v) Current Reports on Form 8-K filed or furnished, as the case may be, with the SEC on March 17, 2020, March 26, 2020, April 16, 2020, May 12, 2020, May 27, 2020 (as amended), August 3, 2020, August 7, 2020, August 11, 2020, September 16, 2020, September 30, 2020, October 9, 2020, November 10, 2020 and December 29, 2020.

(h) "**Company Intellectual Property**" means all intellectual property rights and proprietary rights of any kind, including in or with respect to patents, patent applications, trademarks, trademark applications, service marks, service mark applications, tradenames, copyrights, trade secrets, domain names, mask works, know-how processes, in each case, that are used by the Company and material to its business as currently conducted.

(i) "**Company knowledge**" or similar phrases (such as "Company's knowledge" or to the "knowledge of the Company") means the actual knowledge of the executive officers of the Company, in each case after due inquiry.

(j) "**Dividend Payment Date**" means January 15, April 15, July 15 and October 15 of each year, commencing on April 15, 2021.

(k) "**Dividend Period**" means the period commencing on, and including, a Dividend Payment Date and ending on, and including, the day immediately preceding the next succeeding Dividend Payment Date, with the exception that the first Dividend Period shall commence on, and include, the Original Issue Date and end on and include April 14, 2021.

(l) "**DFC Related Matters**" means investigations, proceedings, and claims arising out or related to the International Development Finance Corporation announcement on July 28, 2020 related to the Company and any events leading up to such announcement..

(m) "**Governmental Entity**" means any: (i) federal, state, local, municipal, foreign or other government; (ii) governmental, quasi-governmental, supranational or regulatory authority (including any governmental division, department, agency, commission, instrumentality, organization, unit or body and any court or other tribunal); or (iii) self-regulatory organization (including the New York Stock Exchange).

(n) "**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

(o) "**GAAP**" means accounting principles generally accepted in the United States of America.

(p) "**HSR Act**" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended.

(q) "**Junior Stock**" means all classes of the Company's Common Stock and any other class of capital stock or series of preferred stock of the Company, the terms of which do not expressly provide that such class or series ranks senior to or *pari passu* with Series C Preferred Stock as to dividend rights or rights upon the Company's liquidation, winding-up or dissolution.

(r) "**Key Employee**" means any executive-level employee (including division director and vice president-level positions).

(s) "**Law**" means any federal, national, supranational, state, provincial, local or similar statute, law, ordinance, regulation, rule, code, order, requirement or rule of law (including common law).

(t) "**Liquidation Preference**" has the meaning assigned to it in the Series C Certificate of Amendment.

(u) "**Material Adverse Effect**" means any circumstance, development, effect, change, event, occurrence or state of facts that, individually or in the aggregate, has had, or would reasonably be expected to have, a material adverse effect on (1) the business, results of operations, assets, or financial condition of the Company and its subsidiaries taken as a whole; provided, however, that none of the following, and no circumstance, development, effect, change, event or occurrence arising out of, or resulting from, the following, shall constitute or be taken into account, individually or in the aggregate, in determining whether a Material Adverse Effect has occurred or may occur: any effect, change, event or occurrence that results from or arises in connection with (A) changes in or conditions generally affecting the industry in which the Company and its subsidiaries operate, (B) general economic or regulatory, legislative or political conditions or securities, credit, financial or other capital markets conditions in any jurisdiction, (C) exchange rate conditions or fluctuations in any jurisdiction, (D) any failure, in and of itself, by the Company and its subsidiaries to meet any internal or published projections, forecasts, estimates or predictions in respect of revenues, earnings or other financial or operating metrics for any period, (E) geopolitical conditions, the outbreak or escalation of hostilities, any acts of war (whether or not declared), sabotage, terrorism or man-made disaster, or any escalation or worsening of any of the foregoing, (F) any volcano, tsunami, pandemic, epidemic or public health emergency (including, for the avoidance of doubt, the COVID-19 pandemic, heightened governmental and social responses thereto, and changes in general economic conditions with respect to or as a result of the COVID-19 pandemic, even if foreseeable), hurricane, tornado, windstorm, flood, earthquake

or other natural disaster, (G) the execution and delivery of this Agreement or the public announcement or pendency of the Transactions, (H) any change, in and of itself, in the market price, credit rating or trading volume of the Company's securities, (I) in GAAP (or authoritative interpretation thereof), including accounting and financial reporting pronouncements by the SEC and the Financial Accounting Standards Board or applicable Law, or (J) any action required to be taken by the Company, or that the Company is required to take or to cause one of its subsidiaries to take pursuant to the terms of the Transaction Agreements (it being understood that the exceptions in clauses (D) and (H) shall not be taken into account in determining whether or not the underlying cause of any such failure or change referred to therein (if not otherwise falling within any of the exceptions provided by clauses (A) through (J) hereof) gives rise to a Material Adverse Effect); provided, that the exceptions in clauses (A), (B), (E) and (F) above shall not apply to the extent such circumstance, development, effect, change, event, occurrence or state of facts has a materially disproportionate impact on the Company and its subsidiaries, taken as a whole, relative to other participants in any of the industries in which the Company and its subsidiaries operate, or (2) the ability of the Company and its subsidiaries to timely consummate the Transactions.

(v) "**Order**" means any judgment, order, decision, writ, injunction, decree, stipulation or legal or arbitration award of, or promulgated or issued by, any Governmental Entity.

(w) "**Original Issue Date**" means the first date on which the Series C Preferred Stock is issued.

(x) "**Person**" means any individual, corporation, partnership, trust, limited liability company, association or other entity.

(y) "**PIK Shares**" has the meaning assigned to it in the Series C Certificate of Amendment.

(z) "**Preferred Stock**" means the Series A Preferred Stock, the Series B Preferred Stock and the Series C Preferred Stock.

(aa) "**Representative**" means, with respect to any Person, the directors, officers, employees, investment bankers, financial advisors, attorneys, accountants or other advisors, agents or representatives of such Person.

(bb) "**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

(cc) "**Series A Preferred Stock**" means the Company's 5.5% Series A Convertible Preferred Stock, no par value per share, the terms of which are set forth in a Certificate of Amendment to the Certificate of Incorporation dated November 14, 2016 (the "**Series A Certificate of Amendment**").

(dd) "**Series B Preferred Stock**" means the Company's 4.0% Series B Convertible Preferred Stock, no par value per share, the terms of which will be as set forth in the form of Certificate of Amendment to the Certificate of Incorporation annexed to the Series A Repurchase and Exchange Agreement as Exhibit A (the "**Series B Certificate of Amendment**").

(ee) "**Series C Preferred Transaction Agreements**" means this Agreement, the Series C Certificate of Amendment and the Series C Registration Rights Agreement.

(ff) "**Series C Preferred Transactions**" means the transactions contemplated by this Agreement and the Series C Registration Rights Agreement.

(gg) "**Specified Public Filings**" means the quarterly report on Form 10-Q of the Borrower for each of the fiscal quarters ended on March 31, 2020, June 30, 2020 and September 30, 2020.

(hh) "**subsidiary**" means, with respect to any person, any corporation, partnership, joint venture, limited liability company or other entity (x) of which such person or a subsidiary of such person is a general partner or (y) of which a majority of the voting securities or other voting interests, or a majority of the securities or other interests of which having by their terms ordinary voting power to elect a majority of the board of directors or persons performing similar functions with respect to such entity, is directly or indirectly owned by such person or one or more subsidiaries thereof.

(ii) "**Transaction Agreements**" means the Series C Preferred Transaction Agreements, the Debt and Common Equity Agreements and the Series A Repurchase and Exchange Documents.

(jj) "**Transactions**" means the transactions contemplated by the Transaction Agreements.

ARTICLE II

PURCHASE; CLOSING

2.1 Authorization, Sale and Issuance of Series C Preferred Stock.

(a) The Company has, or before the Initial Closing shall have, duly authorized the creation, sale and issuance pursuant to the terms and conditions hereof of the Shares having the rights, restrictions, privileges and preferences set forth in the Series C Certificate of Amendment to be filed with the Department of Treasury of the State of New Jersey in the form attached hereto as Exhibit B subject to clerical and administrative amendments only.

(b) Subject to the terms and conditions of this Agreement, the Purchaser agrees to purchase at the Initial Closing and the Company agrees to sell and issue to the Purchaser at the Initial Closing the number of shares of Series C Preferred Stock set forth opposite the Purchaser's name on Exhibit A to be sold at the Initial Closing (the "**Initial Closing Shares**"), at a purchase price of $100 per share (subject to adjustment in the event of a stock split, stock dividends or similar events) (the "**Per Share Purchase Price**"). In addition, subject to the terms and conditions of this Agreement, the Purchaser agrees to purchase at a Second Closing and the

Company agrees to sell and issue to the Purchaser at the Second Closing the number of shares of Series C Preferred Stock set forth opposite the Purchaser's name on Exhibit A (the "**Second Closing Shares**") at a purchase price per share equal to the Per Share Purchase Price. The shares of Series C Preferred Stock issued to the Purchaser pursuant to this Agreement shall be referred to in this Agreement as the "**Shares**", the shares of Series C Preferred Stock issuable as dividends with respect to the Shares shall be referred to as the "**PIK Shares**" and the shares of Common Stock issuable upon conversion of the Shares and the PIK Shares shall be referred to as the "**Conversion Shares**". The aggregate cash amount equal to the product of the Per Share Purchase Price multiplied by the numbers of Shares shall be referred to in this Agreement as the "**Purchase Price**."

2.2 Closing. Subject to the terms and conditions of this Agreement, the initial closing of the purchase and sale of the Shares by the Purchaser and the Company pursuant to this Agreement (the "Initial Closing") shall be held at 10:00 a.m. New York time, remotely by the exchange of documents and signatures (or their electronic counterparts) as soon as reasonably practicable (which may be the date hereof) after the conditions set forth in Article VI to the Initial Closing (other than those conditions that by their nature are to be satisfied at the Closing, but subject to their satisfaction) are satisfied or waived, or at such other date, time and place as the Company and the Purchaser mutually agree in writing (the "**Initial Closing Date**"). Subject to the terms and conditions of this Agreement, the second closing of the purchase and sale of the Shares by the Purchaser and the Company pursuant to this Agreement (the "**Second Closing**") shall be held at 10:00 a.m. New York time, remotely by the exchange of documents and signatures (or their electronic counterparts) as soon as reasonably practicable after the conditions set forth in Article VI to the Second Closing (other than those conditions that by their nature are to be satisfied at the Closing, but subject to their satisfaction) are satisfied or waived, or at such other date, time and place as the Company and the Purchaser mutually agree in writing (the "**Second Closing Date**").

ARTICLE III

REPRESENTATIONS AND WARRANTIES OF THE COMPANY

Except (a) as set forth in any Company Report, including the exhibits thereto (but (i) without giving effect to any amendment thereof filed with, or furnished to, the SEC on or after the date hereof, (ii) excluding any disclosures contained under the heading "Risk Factors" and any disclosure of risks included in any "forward-looking statements" disclaimer or in any other section to the extent they are forward-looking statements or cautionary, predictive or forward-looking in nature, and (iii) without giving effect to the Company Reports with respect to Sections 3.1 (*Organization; Qualifications*), 3.2 (*Capitalization*), 3.3 (*Authorization*), 3.4 (*Valid Issuance of Shares*) (for which no exceptions shall apply)) and (b) DFC Related Matters, which exceptions shall be deemed to be part of the representations and warranties made hereunder, the Company represents and warrants to the Purchaser, as of the date hereof and as of the Closing Date, that:

For purposes of these representations and warranties (other than those in Sections 3.1, 3.2, 3.3 and 3.4), the term the "**Company**" shall include any subsidiaries of the Company, unless otherwise noted herein.

3.1 Organization; Qualifications. The Company and each of its subsidiaries has been duly incorporated and is validly existing as a corporation in good standing under the laws of the jurisdiction of its incorporation and is duly qualified to conduct business and is in good standing in each jurisdiction or place where the nature of its properties or the conduct of its business requires such registration or qualification, except where the failure to so register or qualify in a jurisdiction outside of the jurisdiction of its incorporation would not, individually or in the aggregate, have a Material Adverse Effect.

3.2 Capitalization.

(a) Immediately prior to the Initial Closing, the authorized capital of the Company consists of 500,000,000 shares of Common Stock and 60,000,000 shares of Preferred Stock. As of February 22, 2020, there were 77,364,845 shares of Common Stock and 2,000,000 shares of Series A Preferred Stock issued and outstanding All of the outstanding shares of Common Stock and Series A Preferred Stock have been duly authorized, are fully paid and nonassessable and were issued in compliance with all applicable federal and state securities laws. As of February 22, 2020, the Company held 711,791 shares of Common Stock in its treasury.

(b) Immediately prior to the Initial Closing, the rights, privileges and preferences of the Series C Preferred Stock are as stated in the Series C Certificate of Amendment and as provided by the New Jersey Business Corporation Law, the rights, privileges and preferences of the Series B Preferred Stock are as stated in the Series B Certificate of Amendment and as provided by the New Jersey Business Corporation Law, and the rights, privileges and preferences of the Series A Preferred Stock are as stated in the Series A Certificate of Amendment, which shall be cancelled and no longer in effect as of the consummation of the transactions contemplated by the Series A Repurchase and Exchange Documents.

(c) Immediately following the Initial Closing, after giving effect to the Transactions, the authorized capital of the Company will consist of (i) 2,000,000 shares of Series A Preferred Stock, of which zero (0) shares are issued and outstanding, (ii) 1,000,000 shares of Series B Preferred Stock, of which 1,000,000 shares are issued and outstanding, (iii) 1,000,000 shares of Series C Preferred Stock, of which 750,000 shares are issued and outstanding (which shall be increased to 1,000,000 shares at the Second Closing and further increased by the number of such shares issued from time to time as dividends payable in kind pursuant to the terms of such shares), and (iv) 500,000,000 shares of Common Stock, of which 77,364,845 shares are issued and outstanding (as of February 12, 2021), 0 shares are reserved for issuance upon conversion of the Series A Preferred Stock, 11,428,572 shares are reserved for issuance upon conversion of the Series B Preferred Stock, 17,220,000 shares are reserved for issuance upon conversion of the Series C Preferred Stock (including any PIK Shares), 3,410,500 shares are reserved for issuance upon conversion of the Convertible Notes (including any shares issuable with respect to interest payable in kind) and 8,000,000 shares are reserved for issuance under the Stock Plan as further described below.

(d) The Company has reserved 8,000,000 shares of Common Stock for issuance to officers, directors, employees and consultants of the Company pursuant to its 2013 Omnibus Incentive Plan, as amended and restated, duly adopted by the Board of Directors of the Company (the "**Board of Directors**") and approved by the Company stockholders (the "**Stock Plan**"). Of such reserved shares of Common Stock, as of the date of this Agreement: 2,646,308 shares have been issued pursuant to or are subject to outstanding awards of restricted stock units, 9,749,404 shares have been issued pursuant to or are subject to outstanding awards of non-

qualified stock options (which shares correspond to the equivalent of 4,493,061 shares of Common Stock for purposes of the Stock Plan under the terms of the counting provisions thereof), and 860,631 shares of Common Stock remain available for issuance to officers, directors, employees and consultants pursuant to the Stock Plan. The Company has filed with the SEC complete and accurate copies of the Stock Plan and forms of agreements used thereunder.

(e) Other than under the Stock Plan, the phantom stock rights of the directors of the Company or pursuant to the conversion privileges of (i) the Shares to be issued under this Agreement and (ii) the Series B Preferred Stock, there are no outstanding options, warrants, rights (including conversion or preemptive rights, put rights, call rights, phantom equity, anti-dilutive rights, and rights of first refusal or similar rights), pledges or agreements, orally or in writing, to purchase or acquire from the Company any shares of Common Stock or Preferred Stock, or any securities convertible into or exchangeable for shares of Common Stock or Preferred Stock.

(f) Except as set forth in the Certificate of Incorporation, as amended by the Series A Certificate of Amendment, the Company has no obligation (contingent or otherwise) to purchase or redeem any of its capital stock.

(g) Except for the Existing Registration Rights Agreements, none of the Company or any subsidiary is a party to any stockholders agreement, voting trust agreement, registration rights agreement or other similar agreement or understanding relating to any of the Company's capital sock.

3.3 Authorization.

(a) All corporate action required to be taken by the Board of Directors and shareholders in order to authorize the Company to enter into the Transaction Agreements and consummate the Transactions, and to issue the Shares at the applicable Closings and to consummate the other Transactions, has been taken or will be taken prior to the Initial Closing.

(b) All corporate action required to be taken by the Board of Directors and shareholders in order to issue the Conversion Shares has been taken or will be taken prior to the Initial Closing. All action on the part of the officers of the Company necessary for the execution and delivery of the Series C Transaction Agreements, the performance of all obligations of the Company under the Series C Transaction Agreements to be performed as of the Initial Closing, and the issuance and delivery of the Shares at the applicable Closing has been taken or will be taken prior to the Initial Closing.

(c) The Series C Transaction Agreements, when or as executed and delivered by the Company, shall and do constitute valid and legally binding obligations of the Company, enforceable against the Company in accordance with their respective terms except (i) as limited by applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance, or other laws of general application relating to or affecting the enforcement of creditors' rights generally, (ii) as limited by laws relating to the availability of specific performance, injunctive relief, or other equitable remedies, or (iii) to the extent the indemnification provisions contained in the Registration Rights Agreement may be limited by applicable federal or state securities laws (collectively, the "**Bankruptcy and Equity Exception**").

3.4 Valid Issuance of Shares.

(a) The Shares, when issued, sold and delivered in accordance with the terms and for the consideration set forth in this Agreement, and the PIK Shares and the Conversion Shares when issued in accordance with the Series C Certificate of Amendment will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under the Series C Transaction Agreements, applicable state and federal securities laws and liens or encumbrances created by or imposed by the Purchaser.

(b) Assuming the accuracy of the representations of the Purchaser in Article IV, and subject to the filings described in Section 3.5, below, the Shares will be issued in compliance with all applicable federal and state securities laws. The Series C Preferred Stock issuable as the PIK Shares and Common Stock issuable upon conversion of the Shares has been or will be duly reserved for issuance by the Initial Closing for the Shares to be sold at both Closings, and upon issuance in accordance with the terms of the Certificate of Incorporation, will be validly issued, fully paid and nonassessable and free of restrictions on transfer other than restrictions on transfer under the Series C Transaction Agreements, applicable federal and state securities laws and liens or encumbrances created by or imposed by the Purchaser.

(c) Assuming the accuracy of the representations of the Purchaser in Article IV, and subject to the filings described in Section 3.5, below, the PIK Shares and the Conversion Shares will be issued in compliance with all applicable federal and state securities laws. None of the issued and outstanding shares of capital stock of the Company have been, and none of the shares of capital stock to be issued pursuant to the Transaction will be, issued in violation of any agreement, arrangement or commitment to which the Company or any of its subsidiaries is a party or is subject to or in violation of any preemptive or similar rights of any person.

3.5 Governmental Consents and Filings. Assuming the accuracy of the representations made by the Purchaser in Article IV, no consent, approval, order or authorization of, or registration, qualification, designation, declaration or filing with, any Governmental Entity is required on the part of the Company in connection with the consummation of the Series C Transactions, except for (a) the filing of the Series C Certificate of Amendment with the Department of Treasury of the State of New Jersey, which will have been filed as of the Initial Closing, (b) compliance with any applicable requirements of the Exchange Act, the Securities Act and any other applicable U.S. state or federal securities, takeover or “blue sky” laws which shall be complied with in a timely manner, (c) compliance with any applicable rules of the New York Stock Exchange which shall be complied with in a timely manner, and (d) compliance with the applicable rules and regulations under the HSR Act which shall be complied with in a timely manner.

3.6 Compliance with Laws. The Company currently conducts, and have for the last three (3) years conducted, its business in accordance with all applicable Laws and the Company is not in violation of any such Law, in each case, except as would not, individually or in the aggregate, have a Material Adverse Effect.

3.7 Litigation.

(a) There is no claim, action, suit, proceeding, arbitration, complaint, charge or investigation pending or, to the Company's knowledge, currently threatened, against the Company or any officer, director or Key Employee of the Company arising out of their employment or board relationship with the Company that (a) would, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect or (b) involves any of the Transaction Documents or the Transactions. The written disclosure provided to the Purchaser regarding the DFC Related Matters is true and accurate.

(b) Neither the Company nor, to the Company's knowledge, any of its officers, directors or Key Employees is a party or is named as subject to the provisions of any order, writ, injunction, judgment or decree of any court or government agency or instrumentality (in the case of officers, directors or Key Employees, such as would affect the Company) that would, individually or in the aggregate, have a Material Adverse Effect. There is no action, suit, proceeding or investigation by the Company pending or threatened in writing (or any basis therefor known to the Company) involving the prior employment of any of the Company's employees, their services provided in connection with the Company's business, any information or techniques allegedly proprietary to any of their former employers or their obligations under any agreements with prior employers that would, individually or in the aggregate, have a Material Adverse Effect.

3.8 Intellectual Property. Except as would not, individually or in the aggregate, have a Material Adverse Effect, the Company owns or possesses or can acquire on commercially reasonable terms sufficient legal rights to all Company Intellectual Property without any known conflict with, or infringement of, the rights of others. To the Company's knowledge, no product or service marketed or sold by the Company infringes, misappropriates or otherwise violates any intellectual property rights of any third party, except as would not, individually or in the aggregate, have a Material Adverse Effect. The Company has not received any communications alleging that the Company has violated, or, by conducting its business, would violate any of the intellectual property rights of any other Person that would, individually or in the aggregate, have a Material Adverse Effect. The Company has obtained and possesses valid licenses to use all of the software programs present on the computers and other software-enabled electronic devices that it owns or leases or that it has otherwise provided to its employees for their use in connection with the Company's business, except as would not, individually or in the aggregate, have a Material Adverse Effect.

3.9 Compliance with Other Instruments. The Company is not in violation or default (a) of any provisions of the Certificate of Incorporation or the Fourth Amended and Restated By-laws of the Company (the "**Bylaws**"), (b) of any instrument, judgment, order, writ or decree, (iii) under any note, indenture or mortgage, or (c) under any lease, agreement, contract or purchase order to which it is a party or by which it is bound, or (d) of any provision of federal or state statute, rule or regulation applicable to the Company, except, in the case of clauses (b), (c) and (d) above, for any such violation that would not have a Material Adverse Effect. The execution, delivery and performance of the Transaction Agreements and the consummation of the Transactions will not result in any such violation or be in conflict with or constitute, with or without the passage of time and giving of notice, either (a) a default under any such provision, instrument, judgment, order, writ, decree, contract or agreement, or (b) an event which results in the creation of any lien, charge or encumbrance upon any assets of the Company or the suspension, revocation, forfeiture, or nonrenewal of any permit or license applicable to the Company, except on the case of (b), (c) and (d) as would not, individually or in the aggregate, have a Material Adverse Effect.

3.10 Agreements; Actions. Other than between any wholly owned subsidiary of the Company and the Company or another wholly owned subsidiary of the Company, since September 30, 2020, (a) the Company has not incurred any material liabilities (contingent or otherwise) other than (i) trade payables and accrued expenses incurred in the ordinary course of business consistent with past practice, (ii) liabilities not required to be reflected in the Company's financial statements pursuant to GAAP or disclosed in the Company Reports (b) the Company has not altered its method of accounting or the manner in which it keeps its accounting books and records in any material respect, (c) the Company has not declared or made any dividend or distribution of cash, shares of capital stock or other property to its stockholders or purchased, redeemed or made any agreements to purchase or redeem any shares of its capital stock (other than in connection with the Series A Repurchase and Exchange) and (d) the Company has not issued any equity securities, except pursuant to the Company's Stock Plan or in connection with the Transactions. The Company has not taken any steps, and does not currently expect to take any steps, to seek protection pursuant to any bankruptcy Law nor does the Company have any knowledge or reason to believe that its creditors intend to initiate involuntary bankruptcy or insolvency proceedings. The Company is financially solvent and is generally able to pay its debts as they become due.

3.11 Certain Transactions. Other than (a) standard employee benefits generally made available to all employees, (b) employment contracts entered into in the ordinary course of business, and (c) the purchase or award of shares of the Company's capital stock, awards of restricted stock units and the issuance of options to purchase shares of Common Stock, in each instance, approved in the written minutes of the Board of Directors or an authorized committee thereof, there are no agreements, understandings or proposed transactions between the Company and any of its officers or directors. The Company is not indebted, directly or indirectly, to any of its directors, officers or employees or to their respective spouses or children or to any Affiliate of any of the foregoing, other than in connection with indemnification obligations pursuant to the Company's governing documents employment agreements with directors or officers entered into in the ordinary course of business for ongoing matters, expenses or advances of expenses incurred in the ordinary course of business or employee relocation expenses and for other customary employee benefits made generally available to all employees.

3.12 No Bad Actor Disqualification. No "Bad Actor" disqualifying event described in Rule 506(d)(1)(i) to (viii) of the Securities Act (a "**Disqualification Event**") is applicable to the Company, except for a Disqualification Event as to which Rule 506(d)(2)(ii-iv) or (d)(3) is applicable.

3.13 Rights of Registration and Voting Rights. Except as provided in the Series C Preferred Registration Rights Agreement, that certain Registration Rights Agreement, dated as of November 15, 2016 (the "**Series A Preferred Registration Rights Agreement**"), that certain Registration Rights Agreement, dated as of February 26, 2021 (the "**2021 Registration Rights Agreement**") and that certain Registration Rights Agreement, dated as of September 3, 2013 (collectively, with the Series A Preferred Registration Rights Agreement and the 2021 Registration Rights Agreement, the "**Existing Registration Rights Agreements**"), the Company is not under any obligation to register under the Securities Act any of its currently outstanding securities or any securities issuable upon exercise or conversion of its currently outstanding securities.

3.14 Property. Except as would not, individually or in the aggregate, have a Material Adverse Effect, the Company has good title to, or valid leasehold interests in or rights to use, all its real and personal property material to its business taken as a whole, free of any liens, claims or encumbrances other than those of the lessors of such property or assets.

3.15 Financial Statements.

(a) Prior to the date hereof, the Company has filed with the SEC its audited financial statements as of December 31, 2019 and for the fiscal years ended December 31, 2019 and December 31, 2018, and provided to Purchaser its unaudited financial statements (including balance sheet, income statement and statement of cash flows) as September 30, 2020 and for the three and nine month periods ended September 30, 2020 (collectively, the "**Financial Statements**"). The Financial Statements have been prepared in accordance with GAAP applied on a consistent basis throughout the periods indicated and the Company maintains a standard system of accounting established and administered in accordance with GAAP

(b) Except as set forth in the audited Financial Statements, the Financial Statements fairly present in all material respects the consolidated financial condition and results of operation and cash flows of the Company and its consolidated subsidiaries as of the dates, and for the periods, indicated therein, in accordance with GAAP subject in the case of the unaudited Financial Statements to normal year-end audit adjustments, none of which are material, individually, or in the aggregate.

(c) Except as set forth in the Financial Statements or resulting from the Transactions, the Company has no material liabilities or obligations, contingent or otherwise, other than (i) liabilities incurred in the ordinary course of business subsequent to September 30, 2020; (ii) obligations under contracts and commitments incurred in the ordinary course of business; (iii) liabilities and obligations of a type or nature not required under GAAP to be reflected in the Financial Statements, and (iv) liabilities which would not, individually and in the aggregate, have a Material Adverse Effect or be required to be reported in a Current Report on Form 8-K.

3.16 Changes. Since September 30, 2020, there has been no change, development, event liability, development or circumstance with respect to the business, properties, liabilities, operations (including results thereof) or condition (financial or otherwise) of the Company and its subsidiaries, taken as a whole, that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect.

3.17 Tax Returns and Payments. Except as would not, individually or in the aggregate, have a Material Adverse Effect, (a) there are no federal, state, county, local or foreign taxes due and payable by the Company which have not been timely paid, (b) there are no outstanding examinations or audits of any tax returns or reports by any applicable federal, state, local or foreign governmental agency, (c) the Company has duly and timely filed all federal, state, county, local and foreign tax returns required to have been filed by it, and (d) there are in effect no waivers of applicable statutes of limitations with respect to taxes for any year.

3.18 Insurance.

(a) Except as would not, individually or in the aggregate, have a Material Adverse Effect, the Company has in full force and effect insurance policies or binders of insurance, in amount (subject to reasonable deductions) to allow it to replace its material properties that might be damaged or destroyed consistent with customary practices and standards of companies engaged in businesses and operations similar to those of the Company.

(b) The Company has in effect that directors and officers insurance coverage described in a written presentation provided to the Purchaser prior to date hereof. The Company has provided to the Purchaser written information describing the directors and officers insurance coverage with respect to the Company's pending litigation naming the Company and its directors and officers as defendants. The Company has no reason to believe that it will not be able to renew its existing insurance coverage as and when such coverage expires or to obtain similar coverage from similar insurers as may be necessary to continue its business.

3.19 Permits. The Company has all franchises, permits, licenses and any similar authority necessary for the conduct of its business, the lack of which would have a Material Adverse Effect. The Company is not in default in any material respect under any of such franchises, permits, licenses or other similar authority.

3.20 Corporate Documents. The Certificate of Incorporation and Bylaws are in the form as filed with the SEC.

3.21 Environmental Laws. Except as would not, individually or in the aggregate, have a Material Adverse Effect: (a) the Company is and has been in compliance with all Environmental Laws; (b) there has been no release or threatened release of any pollutant, contaminant or toxic or hazardous material, substance or waste or petroleum or any fraction thereof (each a "**Hazardous Substance**"), on, upon, into or from any site currently or heretofore owned, leased or otherwise used by the Company except as remediated under or in compliance with Environmental Laws; (c) there have been no Hazardous Substances generated by the Company that have been disposed of or come to rest at any site that has been included in any published U.S. federal, state or local "superfund" site list or any other similar list of hazardous or toxic waste sites published by any Governmental Entity in the United States under circumstances that would reasonably be expected to result in liability to the Company; and (d) there are no underground storage tanks located on, no polychlorinated biphenyls ("**PCBs**") or PCB-containing equipment used or stored on, and no hazardous waste as defined by the Resource Conservation and Recovery Act, as amended, stored on, any site owned or operated by the Company, except for the storage of Hazardous Substances or waste in compliance with Environmental Laws, (e) the Company is not and has not become subject to, or to the knowledge of the Company has not been threatened with, any Environmental Liability and (f) within the last three (3) years, the Company has not received written notice of any claim with respect to any Environmental Liability or written notice of violation with respect to any Environmental Law.

For purposes of this Section 3.21, the following definitions apply:

"**Environmental Laws**" means any law, regulation, or other applicable requirement of any Governmental Authority relating to: (a) releases or threatened release of Hazardous Substance; (b) pollution, the protection of employee health and safety and public health from exposure to any Hazardous Substance or the protection of the environment; or (c) the manufacture, handling, transport, use, treatment, storage, or disposal of Hazardous Substances

"**Environmental Liability**" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense or cost, contingent or otherwise (including any liability for costs of remedial actions, or natural resource damages, administrative oversight costs, and indemnities), of or related to the Company (including any predecessor for whom the Company bears liability contractually or by operation of law) arising under or relating to any

Environmental Law, including those resulting from or based upon (a) any compliance or noncompliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Substances, (c) exposure to any Hazardous Substances, (d) the release or threatened release of any Hazardous Substances into the environment (including as related to indoor air quality) or (e) any of the foregoing for which liability is assumed or imposed by any contract or agreement.

3.22 Company Reports. Since December 31, 2019, the Company has timely filed with the SEC all reports, forms, or other documents required to be filed by the Company pursuant to the Securities Act or the Exchange Act, as applicable, and the Company has complied in all material respects with the filing requirements of the Exchange Act or the Securities Act, as applicable. The Company Reports filed before the applicable Closing Date, when filed with the SEC, complied or will comply when filed in all material respects with the Exchange Act and the applicable rules and regulations of the SEC thereunder. None of the Company Reports, as of their respective date of filing, contained or will contain any untrue statement of a material fact or omit, or will omit, to state a material fact required to be stated in order to make the statements therein, in the light of the circumstances under which they were made, not misleading. As of the date hereof, there are no material outstanding or unresolved comments received from the SEC with respect to any of the Company Reports. Except as set forth in the Company Reports, the Company has received no notices or correspondence from the SEC relating to the Company Reports for the two year preceding the date hereof. To the Company's knowledge, the SEC has not commenced any enforcement proceedings against the Company or any of its officers or directors.

3.23 Private Placement. Assuming the accuracy of the representations and warranties of the Purchaser set forth in Section 4.4, the offer and sale of the Shares pursuant to this Agreement will be exempt from the registration requirements of the Securities Act. Without limiting the foregoing, neither the Company nor, to the knowledge of the Company, any other Person authorized by the Company to act on its behalf, has engaged in a general solicitation or general advertising (within the meaning of Regulation D of the Securities Act) of investors with respect to offers or sales of Preferred Stock or Common Stock in connection with the Transactions, and neither the Company nor, to the knowledge of the Company, any Person acting on its behalf has made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would cause the offering or issuance of Shares under this Agreement to be integrated with prior or other offerings by the Company for purposes of the Securities Act that would result in none of Regulation D or any other applicable exemptions from registration under the Securities Act to be available, nor will the Company take any action or steps that would cause the offering or issuance of Series C Preferred Stock under this Agreement to be so integrated with other offerings by the Company.

3.24 NYSE. The Company's Common Stock is listed on the New York Stock Exchange, and no event has occurred, and the Company is not aware of any event that is reasonably likely to occur, that would result in the Common Stock being delisted from the New York Stock Exchange. The Company is in compliance in all material respects with the listing and listing maintenance requirements of the New York Stock Exchange applicable to it for the continued trading of its Common Stock on the New York Stock Exchange.

3.25 Foreign Corrupt Practices Act. To the Company's knowledge since December 31, 2015, neither the Company nor any of the Company's directors, officers, employees or agents have, directly or indirectly, made, offered, promised or authorized any payment or gift of any money or anything of value to or for the benefit of any "foreign official" (as such term is defined in the U.S. Foreign Corrupt Practices Act of 1977, as amended (the "**FCPA**")), foreign political party or official thereof or candidate for foreign political office for the purpose of (a) influencing any official act or decision of such official, party or candidate, (b) inducing such

official, party or candidate to use his, her or its influence to affect any act or decision of a foreign Governmental Entity, or (c) securing any improper advantage, in the case of (a), (b) and (c) above in order to assist the Company or any of its Affiliates in obtaining or retaining business for or with, or directing business to, any person. To the Company's knowledge since December 31, 2015, neither the Company nor any of the Company's directors, officers, employees or agents have made or authorized any bribe, rebate, payoff, influence payment, kickback or other unlawful payment of funds or received or retained any funds in violation of any law, rule or regulation. The Company has maintained, and has caused each of its Affiliates to maintain, systems of internal controls (including, but not limited to, accounting systems, purchasing systems and billing systems) designed to ensure compliance with the FCPA or any other applicable anti-bribery or anti-corruption law. To the Company's knowledge, neither the Company nor any of the Company's directors, officers, employees or agents are the subject of any ongoing allegation, voluntary disclosure, investigation, prosecution or other enforcement action related to the FCPA or any other anti-corruption law.

3.26 Data Privacy. In connection with its collection, storage, transfer (including, without limitation, any transfer across national borders) or use of any personally identifiable information from any individuals, including, without limitation, any customers, prospective customers, employees or other third parties (collectively "Personal Information"), the Company is and, within the three (3) years prior to the date of this Agreement, has been in compliance with all applicable privacy Laws in all relevant jurisdictions (including Laws concerning the loss or theft of Personal Information), the Company's privacy policies and the privacy requirements of any contract or codes of conduct to which the Company is a party, in each case, except as would not, individually or in the aggregate, have a Material Adverse Effect. Except as would not, individually or in the aggregate, have a Material Adverse Effect, the Company has commercially reasonable physical, technical, organizational and administrative security measures and policies in place to protect all Personal Information collected by it or on its behalf from and against unauthorized access, use or disclosure.

3.27 No Rights Agreement; Anti-Takeover Provisions.

(a) The Company is not a party to a currently effective stockholder rights agreement, "poison pill" or similar anti-takeover agreement or plan

(b) The Tax Asset Protection Plan of the Company entered into on September 12, 2019 and the certificate of amendment to the Second Amended and Restated Certificate of Incorporation filed on September 12, 2019 (the "**NOL Charter Amendment**") has expired and is no longer in effect.

(c) The Company and the Board of Directors have taken all necessary actions to ensure that no Antitakeover Provision restricts, or will restrict, the Purchaser's acquisition, or the Company's issuance, of the Shares, the PIK Shares, and the Conversion Shares in accordance with this Agreement and the Series C Certificate of Amendment.

3.28 Debt and Common Equity Financing. Company has delivered to Purchaser a true, correct and complete copy, as of the date of this Agreement, of: (a) the term loan agreement with Kennedy Lewis Investment Management, LLC ("**Lender**") dated as of the date hereof, duly executed by Company and Lender pursuant to which Lender will provide a $275,000,000 senior secured delayed draw term loan to the Company together with the promissory note, security agreement and all other ancillary documents with any material terms and conditions related thereto (the "**Term Loan Agreements**"); (b) the unsecured 5.0% convertible promissory note in the principal amount of $25,000,000 duly executed by the Company in favor of

the Lender dated as of the date hereof (the "**Convertible Note**"); and (c) the securities purchase agreement pursuant to which the Lender shall purchase $10,000,000 of Common Stock and the Convertible Note dated as of the date hereof duly executed by the Company and Lender, together with all other ancillary documents related thereto (collectively, the "**Common Stock Purchase Agreements,**" and together with the Term Loan Agreements and the Convertible Note, the "**Debt and Common Equity Financing Agreements**"). Except as set forth in the Debt and Common Equity Financing Documents, there are no conditions precedent to the obligation of the Lender to provide the debt and equity financing described therein (the **"Debt and Common Equity Financing**") or any contingencies that would allow the Lender to reduce the total amount of the loan extended or Common Stock subscribed for in the Debt and Common Equity Financing. Company has no reason to believe that the Debt and Common Equity Financing will not close on or before the Initial Closing Date.

3.29 Series A Repurchase and Exchange. Company has delivered to Purchaser true, correct and complete copies, as of the date of this Agreement, of: (a) the Series A Preferred Stock Repurchase and Exchange Agreement duly executed by the Company and the Series A Preferred Stock holders ("**Series A Preferred Stockholders**") dated as of the date hereof pursuant to which the Company will redeem on the terms and conditions therein fifty percent of the outstanding Series A Preferred Stock and the Series A Preferred Stockholders will exchange the remaining outstanding Series A Preferred Stock for Series B Preferred Stock, and in connection therewith, extend the mandatory redemption date and otherwise modify the terms and conditions of their equity ownership ("**Series A Repurchase and Exchange Agreement**"); and (b) the Series B Certificate of Amendment and together with the Series A Registration Rights Agreement and the Series A Repurchase and Exchange Agreement, the "**Series A Repurchase and Exchange Documents**"). Except as set forth in the Series A Repurchase and Exchange Documents, there are no conditions precedent to the obligations of the Series A Preferred Stockholders to effect the Series A Preferred Stock repurchase and the exchange of the Series A Preferred Stock into Series B Preferred Stock as contemplated therein (the "**Series A Repurchase and Exchange**"). The Company has no reason to believe that the terms of the Series A Preferred Stock that is not being redeemed on or before the Initial Closing Date will not be exchanged and modified as set forth in the Series A Repurchase and Exchange Documents.

3.30 No Brokers or Finders. No Person has or will have, as a result of the Transactions, any right, interest or claim against or upon the Company for any commission, fee or other compensation as a finder or broker because of any act of the Company.

3.31 No Additional Representations. Except for the representations and warranties made by the Company in this Article III, neither the Company nor any other person makes any express or implied representation or warranty with respect to the Company or any of its respective businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects, and the Company hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing disclaimer, neither the Company nor any other person makes or has made any representation or warranty to the Purchaser, or any of its Affiliates or Representatives, with respect to (i) except for the representations and warranties made by the Company in this Article III, any financial projection, forecast, estimate, budget or prospect information relating to the Company or any of its businesses, or (ii) except for the representations and warranties made by the Company in this Article III, any oral or written information presented to the Purchaser or any of their Affiliates or Representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement, or in the course of the Transactions.

ARTICLE IV

REPRESENTATIONS AND WARRANTIES OF THE PURCHASER

The Purchaser hereby represents and warrants to the Company that:

4.1 Organization; Qualifications. The Purchaser is duly formed and validly existing and in good standing under the Laws of its jurisdiction of formation and has full power to perform its obligations under this Agreement.

4.2 Authorization. The Purchaser has full power and authority to enter into the Series C Transaction Agreements and each document required by this Agreement to be executed at or prior to the Closing by the Purchaser. The Series C Transaction Agreements, when executed and delivered by the Purchaser, will constitute valid and legally binding obligations of the Purchaser, enforceable in accordance with their terms, subject to the Bankruptcy and Equity Exception.

4.3 Registered Securities; Purchase Entirely for Own Account. Purchaser understands that the shares of Series C Preferred Stock it is acquiring pursuant to this Agreement are characterized as "restricted securities" under the federal securities laws inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under such laws and applicable regulations such Series C Preferred Stock may be resold or otherwise transferred without registration under the Securities Act only in certain limited circumstances. In the absence of any effective registration statement covering the Series C Preferred Stock or an available exemption from registration under the Securities Act, the Series C Preferred Stock must be held indefinitely. The Purchaser hereby confirms that the Shares to be acquired by the Purchaser will be acquired for investment for the Purchaser's own account, not as a nominee or agent, and not with a view to the resale or distribution of any part thereof, and that the Purchaser has no present intention of selling, granting any participation in, or otherwise distributing the same. By executing this Agreement, the Purchaser further represents that the Purchaser does not presently have any contract, undertaking, agreement or arrangement with any Person to sell, transfer or grant participations to such Person, or to any third Person, with respect to any of the Shares.

4.4 Disclosure of Information. The Purchaser has had an opportunity to discuss the Company's business, management, financial affairs and the terms and conditions of the offering of the Shares with the Company's management. The foregoing, however, does not limit or modify the representations and warranties of the Company in Article III or the right of the Purchaser to rely thereon.

4.5 Legends. The Company may place appropriate and customary legends on the Shares, the PIK Shares and the Conversion Shares held by the Purchaser setting forth the restrictions referred to in this Section 4.5 and any restrictions appropriate for compliance with U.S. federal securities Laws. The Purchaser agrees with the Company that, other than to take into account any changes in applicable securities Laws, each Share held by the Purchaser on the applicable Closing Date may be notated with one or all of the following legends:

(a) "THESE SECURITIES AND THE SECURITIES ISSUABLE UPON THE CONVERSION THEREOF HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION. THE SECURITIES MAY NOT BE OFFERED, SOLD, PLEDGED, TRANSFERRED OR OTHERWISE DISPOSED OF EXCEPT (1)

PURSUANT TO AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT OR (2) PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT RELATING TO SUCH SECURITIES UNDER THE SECURITIES ACT, IN EACH CASE IN ACCORDANCE WITH ALL APPLICABLE STATE SECURITIES LAWS AND THE SECURITIES LAWS OF OTHER JURISDICTIONS."

(b) Any legend required by the securities laws of any state to the extent such laws are applicable to the Shares, the PIK Shares or the Conversion Shares represented by the certificate, instrument, or book entry so legended.

4.6 Accredited Investor. The Purchaser is an accredited investor as defined in Rule 501(a) of Regulation D promulgated under the Securities Act, and has such knowledge and experience in business and financial matters so as to enable it to understand and evaluate the risks of and form an investment decision with respect to its investment in the Shares and to protect its own interest in connection with such investment.

4.7 No General Solicitation. Neither the Purchaser, nor any of its officers, directors, employees, agents, stockholders or partners has either directly or indirectly, including, through a broker or finder (a) engaged in any general solicitation, or (b) published any advertisement in connection with the offer and sale of the Shares.

4.8 Regulatory Approvals. No notices, reports or other filings are required to be made by the Purchaser with, nor are any consents, registrations, approvals, permits or authorizations required to be obtained by the Purchaser from, any Governmental Entity in connection with the execution, delivery and performance of this Agreement by the Purchaser or the consummation of the Transactions, except where the failure to so make or obtain would not, individually or in the aggregate, reasonably be likely to prevent, materially delay or materially impair the consummation of the Transactions.

4.9 Sufficiency of Funds. The Purchaser will have, sufficient funds on hand at each closing to consummate the purchase of the Shares to be purchased at such Closing and to deliver the applicable Purchase Price (as set forth on Exhibit A) and all fees and expenses related to the Transactions. Notwithstanding anything to the contrary contained herein, the parties acknowledge and agree that it shall not be a condition to the obligations of the Purchaser to consummate the Transactions that the Purchaser has sufficient funds for payment of the Purchase Price.

4.10 Ownership of Common Stock. As of the date hereof, the Purchaser does not, directly or indirectly, own shares of Common Stock, and has not engaged in any transactions (including hedging or similar transactions) involving Common Stock.

4.11 No Additional Representation; Inspection.

(a) Except as expressly set forth in Article III, the Purchaser acknowledges that the Company is not making and has not made any other representation or warranty, express or implied, at Law or in equity, with respect to this Agreement, the Company, the Shares (and the Common Stock issuable upon conversion or pursuant to the terms thereof), any other securities of the Company or the businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects of the Company or any information provided or made available to the Purchaser in connection therewith (including any forecasts, projections, estimates or budgets), including any warranty with respect to merchantability or fitness for any particular purpose, and all such other representations or warranties are hereby expressly disclaimed.

(b) The Purchaser acknowledges and agrees that it (i) has made its own inquiry and investigations into, and, based thereon, has formed an independent judgment concerning, the Company, the Shares (and the Common Stock issuable upon conversion or pursuant to the terms thereof), and the businesses, operations, assets, liabilities, employees, employee benefit plans, conditions and prospects of the Company, (ii) has been provided with adequate access to such information, documents and other materials relating to the Company, the Shares (and the Common Stock issuable upon conversion or pursuant to the terms thereof), and the businesses, operations, assets, liabilities, employees, employee benefit plans, conditions and prospects of the Company as it has deemed necessary to enable it to form such independent judgment, (iii) has had such time as the Purchaser deems necessary and appropriate to fully and completely review and analyze such information, documents and other materials and (iv) has been provided an opportunity to ask questions of the Company with respect to such information, documents and other materials and has received satisfactory answers to such questions. The foregoing, however, does not limit or modify the representations and warranties of the Company in Article III or the right of the Purchaser to rely thereon.

ARTICLE V

ADDITIONAL AGREEMENTS

5.1 Filings; Other Actions. During the period commencing on the date hereof and terminating on the earlier to occur of (a) the Closing and (b) the termination of this Agreement in accordance with Article VII, the Purchaser, on the one hand, and the Company, on the other hand, will, and it will cause its Affiliates to, cooperate and consult with the other and use commercially reasonable efforts (i) to prepare and file all necessary documentation, (ii) to effect all necessary applications, notices, petitions, filings and other documents, and (iii) to obtain all necessary permits, consents, orders, approvals and authorizations of, or any exemption by, all third parties and Governmental Entities, including filings pursuant to the HSR Act and to wait until the expiration or termination of any applicable waiting period related thereto, in each case of (i)-(iii) to the extent necessary or advisable to consummate the Transactions, and to perform the covenants contemplated by this Agreement. Each party shall execute and deliver both before and after the Closing such further certificates, agreements and other documents and take such other actions as the other parties may reasonably request to consummate or implement the Series C Transactions, including without limitation any filings pursuant to the HSR Act to the extent applicable to the Closing. The Purchaser and the Company will have the right to review in advance, and to the extent practicable each will consult with the other, in each case subject to applicable Laws relating to the exchange of information, all the information relating to such other party, and any of their respective Affiliates, which appears in any filing made with, or written materials submitted to, any third party or any Governmental Entity in connection with the Transactions. In exercising the foregoing right, each of the parties hereto agrees to act reasonably and as promptly as practicable. Each party hereto agrees to keep the other party apprised of the status of matters referred to in this Section 5.1. The Purchaser shall promptly furnish the Company, and the Company shall promptly furnish the Purchaser, to the extent permitted by Law, with copies of written communications received by it or its subsidiaries from any Governmental Entity in respect of the Transactions.

5.2 Information Regarding Deemed Dividends. The Company covenants and agrees to provide the Purchaser with (or alternatively, post on its website in accordance with Treasury Regulations Section 1.6045B-1(a)(3)) the amount and date (as determined in accordance with section 1.305-7(c)(5) of the proposed Treasury regulations as if such regulations were in effect or in any other manner the Company is required to provide under applicable Law) of any deemed distribution under Internal Revenue Code section 305(c) in connection with a conversion rate adjustment with respect to the Series C Preferred Stock pursuant to the Series C Certificate of Amendment. The Company shall provide such information to the Purchaser on or before the 45th day following the conversion rate adjustment, or, if earlier, January 15 of the year following the conversion rate adjustment).

5.3 Public Disclosure. On the date of this Agreement and on the applicable Closing Date, or, in each case, within 24 hours thereafter, the Company shall issue a press release in a form mutually agreed to by the Company and the Purchaser. No other written release, announcement or filing concerning the purchase of the Shares or the Series C Transactions shall be issued, filed or furnished, as the case may be, by any party without the prior written consent of the other party (which consent shall not be unreasonably withheld, conditioned or delayed), except as such release, announcement or filing as may be required by Law or the rules or regulations of any securities exchange, in which case the party required to make the release or announcement shall, to the extent reasonably practicable, allow the other party reasonable time to comment on such release or announcement in advance of such issuance.

5.4 Use of Proceeds. The Company plans to use the proceeds from the sale of the Shares for general corporate purposes including the funding of growth initiatives.

5.5 Board Representation.

(a) Until the earlier of (i) the third anniversary of the Initial Closing or (ii) such time as the Purchaser and its Affiliates do not hold, directly or indirectly, at least a majority of the Shares purchased at the Closings (or the Common Stock received upon the conversion of such Shares) (as adjusted for stock splits, stock dividends, stock combinations and the like) (the "**Requisite Shares**"), the Purchaser shall be entitled to, at each annual or special meeting of the Company's shareholders during such period, nominate one (1) director (such Person, the "**Purchaser Designee**") to serve on the Board of Directors; provided, however, that such nomination is subject to such Purchaser Designee's satisfaction of all applicable requirements regarding service as a director of the Company under applicable Law or stock exchange rules regarding service as a director and such other criteria and qualifications for service as a director applicable to all directors of the Company and in effect from time to time. In the event that a Purchaser Designee is nominated, the Company shall (i) include such Purchaser Designee in its slate of nominees for election to the Board of Directors at each annual or special meeting of the Company's shareholders, (ii) recommend that the Company's shareholders vote in favor of the election of the Purchaser Designee and (iii) support the Purchaser Designee in a manner generally no less rigorous and favorable than the manner in which the Company supports its other nominees. The Company shall take all reasonably necessary actions to ensure that, at all times when a Purchaser Designee is eligible to be appointed or nominated, there are sufficient vacancies on the Board of Directors to permit such designation. Notwithstanding the foregoing, the rights of the Purchaser under this Section 5.5(a) to nominate one (1) director shall terminate immediately on the earlier of (A) the third anniversary of the Initial Closing or (B) such time as the Purchaser and its Affiliates ceases to own, directly or indirectly, at least a majority of the Requisite Shares.

(b) If any Purchaser Designee ceases to serve on the Board of Directors for any reason during his or her term, the vacancy created thereby shall be filled, and the Company shall cause the Board of Directors to fill such vacancy, with a new Purchaser Designee eligible to serve on the Board of Directors in accordance with Section 5.5(a); provided, however, notwithstanding anything to the contrary in this Agreement, in the event that the Purchaser's rights under Section 5.5(a) are terminated, any Purchaser Designee serving on the Board of Directors shall immediately tender his or her resignation; provided further that (i) such requirement may be waived in advance by the Company's Compensation, Nominating & Governance Committee and (ii) such resignation shall be subject to the acceptance by the Board of Directors.

(c) For the avoidance of doubt, a Purchaser Designee shall be entitled (i) to the same retainer, equity compensation and other fees or compensation, including travel and expense reimbursement, paid to the non-executive directors of the Company for his or her service as a director and (ii) to the same indemnification rights as other non-executive directors of the Company, and the Company shall maintain, in full force and effect, directors' and officers' liability insurance in reasonable amounts to the same extent it now indemnifies and provides insurance for the non-executive directors on the Board of Directors. A Purchaser Designee shall be bound by the same confidentiality restrictions as the other non-executive directors. Any director minimum ownership requirements shall be deemed satisfied in respect of the Purchaser Designee by the Shares, PIK Shares and Conversion Shares, as applicable, held by the Purchaser or one or more of its Affiliates. The Company acknowledges and agrees that it is the indemnitor of first resort (for the Purchase Designee in connection with matters arising from Purchaser Designee's service as a director of the Company). For the avoidance of doubt, the Purchaser Designee shall be entitled to customary access and information rights in the same manner as received by the other directors on the Board of Directors.

(d) Following the third anniversary of the Initial Closing, for so long as the Purchaser holds, directly or indirectly, at least a majority of the Requisite Shares, whenever dividends on any Series C Preferred Stock of the Purchaser shall be in arrears for six (6) or more consecutive or non-consecutive Dividend Periods (a "**Preferred Dividend Default**"), the Purchaser shall be entitled to nominate one (1) additional director of the Company (the "**Preferred Director**") for election at the next annual meeting of stockholders and at each subsequent meeting, until all dividends accumulated on such Series C Preferred Stock for the past Dividend Periods and the then current Dividend Period shall have been fully paid or declared in the form of PIK Shares or Additional Liquidation Preference. In such case, should a Preferred Director be subsequently elected, the entire Board shall be increased by one (1) director. Notwithstanding the foregoing, if, prior to the election of any additional director in the manner set forth herein, all accumulated dividends are paid or issued on the Series C Preferred Stock, no such additional director shall be so elected. If and when all accumulated dividends shall have been paid or issued on such Series C Preferred Stock, the right of the Purchaser to nominate the Preferred Director shall immediately cease (subject to revesting in the event of each and every Preferred Dividend Default), and the term of office of any Preferred Director so elected shall immediately terminate and the entire Board shall be reduced accordingly. So long as a Preferred Dividend Default shall continue, the Purchaser shall be entitled to nominate a director to fill any vacancy in the office of a Preferred Director. For purposes of the foregoing paragraph, dividends shall be considered to be in arrears with respect to a Dividend Period if (i) the Company has not issued PIK Shares for such Dividend Period and (ii) the Liquidation Preference of such Shares has not been increased by the Additional Liquidation Preference, in each case, in accordance with and within the times set forth in the Series C Certificate of Amendment.

(e) For the avoidance of doubt, the rights of the Purchaser provided for in this Section 5.5 shall not be transferrable to any other Person other than Purchaser's Affiliates.

5.6 Information Rights.

(a) For so long as the Purchaser and its Affiliates holds more than fifty percent (50%) of the Requisite Shares, the Company shall provide the Purchaser with, within fifteen (15) days after it has filed the same with the SEC, copies of the annual reports and of the information, documents and other reports (or copies of such portions of any of the foregoing as the SEC may prescribe) that it may be required to file with the Commission pursuant to Section 13 or Section 15(d) of the Exchange Act (other than confidential filings, documents subject to confidential treatment and correspondence with the SEC) ("**Public Company Reports**").

(b) The Company's obligation set forth in Section 5.6(a) to provide the Purchaser with copies of Public Company Reports shall be satisfied if the Company files such Public Company Reports with the SEC on EDGAR or otherwise makes such reports publicly available on its website.

(c) To the extent the Company is not required to file Public Company Reports with the SEC, and if the Purchaser holds more than fifty percent (50%) of the Requisite Shares, the Company shall furnish to the Purchaser, upon its written request (and subject to the Purchaser entering into customary confidentiality agreements with the Company, consistent with any such agreements entered into generally by shareholders of the Company receiving such information, prior to receiving such information), quarterly reports and annual reports of the Company, which shall be similar in scope to a Form 10-Q and Form 10-K, respectively. In this circumstance, the Company shall furnish to the Purchaser such information as soon as reasonably practicable after such information has been prepared by the Company.

5.7 Protective Provisions. For so long as the Purchaser and its Affiliates hold more than fifty percent (50%) of the Requisite Shares, the prior approval of the Purchaser shall be required for:

(a) repayments and redemptions with respect to Junior Stock or shares of any class or series of stock *pari passu* with or senior to the Shares (including the Series B Preferred Stock); provided that repayments and redemptions shall be permitted to the extent that the Shares are afforded the opportunity to participate in such repayment or redemption on a pro rata as-converted basis with the Common Stock and the Series B Preferred Stock, as applicable, as at the time of such repayment or redemption; provided, further that the prior approval of the Purchaser shall not be required for (i) redemptions, purchases or other acquisitions of shares of Junior Stock or shares of any class or series of stock *pari passu* with or senior to the Shares in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, managers or consultants of, or to, the Company or any of its subsidiaries, (ii) an exchange, reclassification or conversion of any class or series of Junior Stock or shares of any class or series of stock *pari passu* with or senior to the Shares for any class or series of Junior Stock that ranks equal or junior to the applicable Junior Stock or (iii) subject to the Series C Certificate of Amendment, any dividend in the form of stock, warrants, options or other rights where the dividend stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equal or junior to the applicable Junior Stock; or

(b) any alteration, repeal or amendment, whether by merger, consolidation, combination, reclassification or otherwise, of any provisions of the Certificate of Incorporation (including the Series C Certificate of Amendment and the Series B Certificate of Amendment), or the Bylaws, as amended, if the amendment would amend, alter or affect the voting rights, dividend rights, preferences, privileges or other special rights of the Series C Preferred Stock or would adversely affect the Purchaser, including, without limitation, (i) any change to the Series B Preferred Stock that adversely affects the Series C Preferred Stock or (ii) the creation of, increase in the authorized number of, or issuance of, shares of any class or series of stock *pari passu* with or senior to the Series C Preferred Stock (including the Series A Preferred Stock and the Series B Preferred Stock), or security convertible into such capital stock; or

(c) enter into any agreement with respect to the Series B Preferred Stock or amend the Series A Redemption and Exchange Agreements, in each case in a manner that would adversely affect the Purchaser, or grant additional rights to the holders of the Series B Preferred Stock that are more favorable than the terms granted to the Holder of the Series B Preferred Stock as of the Initial Closing without offering the same or equivalent terms to the Purchaser.

5.8 Commercially Reasonable Efforts to Close. The Company and the Purchaser will use commercially reasonable efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary under applicable Laws so as to permit consummation of the Series C Transactions as promptly as practicable and otherwise to enable consummation of the Series C Transactions and shall cooperate reasonably and in good faith with the other party hereto to that end. Without limiting the foregoing, the Company will use commercially reasonable efforts in good faith to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary under applicable to satisfy all conditions to closing set forth in the Debt and Common Equity Financing Agreements and the Series A Repurchase and Exchange Documents and to comply with its obligations thereunder.

ARTICLE VI

CLOSING

6.1 Conditions to the Purchaser's Obligations at the Initial Closing. The obligations of the Purchaser to purchase the Shares at the Initial Closing are subject to the fulfillment, on or before the Initial Closing, of each of the following conditions, unless otherwise waived by the Purchaser:

(a) Shares. The Initial Closing Shares shall be deposited in book-entry form by or on behalf of the Company and registered in the name of the Purchaser or shall be provided to the Purchaser at the Initial Closing in such other form or manner as reasonably agreed between the Company and the Purchaser.

(b) Representations and Warranties of the Company. (i) The representations and warranties of the Company set forth in Article III (other than Sections 3.1 (*Organization; Qualifications*), 3.2 (*Capitalization*), 3.3 (*Authorization*), 3.4 (*Valid Issuance of Shares*) and 3.16 (*Changes*)) shall be true and correct (disregarding all qualifications or limitations as to materiality or Material Adverse Effect) as of the date of this Agreement and as of the Initial Closing Date as though made on and as of such date (except to the extent that such representation or warranty speaks to an earlier date, in which case as of such earlier date), except where the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect, and (ii) the representations and warranties of the Company set forth in Sections 3.1 (*Organization; Qualifications*), 3.2 (*Capitalization*), 3.3 (*Authorization*), 3.4 (*Valid Issuance of Shares*) and 3.16 (*Changes*) shall be true and correct as of the date of this Agreement and as of the Initial Closing Date as though made on and as of such date.

(c) Performance. The Company shall have performed and complied in all material respects with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by the Company on or before the Initial Closing.

(d) Compliance Certificate. The Company shall have delivered to the Purchaser a certificate of a duly authorized officer of the Company certifying that the conditions specified in Sections 6.1(b) and 6.1(c) have been fulfilled.

(e) No Prohibition. No Order (whether temporary, preliminary or permanent) of a Governmental Entity of competent jurisdiction or other applicable Law shall be in effect which makes illegal, restrains, enjoins or otherwise prohibits or prevents the Initial Closing.

(f) Qualifications. All authorizations, approvals or permits, if any, of any Governmental Entity that are required in connection with the lawful issuance and sale of the Shares sold at the Initial Closing pursuant to this Agreement shall have been obtained and shall be effective as of the Initial Closing.

(g) Series C Registration Rights Agreement. The Company shall have executed and delivered to the Purchaser the Series C Registration Rights Agreement for the Shares and the PIK Shares issuable with respect thereto and the Conversion Shares purchased at the Initial Closing.

(h) Series C Certificate of Amendment. The Company shall have adopted and filed with the Department of Treasury of the State of New Jersey the Series C Certificate of Amendment which shall remain in full force and effect as of the Initial Closing.

(i) Secretary's Certificate. The Secretary of the Company shall have delivered to the Purchaser a certificate in form and substance satisfactory to Purchaser certifying (i) the Bylaws, (ii) the Certificate of Incorporation and (iii) the resolutions of the Board of Directors approving the Series C Transaction Agreements and the Series C Transactions (the "**Authorization Resolutions**").

(j) Debt and Common Equity Financing; Series A Repurchase and Exchange.

(i) The Debt and Common Equity Financing shall provide sufficient funds to, in addition to any other required use of proceeds thereunder, pay in full the redemption of the Series A Preferred Stock not exchanged for Series B Preferred Stock set forth in the Series A Repurchase and Exchange Documents; and

(ii) The Debt and Common Equity Financing and the Series A Repurchase and Exchange, shall have closed on the terms and conditions set forth in the Debt and Common Equity Financing Agreements and the Series A Repurchase and Exchange Documents, respectively and Purchaser shall have been provided satisfactory evidence thereof; provided that Purchaser shall have the right to review and approve any material amendments to the Debt and Common Equity Agreements and the Series A Repurchase and Exchange Documents prior to the Initial Closing.

6.2 Conditions to the Purchaser's Obligations at the Second Closing. The obligations of the Purchaser to purchase the Shares at the Second Closing are subject to the fulfillment, on or before the Second Closing, of each of the following conditions, unless otherwise waived by the Purchaser:

(a) Shares. The Second Closing Shares shall be deposited in book-entry form by or on behalf of the Company and registered in the name of the Purchaser or shall be provided to the Purchaser at the Second Closing in such other form or manner as reasonably agreed between the Company and the Purchaser.

(b) Representations and Warranties of the Company. (i) The representations and warranties of the Company set forth in Article III (other than Sections 3.1 (*Organization; Qualifications*), 3.2 (*Capitalization*), 3.3 (*Authorization*) and 3.4 (*Valid Issuance of Shares*)) shall be true and correct (disregarding all qualifications or limitations as to materiality or Material Adverse Effect) as of the date of this Agreement and as of the Initial Closing Date as though made on and as of such date (except to the extent that such representation or warranty speaks to an earlier date, in which case as of such earlier date), except where the failure of such representations and warranties to be so true and correct would not, individually or in the aggregate, have a Material Adverse Effect, and (ii) the representations and warranties of the Company set forth in Sections 3.1 (*Organization; Qualifications*), 3.2 (*Capitalization*), 3.3 (*Authorization*) and 3.4 (*Valid Issuance of Shares*) shall be true and correct as of the date of this Agreement and as of the Initial Closing Date as though made on and as of such date.

(c) Performance. The Company shall have performed and complied in all material respects with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by the Company on or before the Second Closing.

(d) HSR Act. The filings of the Purchaser and the Company pursuant to the HSR Act shall have been made and the applicable waiting period and any extensions thereof shall have expired or been terminated.

(e) Compliance Certificate. The Company shall have delivered to the Purchaser a certificate of a duly authorized officer of the Company certifying that the conditions specified in Sections 6.2(b) and 6.2(c) have been fulfilled.

(f) No Prohibition. No Order (whether temporary, preliminary or permanent) of a Governmental Entity of competent jurisdiction or other applicable Law shall be in effect which makes illegal, restrains, enjoins or otherwise prohibits or prevents the Second Closing.

(g) Qualifications. All authorizations, approvals or permits, if any, of any Governmental Entity that are required in connection with the lawful issuance and sale of the Shares sold at the Second Closing pursuant to this Agreement shall have been obtained and shall be effective as of the Second Closing.

(h) Series C Series Registration Rights Agreement. The Series C Registration Rights Agreement shall be in full force and effect and the Second Closing Shares shall be subject thereto and the Purchaser shall be entitled to the registration rights provided for thereunder with respect to all Conversion Shares issuable upon the conversion of all Shares acquired by the Purchaser from the Company.

(i) Series C Certificate of Amendment. The Series C Certificate of Amendment shall remain in full force and effect as of the Second Closing.

(j) Debt and Common Equity Financing; Series A Repurchase and Exchange. There shall have been no amendments, modifications or waivers of any terms in the Debt and Common Equity Financing Agreements or the Series A Repurchase and Exchange Documents since the Initial Closing that were not approved in writing in advance by the Purchaser.

(k) Secretary's Certificate. The Secretary of the Company shall have delivered to the Purchaser a certificate certifying that there have not been any changes to the Company's Certificate of Incorporation, By-Laws or Authorization Resolutions since the Initial Closing.

6.3 Conditions to the Company's Obligations at the Initial Closing. The obligations of the Company to sell the Shares to the Purchaser at the Initial Closing are subject to the fulfillment, on or before the Initial Closing, of each of the following conditions, unless otherwise waived by the Company:

(a) Purchase Price. The Purchaser shall have delivered the Purchase Price for the Initial Closing Shares to the Company by wire transfer of immediately available funds, pursuant to instructions given to the Purchaser by the Company in writing prior to the Initial Closing Date.

(b) Representations and Warranties. The representations and warranties of the Purchaser set forth in Article IV shall be true and correct in all material respects as of the date of this Agreement and as of the Initial Closing Date as though made on and as of such date.

(c) Performance. The Purchaser shall have performed and complied in all material respects with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by the Purchaser on or before the Initial Closing.

(d) No Prohibition. No Order (whether temporary, preliminary or permanent) of a Governmental Entity of competent jurisdiction or other applicable Law shall be in effect which makes illegal, restrains, enjoins or otherwise prohibits or prevents the Initial Closing.

(e) Qualifications. All authorizations, approvals or permits, if any, of any Governmental Entity that are required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall have been obtained and effective as of the Initial Closing.

(f) Series C Registration Rights Agreement. The Purchaser shall have executed and delivered to the Company the Series C Registration Rights Agreement.

6.4 Conditions to the Company's Obligations at the Second Closing. The obligations of the Company to sell the Second Closing Shares to the Purchaser at the Second Closing are subject to the fulfillment, on or before the Second Closing, of each of the following conditions, unless otherwise waived by the Company:

(a) Purchase Price. The Purchaser shall have delivered the Purchase Price for the Second Closing Shares to the Company by wire transfer of immediately available funds, pursuant to instructions given to the Purchaser by the Company in writing prior to the Second Closing Date.

(b) Representations and Warranties. The representations and warranties of the Purchaser set forth in Article IV shall be true and correct in all material respects as of the date of this Agreement and as of the Second Closing Date as though made on and as of such date.

(c) Performance. The Purchaser shall have performed and complied in all material respects with all covenants, agreements, obligations and conditions contained in this Agreement that are required to be performed or complied with by the Purchaser on or before the Second Closing.

(d) No Prohibition. No Order (whether temporary, preliminary or permanent) of a Governmental Entity of competent jurisdiction or other applicable Law shall be in effect which makes illegal, restrains, enjoins or otherwise prohibits or prevents the Second Closing.

(e) HSR Act. The filings of the Purchaser and the Company pursuant to the HSR Act shall have been made and the applicable waiting period and any extensions thereof shall have expired or been terminated.

(f) Qualifications. All authorizations, approvals or permits, if any, of any Governmental Entity that are required in connection with the lawful issuance and sale of the Shares pursuant to this Agreement shall have been obtained and effective as of the Second Closing.

ARTICLE VII

TERMINATION

7.1 Termination. Prior to the applicable Closing, this Agreement may only be terminated: (a) by mutual written agreement of the Company and the Purchaser; (b) by the Company or the Purchaser if the Initial Closing shall not have occurred on or prior to five (5) business days after the date of this Agreement (provided, that the right to terminate this Agreement pursuant to this Section 7.1(b) shall not be available to any party whose failure to fulfill any obligations under this Agreement shall have been the cause of, or shall have resulted in, the failure of the applicable Closing to occur on or prior to such date); or (c) if any Order permanently restraining, enjoining or otherwise prohibiting the consummation of the Transactions shall have become final and non-appealable.

7.2 Effects of Termination. In the event of the termination of this Agreement pursuant to Section 7.1, this Agreement shall become void and of no effect with no liability to any person on the part of any party (or of any of its Representatives or Affiliates), except to the extent of (a) any fraud or (b) the intentional and willful breach of this Agreement; provided, however, and notwithstanding anything in the foregoing to the contrary, that this Article VII and Article VIII shall survive the termination of this Agreement.

7.3 Non-Recourse. This Agreement may only be enforced against, and any claims or causes of action that may be based upon, arise out of or relate to this Agreement, or the negotiation, execution or performance of this Agreement may only be made against the entities that are expressly identified as parties hereto, and no former, current or future equityholders, controlling persons, directors, officers, employees, agents or Affiliates of any party hereto or any former, current or future equityholder, controlling person, director, officer, employee, general or limited partner, member, manager, advisor, agent or Affiliate of any of the foregoing (each, a "**Non-Recourse Party**") shall have any liability for any obligations or liabilities of the parties to this Agreement or for any claim (whether in tort, contract or otherwise) based on, in respect of, or by reason of, the Transactions or in respect of any representations made or alleged to be made in connection herewith. Without limiting the rights of any party against the other parties hereto, in no event shall any party or any of its Affiliates seek to enforce this Agreement against, make any claims for breach of this Agreement against, or seek to recover monetary damages from, any Non-Recourse Party.

ARTICLE VIII

MISCELLANEOUS

8.1 Survival. Except with respect to the representations and warranties contained in Sections 3.1 (*Organization; Qualifications*), 3.2 (*Capitalization*), 3.3 (*Authorization*) and 3.4 (*Valid Issuance of Shares*), which shall survive the Initial Closing until the second anniversary of the last Closing Date, the representations and warranties of the Company contained in or made pursuant to this Agreement shall not survive the Second Closing or termination of this Agreement. Except with respect to the representations and warranties contained in Sections 4.1 (*Organization; Qualifications*), 4.2 (*Authorization*), 4.3 (*Registered Securities; Purchase Entirely for Own Account*), 4.6 (*Accredited Investor*), and 4.7 (*No General Solicitation*), which shall survive the Initial Closing until the expiration of the applicable statute of limitations for violations of section 5 of the Securities Act and no other representations of the Purchaser shall survive the Second Closing. The foregoing survival periods shall not impair any claim by the Purchaser or the Company for common law fraud with respect to the representations and warranties of the other party in this Agreement. Nothing herein shall relieve any party

of liability for any inaccuracy or breach of such representation or warranty to the extent that any good faith allegation of such inaccuracy or breach is made in writing prior to such expiration by a Person entitled to make such claim pursuant to the terms and conditions of this Agreement. All of the covenants and other agreements of the parties contained in this Agreement shall survive until fully performed or fulfilled, unless and to the extent that non-compliance with such covenants or agreements is waived in writing by the party entitled to such performance. For the avoidance of doubt, claims may be made with respect to the breach of any representation, warranty or covenant until the applicable survival period therefor as described above expires.

8.2 Successors and Assigns; No Third Party Beneficiaries. The terms and conditions of this Agreement shall inure to the benefit of and be binding upon the respective successors and assigns of the parties. Nothing in this Agreement, express or implied, is intended to confer upon any party other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement, except as expressly provided in this Agreement. No party may assign this Agreement or its rights or obligations under this Agreement without the express written consent of the other party.

8.3 Governing Law. This Agreement shall be governed by the internal law of the State of New York.

8.4 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

8.5 Interpretation. When a reference is made in this Agreement to an Article or Section, such reference shall be to an Article or Section of this Agreement unless otherwise indicated. The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. Whenever the words “include”, “includes” or “including” are used in this Agreement, they shall be deemed to be followed by the words “without limitation”. The words “hereof”, “herein” and “hereunder” and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement. The words “date hereof” shall refer to the date of this Agreement. The word “or” shall not be exclusive. The word “extent” in the phrase “to the extent” shall mean the degree to which a subject or other thing extends, and shall not simply mean “if”. All references to “$” mean the lawful currency of the United States of America. The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term. Except as specifically stated herein, any agreement, instrument or statute defined or referred to herein or in any agreement or instrument that is referred to herein means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes and references to all attachments thereto and instruments incorporated therein. Except as otherwise specified herein, references to a Person are also to its successors and permitted assigns. Each of the parties hereto has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement must be construed as if it is drafted by all the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

8.6 Notices. All notices, requests, instructions or other communications or documents to be given or made hereunder by any party to the other parties shall be in writing and deemed given when (a) served by personal delivery upon the party for whom it is intended, (b) sent by an internationally recognized overnight courier service upon the party for whom it is intended, or (c) sent by email, provided that the transmission of the email is promptly confirmed by telephone:

if to the Company to:

Eastman Kodak Company
343 State Street
Rochester, New York 14650
Attention: General Counsel
Telephone: 585-726-3536
Email: roger.byrd@kodak.com

with a copy to (which shall not constitute notice):

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Stephen M. Kotran
Telephone: (212) 558-4000
Email: KotranS@sullcrom.com

if to the Purchaser, to:

GO EK Ventures IV, LLC
7632 County Road 42
Victor, New York, 14564-8906
Attention: David Bovenzi, Managing Director
E-Mail: dbovenzi@grandoakscap.com

with a copy to (which shall not constitute notice):

Woods Oviatt Gilman LLP
1900 Bausch& Lomb Place
Rochester, New York 14604
Attention: Gordon E. Forth
Telephone: (585) 987-2891
Email: gforth@woodsoviatt.com

or to such other address, facsimile number or email address as such party may hereafter specify for the purpose by notice to the other parties hereto.

8.7 No Finder's Fees. Each party represents that it neither is nor will be obligated for any finder's fee or commission in connection with the Series C Transactions. The Purchaser agrees to indemnify and to hold harmless the Company from any liability for any commission or compensation in the nature of a finder's or broker's fee arising out of this transaction (and the costs and expenses of defending against such liability or asserted liability) for which the Purchaser or any of its Representatives is responsible. The Company agrees to indemnify and hold harmless the Purchaser from any liability for any commission or compensation in the nature of a finder's or broker's fee arising out of the Series C Transactions (and the costs and expenses of defending against such liability or asserted liability) for which the Company or any of its Representatives is responsible.

8.8 Fees and Expenses. The Company shall pay the reasonable and documented legal and out-of-pocket administrative costs incurred by the Purchaser in connection with Transactions, including in the event that the Series C Transactions are not consummated; provided, however, that such amount shall not exceed, in the aggregate, (i) $100,000.00 or (ii) if the Series C Transactions are not consummated, $50,000.00.

8.9 Attorneys' Fees. If any action at law or in equity (including arbitration) is necessary to enforce or interpret the terms of any of the Series C Transaction Agreements, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

8.10 Amendments and Waivers. Any term of this Agreement may be amended, terminated or waived only with the written consent of the Company and the Purchaser. Any amendment or waiver effected in accordance with this Section 8.10 shall be binding upon the Purchaser and each transferee of the Shares or the Conversion Shares, each future holder of all such securities, and the Company.

8.11 Severability. The invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

8.12 Delays or Omissions. No delay or omission to exercise any right, power or remedy accruing to any party under this Agreement, upon any breach or default of any other party under this Agreement, shall impair any such right, power or remedy of such non-breaching or non-defaulting party nor shall it be construed to be a waiver of any such breach or default, or an acquiescence therein, or of or in any similar breach or default thereafter occurring; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval of any kind or character on the part of any party of any breach or default under this Agreement, or any waiver on the part of any party of any provisions or conditions of this Agreement, must be in writing and shall be effective only to the extent specifically set forth in such writing. All remedies, either under this Agreement or by law or otherwise afforded to any party, shall be cumulative and not alternative.

8.13 Entire Agreement. This Agreement (including the Exhibits hereto), the Series C Certificate of Amendment and the other Series C Transaction Agreements constitute the full and entire understanding and agreement between the parties with respect to the subject matter hereof, and any other written or oral agreement relating to the subject matter hereof existing between the parties are expressly canceled.

8.14 Dispute Resolution.

(a) The parties (i) hereby irrevocably and unconditionally submit to the jurisdiction of the state courts of New York and to the jurisdiction of the United States District Court for the Western District of New York for the purpose of any suit, action or other proceeding arising out of or based upon this Agreement, (ii) agree not to commence any suit, action or other proceeding arising out of or based upon this Agreement except in the state courts of New York or the United States District Court for the Western District of New York, and (iii) hereby waive, and agree not to assert, by way of motion, as a defense, or otherwise, in any such suit, action or proceeding, any claim that it is not subject personally to the jurisdiction of the above-named courts, that its property is exempt or immune from attachment or execution, that the suit, action or proceeding is brought in an inconvenient forum, that the venue of the suit, action or proceeding is improper or that this Agreement or the subject matter hereof may not be enforced in or by such court.

(b) EACH PARTY HEREBY WAIVES ITS RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, THE OTHER SERIES C TRANSACTION DOCUMENTS, THE SECURITIES OR THE SUBJECT MATTER HEREOF OR THEREOF. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER OF THE SERIES C TRANSACTIONS, INCLUDING, WITHOUT LIMITATION, CONTRACT CLAIMS, TORT CLAIMS (INCLUDING NEGLIGENCE), BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. THIS SECTION HAS BEEN FULLY DISCUSSED BY EACH OF THE PARTIES HERETO AND THESE PROVISIONS WILL NOT BE SUBJECT TO ANY EXCEPTIONS. EACH PARTY HERETO HEREBY FURTHER WARRANTS AND REPRESENTS THAT SUCH PARTY HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL, AND THAT SUCH PARTY KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL.

(c) Subject to Sections 8.8 and 8.9, each party will bear its own costs in respect of any disputes arising under this Agreement. Each of the parties to this Agreement consents to personal jurisdiction for any equitable action sought in the United States District Court for the Western District of New York or any court of the State of New York having subject matter jurisdiction.

8.15 No Commitment for Additional Financing. The Company acknowledges and agrees that the Purchaser has not made any representation, undertaking, commitment or agreement to provide or assist the Company in obtaining any financing, investment or other assistance, other than the purchase of the Shares as set forth herein and subject to the conditions set forth herein. In addition, the Company acknowledges and agrees that (i) no statements, whether written or oral, made by the Purchaser or its Representatives on or after the date of this Agreement shall create an obligation, commitment or agreement to provide or assist the Company in obtaining any financing or investment, (ii) the Company shall not rely on any such statement by the Purchaser or its Representatives, and (iii) an obligation, commitment or agreement to provide or assist the Company in obtaining any financing or investment may only be created by a written agreement, signed by the Purchaser and the Company, setting forth the terms and conditions of such financing or investment and stating that the parties intend for such writing to be a binding obligation or agreement. The Purchaser shall have the right, in its sole and absolute discretion, to refuse or decline to participate in any other financing of or investment in the Company, and shall have no obligation to assist or cooperate with the Company in obtaining any financing, investment or other assistance.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date first written above.

COMPANY:

EASTMAN KODAK COMPANY

By: /s/ James V. Continenza
Name: James V. Continenza
Title: Executive Chairman and
Chief Executive Officer

PURCHASER:

GO EK VENTURES IV, LLC

By: /s/ B. Thomas Golisano
Name: B. Thomas Golisano

Exhibit 10.3

EXECUTION VERSION

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (the "**Agreement**"), dated as of February 26, 2021, by and between **EASTMAN KODAK COMPANY** a New Jersey corporation (the "**Company**") and the investor listed on Exhibit A to the Purchase Agreement (as defined below) (the "**Purchaser**").

WITNESSETH:

WHEREAS, the Company and the Purchaser have entered into a Series C Preferred Stock Purchase Agreement, dated as of February 26, 2021, (the "**Purchase Agreement**"), whereunder, among other things, the Purchaser agreed to purchase the Registrable Securities from the Company; and

WHEREAS, the execution of this Agreement by the Company and its delivery to the Purchaser is required by the Purchase Agreement,

NOW THEREFORE, in consideration of the premises and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereto acknowledge, the parties agree as follows:

ARTICLE 1. DEFINITIONS

Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"**Business Day**" means any day except Saturday, Sunday and any day which shall be a legal holiday or a day on which banking institutions in the States of New York or New Jersey generally are authorized or required by law or other government action to close.

"**Closing Date**" shall have the meaning set forth in the Purchase Agreement.

"**Commission**" means the United States Securities and Exchange Commission.

"**Common Stock**" means the Company's Common Stock, par value $0.01 per share.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Filing Date**" means the date on which the Registration Statement is initially filed.

"**Indemnified Party**" shall have the meaning set forth in Section 5.3.

"**Indemnifying Party**" shall have the meaning set forth in Section 5.3.

"**Losses**" shall have the meaning set forth in Section 5.1.

"**Original Issue Date**" has the meaning given thereto in the Purchase Agreement.

"**Person**" means any individual, corporation, partnership, trust, limited liability company, association or other entity.

"**PIK Shares**" has the meaning given thereto in the Purchase Agreement.

"**Proceeding**" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"**Prospectus**" means the prospectus included in the Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference in such Prospectus.

"**Purchase Agreement**" has the meaning set forth in the Recitations.

"**Registrable Securities**" means the number of shares of Common Stock into which the shares of Series C Preferred Stock purchased by the Purchaser pursuant to the Purchase Agreement or issued as PIK Shares with respect thereto are convertible; provided, that any such securities shall cease to constitute "Registrable Securities" upon the earliest to occur of: (A) the date on which such securities are disposed of pursuant to the Registration Statement; (B) the date on which such securities become eligible for sale under Rule 144 (or any successor rule then in effect) promulgated under the Securities Act, without restriction thereunder and either (1) restrictive legends have been removed from all book entry positions or certificates representing the applicable Registrable Securities or (2) if the Purchaser is unable to deliver an opinion that it is not then an affiliate of the Company, the Company has committed to remove such restrictive legends from the applicable Registrable Securities covered by a Form 144 that has been filed with the Commission pursuant to Rule 144; and (C) the date on which such securities cease to be outstanding.

"**Registration Statement**" means any registration statement contemplated by this Agreement, including (in each case) the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference in such registration statement.

"**Rule 144**" means Rule 144 promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"**Rule 158**" means Rule 158 promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"**Rule 415**" means Rule 415 promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"**Rule 424**" means Rule 424 promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Series B Preferred Stock**" shall have the meaning set forth in the Purchase Agreement.

"**Series C Preferred Stock**" means the 1,000,000 preferred shares of the Company, designated as 5.00% Series C Convertible Preferred Stock, no par value per share, having the terms set forth in the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Company in the form attached as Exhibit B to the Purchase Agreement.

ARTICLE 2. RESALE REGISTRATION STATEMENT

2.1 **Registration Statement**. Within twenty-one (21) months after the Closing Date and subject to Section 2.3, the Company shall prepare and file with the Commission the Registration Statement, which shall be a "resale" registration statement providing for the resale of the Registrable Securities pursuant to an offering to be made on a continuous basis under Rule 415. The Registration Statement shall be on Form S-3 and shall cover to the extent allowable under the Securities Act and the rules promulgated thereunder, such indeterminate number of additional shares of Common Stock resulting from stock splits, stock dividends or similar transactions of and/or from the Registrable Securities and adjustments in the number of shares of Common Stock into which each share of is convertible made pursuant to the terms of the Series C Preferred Stock. The Registration Statement may include only the Registrable Securities. The Company shall use its commercially reasonable efforts to cause the Registration Statement to be declared effective under the Securities Act no later than the second (2nd) anniversary of the Closing Date and to keep the Registration Statement continuously effective under the Securities Act until the earlier of (x) the date when all Registrable Securities covered by such Registration Statement have been sold or (y) the date on which all Registrable Securities then held by the Purchaser may be sold without restriction pursuant to Rule 144, as determined by counsel satisfactory to the Company and the Purchaser in a written opinion addressed to the Company and its transfer agent.

2.2 **Certain Matters**.

(a) In the event that, due to limits imposed by the Commission, the Company is unable on the Registration Statement to register for resale under Rule 415 of Regulation C under the Securities Act all of the Registrable Securities that it has agreed to file pursuant to the first sentence of Section 2.1, the Company shall include in the Registration Statement which may be a subsequent Registration Statement if the Company is required, or determines that it is desirable, to withdraw the original Registration Statement and file a new Registration Statement in order to rely on Rule 415 with respect to the full such amount of the Registrable Securities permitted by the Commission.

(b) In the event that Form S-3 is not available for the registration of the resale of Registrable Securities hereunder, the Company shall register the resale of the Registrable Securities on Form S-1 or another appropriate form, and undertake to register the resale of the Registrable Securities on Form S-3 as soon as such form is available.

2.3 **Blackout Period**. The Company may postpone the filing or effectiveness of any Registration Statement (or amendment or supplement thereto) or suspend the use or effectiveness of any Registration Statement (and in each case suspend any other related action otherwise contemplated hereunder) for a reasonable "blackout period" if the board of directors of the Company determines in good faith that such registration or the sale by the Purchaser of Registrable Securities under such Registration Statement at such time (i) would adversely affect a pending or proposed significant corporate event, proposed financing or negotiations, proposed offering of Common Stock by the Company on its behalf or an underwritten public offering for selling stockholders pursuant to the Registration Rights Agreement dated September 3, 2013 between the Company and stockholders specified in such agreement or the Registration Rights Agreement dated November 15, 2016 between the Company and stockholders specified in such agreement (the "**2016 Registration Rights Agreement**"), or the Registration Rights Agreement dated February 26, 2021 between the Company and stockholders specified in such agreement or discussions or pending proposals with respect thereto or (ii) would require the disclosure of material non-public information the disclosure of which at such time would, in the good faith judgment of the board of directors of the Company, be materially adverse to the interests of the Company; provided that the filing or effectiveness of a Registration Statement (or amendment or supplement thereto) by the Company may not be postponed and the use or effectiveness of any Registration Statement may not be suspended (A) in the case of clause (i) above, for more than ten (10) days after the abandonment or consummation of any of the pending or proposed significant corporate event, proposed financing or the negotiations, discussions or pending proposals with respect thereto; (B) in the case of clause (ii) above, until the earlier to occur of the filing by the Company of its next succeeding Form 10-K or Form 10-Q or the date upon which such information is otherwise publicly disclosed by the Company; or (C) in any event, in the case of either clause (i) or (ii) above, for more than 90 days after the date of the determination of the board of directors of the Company; provided further that the Company may not postpone the filing or effectiveness of a Registration Statement (or amendment or supplement thereto) or suspend the use or effectiveness of any Registration Statement for more than an aggregate of 90 days in any 365-day period. In addition to the foregoing, the Company shall have the right to suspend the Purchaser's ability to use a Prospectus in connection with non-underwritten sales off of a Registration Statement during each of its regular quarterly blackout periods applicable to directors and senior officers under the Company's policies in existence from time to time. The Company shall not be required to effectuate an underwritten offering (during such a regular quarterly blackout period or otherwise) to the extent the Company reasonably concludes, after consultation in good faith with the Purchaser, that the Company cannot provide adequate, timely disclosure or satisfy other underwriting conditions in connection with such offering without undue burden. The Company shall use commercially reasonable efforts to amend the 2016 Registration Rights Agreement to include a provision therein (which the Company shall exercise) that provides blackout rights to the Company as set forth in Section 2.3(i) with respect to the registration of the Series B Preferred Stock or the Common Stock issued pursuant to the conversion thereof if and when the Purchaser is engaged in an offering of its Registrable Securities pursuant hereto.

2.4 **Demand Rights for Shelf Takedowns**. Subject to Sections 2.3 and 8.4, upon the written demand of the Purchaser, the Company will facilitate in the manner described in this Agreement a "takedown" of Registerable Securities off of the Registration Statement; provided that the Purchaser may not make such demand more than two (2) times in the aggregate; and provided, furthermore, that any demand for an underwritten offering of Registrable Securities shall have an aggregate market value (based on the most recent closing pricing of the Common Stock into which the Series C Preferred Stock is convertible at the time of the demand) of at least $25 million. If a demand by the Purchaser has been made for a shelf takedown, no further demands may be made so long as such offering is still being pursued. Purchaser shall be entitled to withdraw a demand for a shelf takedown if the Company imposes a blackout pursuant to Section 2.3 and, notwithstanding anything to the contrary in this Agreement, if such demand is withdrawn by the Purchaser, such demand shall not count as one of the permitted demands hereunder and the Company shall pay all expenses in connection with such shelf takedown.

ARTICLE 3. NOTICES, CUTBACKS AND OTHER MATTERS

3.1 **Notifications Regarding Request for Takedown**. In order for the Purchaser to initiate a shelf takedown off of the Registration Statement, the Purchaser must so notify the Company in writing indicating the number of Registrable Securities sought to be offered and sold in such takedown and the proposed plan of distribution. Pending any required public disclosure by the Company and subject to applicable legal requirements, the parties will maintain the confidentiality of all notices and other communications regarding any such proposed takedown.

3.2 **Plan of Distribution, Underwriters and Counsel**. If the Registrable Securities are proposed to be sold in an underwritten offering, the Purchaser will be entitled to determine the plan of distribution and select the managing underwriters, in each case subject to the consent of the Company (not to be unreasonably withheld), and the Purchaser will also be entitled to select counsel for the Purchaser (which may be the same as counsel for the Company).

3.3 **Cutbacks**. If the Registrable Securities are proposed to be sold in an underwritten offering and the managing underwriters advise the Company and the Purchaser that, in their opinion, the number of Registrable Securities requested to be included in an underwritten offering exceeds the amount that can be sold in such offering without adversely affecting the distribution of the Registrable Securities being offered, such offering will include only the number of Registrable Securities that the managing underwriters advise can be sold in the offering.

3.4 **Withdrawals**. If the Purchaser has demanded a registered underwritten offering to be conducted, the Purchaser may, no later than the time at which the public offering price and underwriters' discount are determined with the managing underwriter, decline to sell all or any portion of the Registrable Securities being offered for the Purchaser's account; provided that if the Purchaser declines to sell, in whole or in part, the Registrable Securities being offered for the Purchaser's account, then the demand for such underwritten offering shall count as a demand for purposes of Section 2.4 of this Agreement unless the Purchaser reimburses the Company for all reasonable out-of-pocket expenses incurred by the Company in connection with such underwritten offering.

3.5 **Lockups**. In connection with any underwritten offering of Registrable Securities, the Company and the Purchaser will agree (in the case of the Company, with respect to the Common Stock and any rights related thereto, and in the case of the Purchaser, with respect to the Registrable Securities held by it and any rights related thereto) to be bound by customary lockup restrictions in the applicable underwriting agreement

3.6 **Limitation on Other Registration Rights**. From and after the date of this Agreement, the Company shall not, without the (a) prior written consent of the Purchaser or (b) approval of Purchaser's board nominee, if such nominee is then serving as a director of the Company, enter into any agreement with any holder or prospective holder of any securities of the Company that would provide to such holder the right to include securities in any registration on other than on a subordinate basis after Purchaser has had the opportunity to include in the registration and offering all shares of Registrable Securities that it wishes and such amount would not be subject to cutback by the Commission.

ARTICLE 4. FACILITATING REGISTRATIONS AND OFFERINGS

4.1 **Registration Statements**. In connection with any Registration Statement, the Company will:

(a) (i) prepare and file with the Commission the Registration Statement covering the applicable Registrable Securities pursuant to Section 2.1 of this Agreement, (ii) file amendments thereto as warranted, (iii) seek the effectiveness thereof, and (iv) file with the Commission such Prospectuses as may be required, all in consultation with the Purchaser (or its representatives) and as reasonably necessary in order to permit the offer and sale of such Registrable Securities in accordance with the applicable plan of distribution;

(b) (1) within a reasonable time prior to the filing of any Registration Statement, any Prospectus, any amendment to any Registration Statement, any amendment or supplement to a Prospectus or any issuer free writing prospectus covering Registrable Securities, provide copies of such documents to the Purchaser (or its representatives) and to the underwriter or underwriters of an underwritten offering, if applicable, and to their respective counsel; fairly consider such reasonable changes in any such documents prior to or after the filing thereof as the counsel to the Purchaser or the underwriter or the underwriters may request; and make such of the representatives of the Company as shall be reasonably requested by the Purchaser or any underwriter available for discussion of such documents;

(2) within a reasonable time prior to the filing of any document which is to be incorporated by reference into any Registration Statement or a Prospectus covering Registrable Securities, provide copies of such document to counsel for the Purchaser and underwriters; fairly consider such reasonable changes in such document prior to or after the filing thereof as counsel for the Purchaser or such underwriter shall request; and make such of the representatives of the Company as shall be reasonably requested by such counsel available for discussion of such document;

(c) use its commercially reasonable efforts to cause any Registration Statement and the related Prospectus and any amendment or supplement thereto, as of the effective date of such Registration Statement, amendment or supplement and during the distribution of the registered Registrable Securities (x) to comply in all material respects with the requirements of the Securities Act and the rules and regulations of the Commission and (y) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(d) notify the Purchaser promptly, and, if requested by the Purchaser, confirm such advice in writing, (i) when any Registration Statement has become effective and when any post-effective amendments and supplements thereto become effective if such Registration Statement or post-effective amendment is not automatically effective upon filing pursuant to Rule 462, (ii) of the issuance by the Commission or any U.S. state securities authority of any stop order, injunction or other order or requirement suspending the effectiveness of any Registration Statement or the initiation of any proceedings for that purpose, (iii) if, between the effective date of any Registration Statement and the closing of any sale of securities covered thereby pursuant to any agreement to which the Company is a party, the representations and warranties of the Company contained in such agreement cease to be true and correct in all material respects or if the Company receives any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose, and (iv) of the happening of any event during the period any Registration Statement is effective as a result of which such Registration Statement or the related Prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading; provided that the Purchaser, upon receiving written notice of an event described in clauses (ii) to (iv) of this Section 4.1(d), shall discontinue (and direct any other person making offers and sales of Registrable Securities on its behalf to discontinue) offers and sales of Registrable Securities pursuant to any Registration Statement (other than those pursuant to a plan in effect prior to such event and that complies with Rule 10b5-1 under the Exchange Act) until it is advised in writing by the Company that the use of the applicable Prospectus may be resumed and is furnished with an amended or supplemented Prospectus;

(e) furnish counsel for each underwriter, if any, and for the Purchaser with copies of any written correspondence with the Commission or any state securities authority relating to the Registration Statement or Prospectus;

(f) otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, including making available to its security holders an earnings statement covering at least 12 months which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar provision then in force); and

(g) use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of any Registration Statement at the earliest possible time.

4.2 **Shelf Takedowns**. In connection with any shelf takedown that is demanded by the Purchaser, the Company will:

(a) cooperate with the Purchaser and the sole underwriter or managing underwriter of an underwritten offering, if any, to facilitate the timely preparation and delivery of certificates representing the Registrable Securities to be sold and not bearing any restrictive legends; and enable such Registrable Securities to be in such denominations (consistent with the provisions of the governing documents thereof), and registered in such names as the Purchaser or the sole underwriter or managing underwriter of an underwritten offering of Registrable Securities, if any, may reasonably request at least five days prior to any sale of such Registrable Securities;

(b) furnish to the Purchaser and to each underwriter, if any, participating in the relevant offering, without charge, as many copies of the applicable Prospectus, including each preliminary prospectus, and any amendment or supplement thereto and such other documents as the Purchaser or underwriter may reasonably request in order to facilitate the public sale of the Registrable Securities, subject to the other provisions of this Agreement; the Company hereby consents to the use of the Prospectus, including each preliminary prospectus, by the Purchaser and each underwriter in connection with the offering and sale of the Registrable Securities covered by the Prospectus or the preliminary prospectus;

(c) (i) use its commercially reasonable efforts to register or qualify the Registrable Securities being offered and sold under all applicable U.S. state securities or "blue sky" laws of such jurisdictions as each underwriter shall reasonably request; (ii) use its commercially reasonable efforts to keep each such registration or qualification effective during the period such Registration Statement is required to be kept effective; and (iii) do any and all other acts and things which may be reasonably necessary or advisable to enable each such underwriter, if any, and/or the Purchaser to consummate the disposition in each such jurisdiction of such Registrable Securities owned by the Purchaser, including amending or supplementing such shelf Registration Statement, to enable such Registrable Securities to be offered and sold as contemplated by Purchaser; provided, however, that the Company shall not be obligated to qualify as a foreign corporation or as a dealer in securities in any jurisdiction in which it is not so qualified, to subject itself to taxation in any such jurisdiction, or to consent to be subject to general service of process (other than service of process in connection with such registration or qualification or any sale of Registrable Securities in connection therewith) in any such jurisdiction;

(d) use its commercially reasonable efforts to cause all Registrable Securities being offered and sold pursuant to this Agreement to be qualified for inclusion in or listed on The New York Stock Exchange or any securities exchange on which the Common Stock issued by the Company are then so qualified or listed if so requested by the Purchaser or if so requested by the underwriter or underwriters of an underwritten offering of Registrable Securities, if any;

(e) cooperate and assist in any filings required to be made with The New York Stock Exchange or other securities exchange and, solely with regard to an underwritten shelf takedown, in the performance of any reasonable due diligence investigation by the underwriters;

(f) solely with regard to an underwritten shelf takedown, use its commercially reasonable efforts to facilitate the distribution and sale of any Registrable Securities to be offered pursuant to this Agreement, including without limitation by making road show presentations, holding meetings with and making calls to potential investors and taking such other actions as shall be reasonably requested by the Purchaser or the lead managing underwriter;

(g) solely with regard to an underwritten shelf takedown, enter into underwriting agreements in customary form (including provisions with respect to indemnification and contribution in customary form) and take all other customary and appropriate actions in order to expedite or facilitate the disposition of such Registrable Securities and in connection therewith:

1. make such representations and warranties to the Purchaser and the underwriters in such form, substance and scope as are customarily made by issuers to underwriters in similar underwritten offerings;

2. obtain opinions of counsel to the Company and updates thereof (which counsel and opinions (in form, scope and substance) shall be reasonably satisfactory to the lead managing underwriter) addressed to the underwriters and, if reasonably obtainable, the Purchaser covering the matters customarily covered in opinions delivered in similar underwritten offerings; and

3. obtain "cold comfort" letters and updates thereof from the Company's independent certified public accountants addressed to the underwriters, and, if reasonably obtainable, the Purchaser, which letters shall be customary in form and shall cover matters of the type customarily covered in "cold comfort" letters to underwriters in connection with similar underwritten offerings.

4.3 **Due Diligence**. In connection with each registration and offering of Registrable Securities to be sold by the Purchaser, the Company will, in accordance with customary practice, make reasonably available for inspection by representatives of the Purchaser and underwriters and any counsel or accountant retained by the Purchaser or underwriters all relevant financial and other records, pertinent corporate documents and properties of the Company and cause appropriate officers, managers and employees of the Company to supply all information reasonably requested by any such representative, underwriter, counsel or accountant in connection with their due diligence exercise. Such access to information, documents, personnel and other matters shall be provided to such participants, at such times and in such manner as are customary for offerings of the relevant type and as do not unreasonably burden the Company or unreasonably interfere with its operations. All information, documents and other matters provided or made accessible by the Company in connection with a registered offering hereunder shall be kept confidential pending any public disclosure thereof by the Company and subject to applicable legal requirements.

4.4 **Information from the Purchaser**. The Purchaser shall furnish to the Company such information regarding itself as is required to be included in any Registration Statement, the ownership of Registrable Securities by the Purchaser and the proposed distribution by the Purchaser of such Registrable Securities as the Company may from time to time reasonably request in writing. The Purchaser participating in a registered offering hereunder shall do so on the terms and conditions applicable to such offering and the applicable plan of distribution; provided that the Purchaser shall not be required to make any representations or warranties to or agreements with the Company or the underwriters other than representations, warranties or agreements regarding the Purchaser and the Purchaser's Registrable Securities. Notwithstanding any other provision of this Agreement, the Company shall not be required to file any Registration Statement or include Registrable Securities therein unless it has received from the Purchaser, within a reasonable period of time prior to the anticipated filing date of such Registration Statement, all requested information required to be included in the Registration Statement.

ARTICLE 5. REGISTRATION EXPENSES

All fees and expenses incident to the performance of or compliance with this Agreement by the Company, except as and to the extent specified in this Article 5, shall be borne by the Company whether or not the Registration Statement is filed or becomes effective and whether or not any Registrable Securities are sold pursuant to the Registration Statement. The fees and expenses referred to in the foregoing sentence shall include, without limitation, and to the extent applicable (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with each securities exchange or market on which Registrable Securities are required hereunder to be listed, if any, (B) with respect to filing fees required to be paid to the Financial Industry Regulatory Authority and (C) in compliance with state securities or "blue sky" laws (including, without limitation, fees and disbursements of counsel for the Purchaser in connection with "blue sky" qualifications of the Registrable Securities and determination of the eligibility of the Registrable Securities for investment under the laws of such jurisdictions as the Company may designate)), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing prospectuses if the printing of prospectuses is requested by the Company), (iii) messenger, telephone and delivery expenses, (iv) Securities Act liability insurance, if the Company elects to purchase such insurance, and (v) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement, including, without limitation, the Company's independent public accountants (including the expenses of any comfort letters or costs associated with the delivery by independent public accountants of a comfort letter or comfort letters). In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange if required hereunder. The Company shall not be responsible for any underwriters', brokers' and dealers' discounts and commissions, transfer taxes or other similar fees incurred by Purchaser in connection with the sale of the Registrable Securities.

ARTICLE 6. INDEMNIFICATION

6.1 **Indemnification by the Company**. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless the Purchaser, its officers, directors, employees and affiliates, each Person who controls the Purchaser (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors and employees of each such controlling Person (collectively, the "**Purchaser Indemnified Parties**"), to the full extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, costs of preparation and attorneys' and expert witnesses' fees) and expenses (collectively, "**Losses**") (as determined by a court of competent jurisdiction in a final judgment not subject to appeal or review), to which such Purchaser Indemnified Parties may become subject under the Securities Act or otherwise, arising out of or relating to any violation of securities laws or untrue or alleged untrue statement of a material fact

contained in any Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that such untrue statements or omissions are based solely upon information regarding the Purchaser furnished in writing to the Company by the Purchaser expressly for use therein. The Company shall notify the Purchaser promptly of the institution, threat or assertion of any Proceeding of which the Company is aware in connection with the transactions contemplated by this Agreement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Purchaser, the directors and officers of the Purchaser, or controlling Person of the Purchaser, and shall survive the transfer of such securities held by the Purchaser.

6.2 **Indemnification by Purchaser**. The Purchaser shall indemnify and hold harmless the Company, its directors, officers and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers and employees of such controlling Persons (collectively, the "**Company Indemnified Parties**"), to the full extent permitted by applicable law, from and against all Losses (as determined by a court of competent jurisdiction in a final judgment not subject to appeal or review), to which the Company Indemnified Parties may become subject under the Securities Act or otherwise, arising solely out of or based solely upon any untrue statement of a material fact contained in any Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto, or arising solely out of or based solely upon any omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by the Purchaser to the Company specifically for inclusion in the Registration Statement or such Prospectus. Notwithstanding anything to the contrary contained herein, the Purchaser shall be liable under this Section 6.2 for only that amount as does not exceed the net proceeds to the Purchaser as a result of the sale of Registrable Securities pursuant to such Registration Statement.

6.3 **Conduct of Indemnification Proceedings**.

(a) If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "**Indemnified Party**"), such Indemnified Party promptly shall notify the Person from whom indemnity is sought (the "**Indemnifying Party**") in writing, and the Indemnifying Party shall be entitled to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party.

(b) An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; or (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such parties shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending or threatened Proceeding in respect of which any Indemnified Party is a party and indemnity has been sought hereunder, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

(c) All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within thirty (30) Business Days of written notice thereof to the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder; provided, that the Indemnified Party shall reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification hereunder).

6.4 **Contribution**.

(a) If a claim for indemnification under Sections 6.1 or 6.2 is due but unavailable to an Indemnified Party, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission.

(b) The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in Section 6.3, any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms. In no event shall the Purchaser be required to contribute an amount under this Section 6.4 in excess of the net proceeds received by it upon the sale of its Registrable Securities pursuant to a Registration Statement giving rise to such contribution obligation.

(c) The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 6.4 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not also guilty of such fraudulent misrepresentation.

(d) The indemnity and contribution agreements contained in this Article 6 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties pursuant to the law.

6.5 **Survival**. The agreements contained in this Article 6 shall survive the transfer of the Registered Securities by the Purchaser and sale of all of the Registrable Securities pursuant to any registration statement and shall remain in full force and effect, regardless of any investigation made by or on behalf of any Purchaser Indemnified Party.

ARTICLE 7. RULE 144

If the Company is subject to the requirements of Section 13, 14 or 15(d) of the Exchange Act, the Company covenants that it will file any reports required to be filed by it under the Securities Act and the Exchange Act, so as to enable the Purchaser to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144 under the Securities Act or (b) any successor rule or regulation hereafter adopted by the Commission. Upon the request of the Purchaser, the Company will deliver to the Purchaser a written statement as to whether it has complied with such requirements.

ARTICLE 8. MISCELLANEOUS

8.1 **Remedies**. In the event of a breach by the Company or the Purchaser of any of their respective obligations under this Agreement, the Company or the Purchaser, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company and the Purchaser acknowledge and agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by either of them of any of the provisions of this Agreement and each hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

8.2 **No Inconsistent Agreements**. The Company shall not enter into any such agreement with respect to its securities that is inconsistent with or violates the rights granted to the Purchaser in this Agreement.

8.3 **Amendments and Waivers**. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Purchaser shall have consented thereto.

8.4 **Termination of Registration Rights**. This Agreement to register Registrable Securities for sale under the Securities Act shall terminate on the earliest to occur of (a) the first date on which all outstanding Registrable Securities are eligible for sale under Rule 144 and (i) restrictive legends have been removed from all book entry positions or certificates representing the applicable Registrable Securities, or (ii) if the Purchaser is unable to deliver an opinion that it is not then an affiliate of the Company, the Company has committed to remove such restrictive legends from the applicable Registrable Securities covered by a Form 144 that has been filed with the Commission pursuant to Rule 144, and (b) the later of the third anniversary of the effective date of the Registration Statement filed pursuant to Section 2.1 or the fifth anniversary of the Original Issue Date, in either case which shall be extended day-day-for day for any blackout periods initiated by the Company in accordance with Section 2.3 in effect during the 180 day period prior to the scheduled termination date; provided that the following shall not be taken into account for calculating such day-for-day extensions: (i) closed trading windows established by the Company for its Common Stock that are applicable to the Purchaser while it has a representative serving on the Company's Board of Directors and (ii) blackout periods related to Purchaser's possession of material non-public information. Notwithstanding any termination of this Agreement pursuant to this Section 8.4, the parties' rights and obligations under Article 6 hereof shall continue in full force and effect in accordance with their respective terms.

8.5 **Notices**. Any notice, demand, request, waiver or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by a recognized courier service, fully prepaid and properly addressed upon the earlier of (i) actual receipt thereof, as shown by the records of such courier or (ii) five days after the receipt thereof by the courier from the party giving it. The addresses for such notice, demand, request, waiver or other communication shall be:

If to the Company:

Eastman Kodak Company
343 State Street
Rochester, NY 14650
Attention: General Counsel

If to Purchaser:

GO EK Ventures IV, LLC
7632 County Road 42
Victor, New York, 14564-8906
Attention: David Bovenzi, Managing Director
E-Mail: dbovenzi@grandoakscap.com

Either party may from time to time change its address for notice by giving at least five (5) days written notice of such changed address to the other party.

8.6 **Successors and Assigns**.

(a) This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns and shall inure to the benefit of the Purchaser and its successors and permitted assigns. Neither party may assign this Agreement nor any of its rights or obligations hereunder without the prior written consent of the other party; provided, however that Purchaser's rights under this Agreement may be assigned (but only with all related obligations) to a transferee of Registrable Securities that (i) is an Affiliate of a Purchaser; or (ii) after such transfer, holds shares of Registrable Securities representing at least 2,500,000 shares of Common Stock (subject to appropriate adjustment for stock splits, stock dividends, combinations, and other recapitalizations).

(b) In the event the Company engages in a merger or consolidation in which the Registrable Securities are converted into securities of another company, or if there are any changes in the Common Stock by way of share split, stock dividend, combination or reclassification, appropriate arrangements will be made so that the registration rights provided under this Agreement continue to be provided to the Purchaser by the issuer of such securities. To the extent any new issuer, or any other company acquired by the Company in a merger or consolidation, was bound by registration rights obligations that would conflict with the provisions of this Agreement, the Company will, unless the Purchaser otherwise agrees, use commercially reasonable efforts to modify any such "inherited" registration rights obligations so as not to interfere in any material respects with the rights provided under this Agreement.

8.7 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement and shall become effective when counterparts have been signed by each party and delivered to the other parties hereto, it being understood that all parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature were the original thereof.

8.8 **Governing Law; Jurisdiction**. This Agreement shall be governed by and construed in accordance with the internal laws of the State of New York. This Agreement shall not be interpreted or construed with any presumption against the party causing this Agreement to be drafted. The exclusive jurisdiction for the resolution of any conflicts regarding this Agreement shall be in the courts of the Western District of New York. This exclusive jurisdiction is a material provision to this Agreement.

8.9 **Waiver of Jury Trial**. Each of the parties to this Agreement hereby unconditionally agrees to waive, to the fullest extent permitted by applicable law, its respective rights to a jury trial of any claim or cause of action (whether based on contract, tort or otherwise) based upon, arising out of or relating to this Agreement or the transactions contemplated hereby. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that

relate to the subject matter of this Agreement, including contract claims, tort claims and all other common law and statutory claims. Each party hereto: (i) acknowledges that this waiver is a material inducement to enter into this Agreement, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings, (ii) acknowledges 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 any action or proceeding, seek to enforce the foregoing waiver and (iii) warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 8.9 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

8.10 **Cumulative Remedies**. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

8.11 **Severability**. If any term, provision, covenant or restriction of this Agreement is held to be invalid, illegal, void or unenforceable in any respect, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

8.12 **Section Headings**. The Section headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Registration Rights Agreement to be duly executed by a person thereunto authorized as of the date first indicated above.

COMPANY:

EASTMAN KODAK COMPANY

By: /s/ David E. Bullwinkle

Name: David E. Bullwinkle

Title: Chief Financial Officer and Senior Vice President

PURCHASER:

GO EK VENTURES IV, LLC

By: /s/ B. Thomas Galisano

Name: B. Thomas Galisano

Title: Member

Exhibit 10.4

[Execution]

AMENDMENT NO. 4 TO AMENDED AND RESTATED CREDIT AGREEMENT

AMENDMENT NO. 4 TO AMENDED AND RESTATED CREDIT AGREEMENT, dated as of February 26, 2021 (this "Amendment No. 4"), by and among Bank of America, N.A., a national banking association, in its capacity as administrative agent and collateral agent (in such capacity, together with its successors and assigns, "Agent") pursuant to the Credit Agreement (as defined below), each of the parties to the Credit as lenders (individually, each a "Lender" and collectively, "Lenders"), Eastman Kodak Company, a New Jersey corporation (the "Borrower" or "Company"), the subsidiaries of Borrower party thereto as Guarantors (individually, each a "Guarantor" and collectively, "Guarantors").

W I T N E S S E T H :

WHEREAS, Agent, Lenders and certain other parties have entered into a senior secured revolving credit facility pursuant to which Agent and Lenders have made, and may make, loans and advances and provide other financial accommodations to Borrower as set forth in the Amended and Restated Credit Agreement, dated as of May 26, 2016, by and among Borrower, Guarantors, Lenders and Agent (as amended by Amendment No. 1, dated as of November 7, 2016, Amendment No. 2, dated as of May 24, 2019 and Amendment No. 3, dated as of March 27, 2020 and as in effect prior to the date hereof, the "Existing Credit Agreement") and the other Loan Documents (as defined in the Existing Credit Agreement);

WHEREAS, Borrower and Guarantors have requested that Agent and Lenders agree to certain amendments to the Existing Credit Agreement, and Agent and Lenders are willing to agree to such amendments, subject to the terms and conditions contained herein; and

WHEREAS, by this Amendment No. 4, Agent, Lenders and the Loan Parties intend to evidence such amendments;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Definitions.

1.1. Interpretation. For purposes of this Amendment No. 4, the following terms shall have the following meanings, and all terms used herein which are not otherwise defined herein, including but not limited to, those terms used in the recitals hereto, shall have the respective meanings assigned thereto in the Credit Agreement (as defined below).

(a) "Amendment No. 4" means Amendment No. 4 to Amended and Restated Credit Agreement, dated as of February 26, 2021, by and among Agent, Lenders, and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(b) "Amendment No. 4 Effective Date" means the first date on which the conditions precedent set forth in Section 8 of Amendment No. 4 are satisfied as set forth in the notice from Agent to Borrower provided for in Section 8 of Amendment No. 4.

2. Amendments to Existing Credit Agreement. As of the Amendment No. 4 Effective Date, the Existing Credit Agreement is hereby amended and restated in its entirety such that on the Amendment No. 4 Effective Date, the terms and conditions set forth in Exhibit A hereto shall replace and supersede in their entirety the terms and conditions set forth in the Existing Credit Agreement. All schedules and exhibits to the Existing Credit Agreement, as in effect immediately prior to the date of this Amendment No. 4, shall constitute schedules and exhibits to the Credit Agreement, except, that, those schedules and exhibits which are attached to the Credit Agreement as set forth in Exhibit A to this Amendment No. 4 shall constitute those respective schedules and exhibits after the date of this Amendment No. 4. Each Lender signatory hereto and Borrower consent to the amendment of the Existing Credit Agreement as provided for herein pursuant to the terms set forth in Exhibit A. From and after the Amendment No. 4 Effective Date, each reference to the "Agreement", "Credit Agreement", "thereunder", "thereof", "therein" or words of like import originally applicable to the Existing Credit Agreement contained in any Loan Document shall mean and be a reference to the Credit Agreement as set forth in Exhibit A to this Amendment No. 4 (as such credit agreement may be amended, supplemented, restated or otherwise modified from time to time, the "Credit Agreement").

3. Intercreditor Agreements. Without limitation of any of the terms set forth in Section 8.01(b) or 8.11 of the Credit Agreement, each Lender (a) authorizes and instructs the Agent to enter into each of the Term Loan Intercreditor Agreement as Agent and on behalf of such Lender and the Supplemental Letter of Credit Facility Intercreditor Agreement as Agent and on behalf of such Lender, (b) agrees that, upon the execution and delivery thereof, such Lender will be bound by the provisions of each of the Term Loan Intercreditor Agreement and the Supplemental Letter of Credit Facility Intercreditor Agreement, in each case, as if it were a signatory thereto and will take no actions contrary to the provisions of the Term Loan Intercreditor Agreement or the Supplemental Letter of Credit Facility Intercreditor Agreement, (d) agrees that no Lender shall have any right of action whatsoever against the Agent as a result of any action taken by Agent pursuant to this Section or in accordance with the terms of the Term Loan Intercreditor Agreement and the Supplemental Letter of Credit Facility Intercreditor Agreement and (e) agrees that the Agent may take all actions (and execute all documents) required (or deemed advisable) by it in accordance with the terms of the Term Loan Interecreditor Agreement and the Supplemental Letter of Credit Facility Intercreditor Agreement, in each case, and without any further consent, authorization or other action by such Lender, including the execution and delivery of such amendments, supplements or other modifications to the Term Loan Intercreditor Agreement or the Supplemental Letter of Credit Facility Intercreditor Agreement as are approved by Agent.

4. Representations and Warranties. Each Loan Party represents and warrants with and to Secured Parties as follows, which representations and warranties shall survive the execution and delivery hereof:

4.1. As of the Amendment No. 4 Effective Date, no Default or Event of Default exists or has occurred and is continuing.

4.2. This Amendment No. 4 has been duly authorized, executed and delivered by all necessary corporate or limited liability company action, as applicable, on the part of each Loan Party and, upon the notification by Agent to Borrower and Lenders of the Amendment No. 4 Effective Date, is in full force and effect as of the date hereof, as the case may be, and the agreements and obligations of each Loan Party, as the case may be, contained herein constitute legal, valid and binding obligations of each Loan Party, enforceable against it in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

4.3. All of the representations and warranties of each Loan Party set forth herein and in each of the other Loan Documents are true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) on and as of the Amendment No. 4 Effective Date before and after giving effect to the effectiveness of this Amendment No. 4 and the transactions contemplated hereby 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 such representations and warranties shall be true and correct in all material respects (or, in the case of any representations and warranties qualified by materiality or Material Adverse Effect, in all respects) as of such earlier date.

5. Amendment Fee. Borrower shall pay to Agent, for the account of the Lenders which execute this Amendment No. 4, an amendment fee in an amount equal to seventy-five (75) basis points multiplied by the aggregate Commitment of each such Lender as in effect immediately after the Amendment No. 4 Effective Date, which fee shall be fully earned and payable on the Amendment No. 4 Effective Date and shall be nonrefundable in all circumstances.

6. Reaffirmation. Each Loan Party acknowledges, confirms and agrees that (a) it is indebted to Agent and Lenders under the Existing Credit Agreement, including principal and all interest accrued and accruing thereon (to the extent applicable), and all fees, costs, expenses and other charges relating thereto, all of which are unconditionally owing by Loan Parties, without offset, defense or counterclaim of any kind, nature or description whatsoever, (b) Agent has had and shall on and after the date hereof continue to have, for itself and the benefit of Lenders, a security interest in and lien upon the Collateral heretofore granted to Agent (or its predecessors in whatever capacity) pursuant to the Loan Documents to secure the Obligations, (c) the liens and security interests of Agent in the Collateral shall be deemed to be continuously granted and perfected from the earliest date of the granting and perfection of such liens and security interests to Agent, and (d) the Existing Credit Agreement and each of the other Loan Documents remain in full force and effect and are hereby ratified and confirmed.

7. No Novation. The terms and conditions of the Existing Credit Agreement are amended as set forth in, and restated in their entirety and superseded by, Exhibit A to this Amendment No. 4. Nothing in this Amendment No. 4 (including Exhibit A hereto) shall be deemed to be a novation of any of the Obligations as defined in the Existing Credit Agreement or in any way impair or otherwise affect the rights or obligations of the parties thereunder (including with respect to Revolving Loans and representations and warranties made thereunder) except as such rights or obligations are amended or modified hereby. Notwithstanding any provision of this Amendment No. 4 or any other Loan Document or instrument executed in connection herewith, the execution and delivery of this Amendment No. 4 and the incurrence of Obligations hereunder shall be in substitution for, but not in payment of, the Obligations owed by the Loan Parties under the Existing Credit Agreement. The Existing Credit Agreement as amended and restated pursuant to the terms set forth in Exhibit A shall be deemed to be a continuing agreement among the parties, and all documents, instruments and agreements delivered pursuant to or in connection with the Existing Credit Agreement not amended and restated in connection with the entry of the parties into this Amendment No. 4 shall remain in full force and effect, each in accordance with its terms, as of the date of delivery or such other date as contemplated by such document, instrument or agreement to the same extent as if the modifications to the Existing Credit Agreement contained herein were set forth in an amendment to the Existing Credit Agreement in a customary form, unless such document, instrument or agreement has otherwise been terminated or has expired in accordance with or pursuant to the terms of this Amendment No. 4, the Existing Credit Agreement or such document, instrument or agreement or as otherwise agreed by the required parties hereto or thereto.

8. Conditions Precedent. The effectiveness of this Amendment No. 4 shall be subject to the satisfaction of each of the following conditions:

8.1. Agent shall have received executed counterparts (originals or electronic copies) of this Amendment No. 4, duly authorized, executed and delivered by Agent, each of the Lenders and the Loan Parties;

8.2. Agent shall have received correct and complete copies of each of the Term Loan Documents, as duly authorized, executed and delivered by the parties thereto, each in form and substance reasonably satisfactory to Agent, the Term Loan Facility shall be consummated and effective and Borrower shall have received not less than $225,000,000 in proceeds of loans under the Term Loan Facility;

8.3. Agent shall have received correct and complete copies of each of the Supplemental Letter of Credit Facility Documents, as duly authorized, executed and delivered by the parties thereto, each in form and substance reasonably satisfactory to Agent, and the Supplemental Letter of Credit Facility shall be consummated and effective;

8.4. Agent shall have received correct and complete copies of each of the Convertible Note Documents, as duly authorized, executed and delivered by the parties thereto, each in form and substance reasonably satisfactory to Agent, and the Convertible Notes shall be issued and effective;

8.5. Agent shall have received, in form and substance reasonably satisfactory to Agent, the Term Loan Intercreditor Agreement, as duly authorized, executed and delivered by the parties thereto;

8.6. Agent shall have received, in form and substance reasonably satisfactory to Agent, the Supplemental Letter of Credit Facility Intercreditor Agreement, as duly authorized, executed and delivered by the parties thereto;

8.7. Agent shall have received, for the account of the applicable Lenders, the fee set forth in Section 5 above and payment of all other fees and expenses of Agent or its affiliates in connection with this Amendment No. 4;

8.8. Agent shall have received projected balance sheets, income statements, statements of cash flows and availability of Borrower and its Restricted Subsidiaries giving effect to this Amendment No.4, the Term Loan Facility and the other Transactions, covering the period through the Maturity Date, which projections shall be on a monthly basis for the twelve-month period following the Amendment No. 4 Effective Date, a quarterly basis for the twelve-month period thereafter and on an annual basis thereafter through the Maturity Date, in each case with the results and assumptions in all of such projections in form and substance satisfactory to Agent;

8.9. Agent shall have received, each in form and substance reasonably satisfactory to Agent, (i) customary legal opinions, (ii) customary evidence of authority from each Loan Party, (iii) customary officer's certificates from each Loan Party, (iv) good standing certificates (to the extent applicable) in the respective jurisdictions of organization of each Loan Party, and (v) lien searches with respect to each Loan Party;

8.10. Agent shall have received (i) evidence that (A) $100,000,000 of the Series A Preferred Stock have been redeemed and cancelled and (B) the remaining balance of the Series A Preferred Stock have been exchanged for Series B Preferred Stock, such that after giving effect to such redemption and such exchange, Borrower has no further obligations or liabilities in respect of the Series A Preferred Stock and (ii) the agreements and documents providing for the redemption of the Series A Preferred Stock and relating to the Series B Preferred Stock Issuance, in each case which shall be on terms and conditions satisfactory to Agent;

8.11. the Excess Availability on the Amendment No. 4 Effective Date after the application of proceeds of the initial funding under this credit facility as amended by this Amendment No. 4 and after payment of all fees and expenses of the transactions related to this Amendment No. 4 payable on the Amendment No. 4 Effective Date, shall be not less than $25,000,000;

8.12. Agent shall have received an update of the Borrowing Base consistent with Agent's customary procedures and practices so as to obtain current results;

8.13. Agent shall have received a customary solvency certificate from the chief financial officer of Borrower substantially in form and substance reasonably satisfactory to Agent and as of the Amendment No. 4 Effective Date and after giving effect to the transactions related to this Amendment No. 4, Borrower shall not be insolvent or become insolvent as a result thereof;

8.14. after giving effect to this Amendment No. 4, no Default or Event of Default shall exist or have occurred and be continuing;

8.15. no material adverse change in the business, operations, profits, assets or prospects of Loan Parties shall have occurred since September 30, 2020; and

8.16. Agent and Lenders shall have received payment of all reasonable and documented out-of-pocket costs and expenses (including, without limitation, the reasonable and documented fees and expenses of counsel for Agent).

Agent shall notify Borrower and Lenders of the Amendment No. 4 Effective Date and such notice shall be conclusive and binding.

9. Effect of Amendment No. 4. Except as expressly set forth herein, no other amendments, changes or modifications to the Loan Documents are intended or implied, and in all other respects the Loan Documents are hereby specifically ratified, restated and confirmed by all parties hereto as of the effective date hereof and the Loan Parties shall not be entitled to any other or further amendment by virtue of the provisions of this Amendment No. 4 or with respect to the subject matter of this Amendment No. 4. To the extent of conflict between the terms of this Amendment No. 4 and the other Loan Documents, the terms of this Amendment No. 4 shall control. The Credit Agreement and this Amendment No. 4 shall be read and construed as one agreement. This Amendment No. 4, including Exhibit A hereto, is a Loan Document.

10. Jurisdiction. The provisions of Section 9.13 of the Credit Agreement shall apply with like effect to this Amendment No. 4.

11. Binding Effect. This Amendment No. 4 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

12. Waiver, Modification, Etc. No provision or term of this Amendment No. 4 may be modified, altered, waived, discharged or terminated orally or by course of conduct, but only by an instrument in writing executed by the party against whom such modification, alteration, waiver, discharge or termination is sought to be enforced.

13. Entire Agreement. This Amendment No. 4 represents the entire agreement and understanding concerning the subject matter hereof among the parties hereto, and supersedes all other prior agreements, understandings, negotiations and discussions, representations, warranties, commitments, proposals, offers and contracts concerning the subject matter hereof, whether oral or written.

14. Headings. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 4.

15. Counterparts. This Amendment No. 4 may be executed in any number of counterparts, each of which shall be an original, but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of this Amendment No. 4 by telefacsimile or other electronic method of transmission (e.g., "pdf" or "tif") shall have the same force and effect as delivery of an original executed counterpart of this Amendment No. 4. Any party delivering an executed counterpart of this Amendment No. 4 by telefacsimile or other electronic method of transmission shall also deliver an original executed counterpart of this Amendment No. 1, but the failure to do so shall not affect the validity, enforceability, and binding effect of this Amendment No. 4.

16. Designation of Immaterial Subsidiaries. Borrower hereby designates each of (i) FPC Inc., (ii) Laser-Pacific Media Corporation and (iii) NEPC Inc. as Immaterial Subsidiaries in accordance with the Credit Agreement and certifies that each such Subsidiary satisfies, individually and in the aggregate for all Immaterial Subsidiaries, the requirements applicable to Immaterial Subsidiaries set forth in the definition thereof. In reliance upon the foregoing certification, Agent and the Required Lenders waive any requirement with respect to the delivery of a separate certificate with respect to the designation of such Subsidiaries as Immaterial Subsidiaries.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 4 to be duly executed and delivered by their authorized officers as of the day and year first above written.

EASTMAN KODAK COMPANY

By: /s/ David E. Bullwinkle
Name: David E. Bullwinkle
Title: Chief Financial Officer and Senior Vice President

FAR EAST DEVELOPMENT LTD.
KODAK (NEAR EAST), INC.
KODAK AMERICAS, LTD.
KODAK PHILIPPINES, LTD.
EASTMAN KODAK INTERNATIONAL CAPITAL COMPANY, INC.

By: /s/ Roger W. Byrd
Name: Roger W. Byrd
Title: Secretary

Agent and Lenders

BANK OF AMERICA, N.A.,
as Agent and a Lender

By: /s/ Matthew T. O'Keefe
Name: Matthew T. O'Keefe
Title: Senior Vice President

JPMORGAN CHASE BANK, N.A.,
as a Lender

By: /s/ Daglas Panchal
Name: Daglas Panchal
Title: Executive Director

SIEMENS FINANCIAL SERVICES, INC.,
as a Lender

By: /s/ Jeffery B. Iervese
Name: Jeffery B. Iervese
Title: Vice President

By: /s/ Sonia Vargas
Name: Sonia Vargas
Title: Senior Loan Closer

WEBSTER BUSINESS CREDIT CORPORATION, as a Lender

By: /s/ Arthur Kim
Name: Arthur Kim
Title: Duly Authorized Signatory

CREDIT SUISSE AG,
as a Lender

By: /s/ Vipul Dhadda
Name: Vipul Dhadda
Title: Authorized Signatory

By: /s/ Brady Bingham
Name: Brady Bingham
Title: Authorized Signatory

Exhibit A
to
Amendment No. 4 to Amended and Restated Credit Agreement

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of May 26, 2016
as amended through February 26, 2021

among

EASTMAN KODAK COMPANY
as Borrower

and

THE GUARANTORS NAMED HEREIN
as Guarantors

and

THE LENDERS NAMED HEREIN
as Lenders

and

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

and

BANK OF AMERICA, N.A.

and

JPMORGAN CHASE BANK, N.A.
as Joint Lead Arrangers and Joint Bookrunners

TABLE OF CONTENTS

Schedules

Exhibits

Exhibit A	-	Form of Note
Exhibit B-1	-	Form of Notice of Borrowing
Exhibit B-2	-	Form of Swingline Loan Notice
Exhibit C	-	Form of Assignment and Acceptance
Exhibit D	-	Form of Solvency Certificate
Exhibit E	-	Form of Guaranty Supplement
Exhibit F	-	Form of Borrowing Base Certificate
Exhibit G	-	Form of Bank Products Obligations Agreement
Exhibit H	-	Form of Compliance Certificate
Exhibit I	-	[Intentionally deleted]

AMENDED AND RESTATED CREDIT AGREEMENT

Dated as of May 26, 2016,

as amended through February 26, 2021

EASTMAN KODAK COMPANY, a New Jersey corporation (the "Borrower" or "Company"), the Guarantors (as hereinafter defined), the banks, financial institutions and other institutional lenders (the "Lenders") and issuers of letters of credit from time to time party hereto, BANK OF AMERICA, N.A. and JPMORGAN CHASE BANK, N.A., as joint lead arrangers and joint bookrunners, BANK OF AMERICA, N.A., as administrative agent and collateral agent for the Lenders agree as follows:

WHEREAS, the Borrower entered into that certain Credit Agreement, dated as of September 3, 2013, among the Borrower, the Guarantors, the banks, financial institutions and other institutional lenders and issuers of letters of credit from time to time party thereto, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Bank PLC and J.P. Morgan Securities LLC, as joint lead arrangers and joint bookrunners, Barclays Bank PLC, as syndication agent, and Bank of America, N.A., as administrative agent and collateral agent for the Lenders (as amended, supplemented or otherwise modified prior to the Closing Date, the "Existing Credit Agreement");

WHEREAS, this Agreement amends and restates the Existing Credit Agreement in its entirety and without novation and shall, upon execution by all parties to the Existing Credit Agreement (and the Non-Consenting Lenders solely for purposes of Section 2.25) and the satisfaction or waiver of the conditions set forth in Section 3.01, be binding on all parties hereto;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto hereby agree that on the Closing Date, the Existing Credit Agreement shall be amended and restated in its entirety as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"ABL Priority Collateral" has the meaning set forth in the Term Loan Intercreditor Agreement and after the termination of the Term Loan Intercreditor Agreement, shall mean all Collateral.

"Acceptable Foreign Currency" means Pounds Sterling, Euros, the currencies listed on Schedule 1.01(a), any other currency used in the ordinary course of business of the Company and its Restricted Subsidiaries for cash management purposes outside the United States and any other currency as may be approved by the Agent from time to time in its sole discretion.

"Account Debtor" means each Person obligated on an Account.

"Acquisition" means a transaction or series of transactions resulting in (a) acquisition of a business, division or substantially all assets of a Person; (b) record or beneficial ownership of 50% or more of the equity interests of a Person; or (c) merger, consolidation or combination of the Borrower or a Restricted Subsidiary with another Person.

"Account" has the meaning specified in the UCC.

"ACH" means automated clearinghouse transfers.

"Activities" has the meaning specified in Section 8.02(b).

"Additional Guarantor" has the meaning specified in Section 7.05.

"Adjustment Date" has the meaning specified in the definition of "Applicable Margin".

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Agent.

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

"Affected Lender" has the meaning specified in Section 2.20.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or executive officer of such Person. For purposes of this definition, the term "control" (including the terms "controlling", "controlled by" and "under common control with") of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

"Agent" means, Bank of America, in its capacity as administrative and collateral agent under the Loan Documents, or any successor administrative agent appointed in accordance with Section 8.07.

"Agent Parties" has the meaning specified in Section 9.02(d).

"Agent's Account" means the account of the Agent maintained by the Agent at its office as set forth on Schedule 9.02.

"Agent's Group" has the meaning specified in Section 8.02(b).

"Agent Sweep Account" has the meaning specified in Section 2.18(b).

"Agreement" means this Amended and Restated Credit Agreement, as amended, restated, supplemented or otherwise modified from time to time.

"Amendment No. 1" means to Amendment No. 1 to Amended and Restated Credit Agreement, dated as of November 7, 2016, by and among Agent, Lenders, and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Amendment No. 1 Effective Date" means the "Amendment Effective Date" as defined in Amendment No. 1.

"Amendment No. 2" means Amendment No. 2 to Amended and Restated Credit Agreement, dated as of May 24, 2019, by and among Agent, Lenders, and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Amendment No. 2 Effective Date" means the first date on which the conditions precedent set forth in Section 8 of Amendment No. 2 are satisfied as set forth in the notice from Agent to Borrower provided for in Section 8 of Amendment No. 2.

"Amendment No. 3" means the Amendment No. 3 to Amended and Restated Credit Agreement by and among Agent, Lenders, and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Amendment No. 3 Effective Date" means the first date on which the conditions precedent set forth in Section 5 of Amendment No. 3 are satisfied as set forth in the notice from Agent to Borrower provided for in Section 8 of Amendment No. 3.

"Amendment No. 4" means the Amendment No. 4 to Amended and Restated Credit Agreement by and among Agent, Lenders, and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

"Amendment No. 4 Effective Date" means the first date on which the conditions precedent set forth in Section 8 of Amendment No. 4 are satisfied as set forth in the notice from Agent to Borrower provided for in Section 8 of Amendment No. 4.

"Anti-Corruption Laws" means all laws, rules and regulations applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Lending Office" means, with respect to each Lender, such Lender's Domestic Lending Office in the case of a Base Rate Revolving Loan and such Lender's Eurodollar Lending Office in the case of a Eurodollar Rate Revolving Loan.

"Applicable Margin" means four percent (4.00%) per annum, in the case of Eurodollar Rate Revolving Loans, and three percent (3.00%) per annum, in the case of Base Rate Revolving Loans; provided, that, on and after the first Adjustment Date after the Amendment No. 4 Effective Date, the Applicable Margin will be the rate per annum as determined pursuant to the pricing grid below based upon the average daily Excess Availability for the most recently ended fiscal quarter immediately preceding such Adjustment Date:

Tier	Average Daily Excess Availability	Applicable Margin for Base Rate Revolving Loans	Applicable Margin for Eurodollar Rate Revolving Loans
I	Greater than 67% of the Revolving Credit Facility	2.50%	3.50%
II	Equal to or greater than 33% of the Revolving Credit Facility but less than or equal to 67% of the Revolving Credit Facility	2.75%	3.75%
III	Less than 33% of the Revolving Credit Facility	3.00%	4.00%

Any change in the Applicable Margin resulting from changes in average daily Excess Availability shall become effective on the first day of the calendar month following each fiscal quarter (the "Adjustment Date"); provided, that, the first Adjustment Date shall occur on the first day of the calendar month following the second full fiscal quarter after the Amendment No. 4 Effective Date. If the Agent is unable to calculate average daily Excess Availability for a fiscal quarter due to Borrower's failure to deliver any Borrowing Base Certificate when required hereunder, then, at the option of the Agent or the Required Lenders, margins shall be determined as if Tier III (rather than the Tier applicable for the prior period) were applicable until the first day of the calendar month following the receipt of the applicable Borrowing Base Certificate.

In the event that at any time after the end of a fiscal quarter it is discovered that the average daily Excess Availability for such fiscal quarter used for the determination of the Applicable Margin was less than the actual amount of the average daily Excess Availability for such fiscal quarter used to calculate the Applicable Margin, the Applicable Margin for such prior fiscal quarter shall be adjusted to the applicable percentage based on such actual average daily Excess Availability for such fiscal quarter and any additional interest for the applicable period payable as a result of such recalculation shall be promptly paid to the Lenders.

"Applicable Percentage" means, (a) three-eighths percent (0.375%) per annum when the aggregate amount of the Unused Revolving Credit Commitments is less than or equal to fifty percent (50%) of the Revolving Credit Facility or (b) one-half percent (0.50%) per annum when the aggregate amount of the Unused Revolving Credit Commitments is greater than fifty percent (50%) of the Revolving Credit Facility.

"Approved Fund" means any Fund that is administered or managed by (i) a Lender, (ii) an Affiliate of a Lender or (iii) an entity or an Affiliate of an entity that administers or manages a Lender; provided, that, an Approved Fund shall not include any Disqualified Institution.

"Arrangers" means Bank of America, N.A. and JPMorgan Chase Bank, N.A. in their respective capacities as joint lead arrangers and joint bookrunners.

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Agent, in substantially the form of Exhibit C hereto.

"Assuming Lender" has the meaning specified in Section 2.21(d).

"Assumption Agreement" has the meaning specified in Section 2.21(d).

"Auto-Extension Letter of Credit" has the meaning specified in Section 2.03(a).

"Available Amount" of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit at such time (assuming compliance at such time with all conditions to drawing). For purposes of computing the amounts available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of any rule under the ISP or any article of the UCP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

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

"Bail-In Legislation" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part 1 of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank of America" means Bank of America, N.A. and its successors.

"Bank Product Agreements" means, those agreements entered into from time to time by any Loan Party or its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products to the extent designated in a Bank Products Obligations Agreement.

"Bank Products" means any of the following products, services or facilities extended to a Loan Party or Affiliate of a Loan Party by a Bank Product Provider: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card and merchant card services; and (d) other banking products or services.

"Bank Product Obligations" means Debt, obligations and other liabilities with respect to Bank Products owing by a Loan Party or an Affiliate of a Loan Party to a Bank Product Provider; to the extent designated as such by the Company in writing to the Agent from time to time in accordance herewith, provided, that, Bank Product Obligations of a Loan Party shall not include its Excluded Swap Obligations.

"Bank Products Obligations Agreement" means an agreement in substantially the form attached hereto as Exhibit G, in form and substance satisfactory to the Agent, duly executed by the applicable Bank Product Provider, the Company, and the Agent; provided, that, no Bank Products Obligations Agreement shall be required with respect to Bank Products provided by Bank of America, N.A. or any of its Affiliates.

"Bank Product Provider" means (a) Bank of America or any of its Affiliates; and (b) any other Lender or Affiliate of a Lender to the extent of any Bank Products furnished by such Lender or Affiliate of a Lender on the Initial Closing Date or, if such Bank Products are established by a Lender or

Affiliate of a Lender after the Initial Closing Date, to the extent such Person was a Lender or an Affiliate of a Lender on the date such Bank Product is established; provided, that, in each case a Bank Product Obligations Agreement has been duly executed and delivered to the Agent within ten (10) days following the later of the Initial Closing Date or creation of the Bank Product, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by Section 8.13.

"Bank Product Reserve" means the aggregate amount of reserves established by the Agent against the Borrowing Base from time to time in its Permitted Discretion in respect of Bank Product Obligations.

"Bankruptcy Code" shall mean title 11 of the United States Code, as in effect from time to time.

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the Southern District of New York.

"Bankruptcy Law" means any proceeding of the type referred to in Section 6.01(e) of this Agreement or the Bankruptcy Code or any similar foreign, federal, provincial or state law for the relief of debtors.

"Base Rate" means for any day a fluctuating rate per annum equal to the highest of (a) the Federal Funds Rate plus one-half of one percent (1/2 of 1%), (b) the rate of interest in effect for such day as publicly announced from time to time by the Agent as its "prime rate" and (c) the Eurodollar Rate for a one (1)-month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus one percent (1.00%). The "prime rate" and the "base rate" is a rate set by the Agent based upon various factors including the Agent's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate or base rate announced by the Agent shall take effect at the opening of business on the day specified in the announcement of such change.

"Base Rate Revolving Loan" means a Revolving Loan that bears interest as provided in Section 2.07(a)(i).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

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

"Board of Governors" means the Board of Governors of the Federal Reserve System.

"Bona Fide Debt Fund" means a debt fund or other investment vehicle engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds or similar extensions of credit in the ordinary course of business and whose managers have fiduciary duties to third party investors in such fund or investment vehicle.

"Borrower" has the meaning in the introductory paragraph hereto.

"Borrower Information" has the meaning specified in Section 9.09.

"Borrowing" means a borrowing consisting of Revolving Loans of the same Type made on the same day by each of the Lenders pursuant to Section 2.01(a).

"Borrowing Base" means, at any time, the amount equal to the Loan Value less applicable Reserves.

"Borrowing Base Certificate" means a certificate in substantially the form of Exhibit F hereto (with such changes therein as may be required by the Agent in its Permitted Discretion to reflect the components of, and Reserves against, the Borrowing Base as provided for hereunder from time to time), executed and certified as accurate and complete by a Responsible Officer of the Company, which shall include detailed calculations as to the Borrowing Base as reasonably requested by the Agent.

"Borrowing Base Deficiency" means, at any time, the failure of the Borrowing Base to equal or exceed Revolving Credit Facility Usage.

"Business Day" means a day of the year on which banks are not required or authorized by law to close in the states of North Carolina and New York and, if the applicable Business Day relates to any Eurodollar Rate Revolving Loans, on which dealings are carried on in the London interbank market.

"Capital Expenditures" means, without duplication, any expenditure of money for any purchase or other acquisition of any asset which, in conformity with GAAP, would be required to be classified as a capital expenditure on the Consolidated statement of cash flows of the Company and its Restricted Subsidiaries; provided, that, the term "Capital Expenditures" shall not include (a) any additions to property, plant and equipment and other expenditures made in connection with the replacement, substitution, restoration, repair or improvement of assets to the extent made with (i) the proceeds of equity issuances of, or capital contributions to the Company, provided those expenditures are made substantially contemporaneously with the equity issuances or capital contributions as the case may be, (ii) Debt borrowed (excluding borrowings under this Agreement, the Term Loan Agreement, the Supplemental Letter of Credit Facility Agreement and the Convertible Note Documents) by the Company or any Restricted Subsidiary in connection with such capital expenditures, (iii) the proceeds from any casualty insurance or condemnation or eminent domain paid on account of the loss of or damage to the assets being replaced, substituted, restored, repaired or improved, to the extent that the proceeds therefrom are utilized or committed to be utilized for capital expenditures within twelve (12) months of the receipt of such proceeds and (if so committed) are so utilized within twelve (12) months of the receipt of such proceeds, or (iv) the proceeds from any sale or other Disposition of the Company's or any Restricted Subsidiary's assets (other than assets constituting Collateral consisting of Accounts and the proceeds thereof), to the extent that the proceeds therefrom are utilized or committed to be utilized for capital expenditures within twelve (12) months of the receipt of such proceeds and (if so committed) are so utilized within twelve (12) months of the receipt of such proceeds, (b) the purchase price of equipment that is purchased substantially contemporaneously with the trade-in of existing equipment solely to the extent of the amount of such purchase price reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (c) expenditures that constitute operating lease expenses in accordance with GAAP, (d) expenditures that constitute Permitted Acquisitions or other investments that consist of the purchase of a business unit, line of business or a division of a Person or all or substantially all of the assets of a Person, (e) any expenditures which are paid by a third party or which are contractually required to be, and are, reimbursed to the Loan Parties in cash by a third party (including landlords) during such period of calculation or (f) any non-cash capitalized interest expense reflected as additions to property, plant or equipment in the consolidated balance sheet of the Company and the Restricted Subsidiaries.

"Capital Lease Obligations" means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP (as of the date hereof) and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP. For the avoidance of doubt, operating leases shall also be accounted for in accordance with GAAP in effect as of the date hereof.

"Captive Insurance Subsidiary" means any Subsidiary that is subject to regulation as an insurance company.

"Cases" means the cases under Chapter 11 of the Bankruptcy Code of Borrower and certain of the Guarantors, each as debtor-in-possession, which have been jointly administered as Chapter 11 Case No. 12-10201(ALG) and which are pending in the Bankruptcy Court.

"Cash Collateralize" means, in respect of an Obligation, provide and pledge (as a first priority perfected security interest) cash collateral in Dollars in an amount equal to one hundred five percent (105%) of such Obligation, at a location and pursuant to documentation in form and substance reasonably satisfactory to the Agent (and "Cash Collateralization" has a corresponding meaning).

"Cash Control Trigger Event" means either (a) the occurrence and continuance of an Event of Default or (b) the failure of the Borrower to maintain Excess Availability of at least the greater of (i) twelve and one-half percent (12.5%) of the Revolving Credit Facility and (ii) $11,250,000. For purposes of this Agreement, the occurrence of a Cash Control Trigger Event shall be deemed to be continuing (A) until such Event of Default has been cured or waived and/or (B) if the Cash Control Trigger Event arises under clause (b) above, until Excess Availability is equal to or greater than the applicable amount set forth above for sixty (60) consecutive days, at which time a Cash Control Trigger Event shall no longer be deemed to be occurring for purposes of this Agreement.

"Cash Equivalents" means any of the following:

(a) Acceptable Foreign Currencies;

(b) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality of the United States of America (provided that the full faith and credit of the United States of America is pledged in support of those securities) having maturities of not more than twenty-four (24) months from the date of acquisition;

(c) obligations issued or fully guaranteed by any state of the United States of America or any political subdivision of any such state or province or any instrumentality thereof maturing within one (1) year from the date of acquisition and having a rating of either "A" or better from S&P or A2 or better from Moody's;

(d) certificates of deposit and eurodollar time deposits with maturities of one (1) year or less from the date of acquisition, banker's acceptances with maturities not exceeding one (1) year and overnight bank deposits, in each case, with any Lender or with any United States commercial bank having capital and surplus in excess of $250,000,000;

(e) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clauses (b), (c), and (d) above entered into with any financial institution meeting the qualifications specified in clause (d) above;

(f) commercial paper rated at least "P-2" by Moody's or at least "A-2" by S&P, in each case, maturing within one (1) year after the date of acquisition;

(g) money market funds that either are (x) SEC.270.2a-7 compliant, (i) enhanced cash funds having a weighted average maturity of not greater than one hundred twenty (120) days or (ii) investing at least ninety-five percent (95%) of their assets in securities of the types described in clauses (a) through (f) above;

(h) offshore overnight interest bearing deposits in foreign branches of the Agent, any Lender or an Affiliate of a Lender; or

(i) instruments equivalent to those referred to in clauses (a) through (h) above of comparable tenor to those referred to above, denominated in any Acceptable Foreign Currency and used in the ordinary course of business of the Borrower and its Subsidiaries for cash management purposes in any jurisdiction outside the United States of America to the extent reasonably required or advisable in connection with any business conducted by the Borrower or any Subsidiary.

"Cash Management Services" means services relating to operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

"CFC" means an entity that is a "controlled foreign corporation" of the Company under Section 957 of the Code or an entity all or substantially all of the assets of which consist of equity interests in one or more CFCs, and any entity which would be a "controlled foreign corporation" except for any alternate classification under Treasury Regulation 301.7701-3, or any successor provisions to the foregoing.

"Change of Control" means, at any time, (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities and Exchange Act of 1934 (the "Exchange Act"), other than a Permitted Holder (or group consisting of Permitted Holders), is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of Voting Stock of the Company representing more than 35% of the voting power of all Voting Stock of the Company, and (b) during any period of two (2) consecutive years (commencing immediately following the Closing Date), individuals who at the beginning of such period constituted the board of directors of the Company (together with any new directors whose election by such board of directors or whose nomination for election by the Company's shareholders was approved by a vote of a majority of the Company's directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Company's directors then in office (excluding any directors from the numerator and denominator of such calculation to the extent such director is or was designated by a Permitted Holder (or group consisting of Permitted Holders) or pursuant to a contractual agreement with the Company existing on the Closing Date).

"Chapter 11 Plan" means the First Amended Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and its Debtor Affiliates, dated August 21, 2013, as amended, supplemented or otherwise modified from time to time in accordance with Section 3.01(f) of the Existing Credit Agreement, and together with all exhibits, schedules, annexes, supplements and other attachments thereto.

"Closing Date" means the first date on which all of the conditions precedent in Article III are satisfied or waived in accordance with Article III.

"Closing Date Transactions" shall mean, collectively, (a) the execution, delivery and performance of, this Agreement and the other Loan Documents and (b) all other related transactions including the payment of fees and expenses in connection therewith.

"Code" means the United States Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

"Collateral" means all "Collateral" as defined in the Security Agreement and the other Collateral Documents.

"Collateral Documents" means the Security Agreement, the Control Agreements, each of the other collateral documents, instruments and agreements delivered pursuant to Section 5.01(i) or (j), and each other security agreement or other instrument or document executed and delivered by any Loan Party to secure any of the Obligations or, with respect to Collateral Documents governed by the laws of the Netherlands, the Obligations of Borrower under the Parallel Debt.

"Commitment" means a Letter of Credit Commitment and/or a Revolving Credit Commitment, as the context may require.

"Commitment Increase" has the meaning specified in Section 2.21(a).

"Commitment Letter" means that certain Commitment Letter, dated as of April 28, 2016 among Bank of America, N.A., as an Arranger, the Agent, and the Company (as amended, supplemented or otherwise modified from time to time).

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

"Company" has the meaning in the introductory paragraph hereto.

"Competitor" means those Persons who are directly or indirectly engaged in the same or similar line of business as the Company or its Subsidiaries.

"Compliance Certificate" means a certificate substantially in the form attached as Exhibit H or in such other form as reasonably agreed by the Agent and the Company, by which Company certifies compliance of the Borrower in accordance with Section 5.03.

"Concentration Account" means each Deposit Account, other than an Excluded Account, maintained by a Loan Party in which funds of such Loan Party from one or more Deposit Accounts are concentrated.

"Confirmation Order" means the Order Confirming the Chapter 11 Plan entered by the Bankruptcy Court in the Cases on August 23, 2013.

"Consolidated" refers to the consolidation of accounts in accordance with GAAP.

"Consolidated EBITDA" means, at any date of determination, an amount equal to Consolidated Net Income for the most recently completed Measurement Period, plus the following to the extent reducing Consolidated Net Income (without duplication):

(a) (i) Consolidated Interest Charges,

(ii) provision for taxes based on income, profits or capital gains, including foreign, federal, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations) of such Person paid or accrued during such period,

(iii) accretion, depreciation and amortization expense (excluding amortization of a prepaid cash item that was paid and not expensed in a prior period, other than in respect of licenses provided to the Company or a Restricted Subsidiary in connection with the settlement of litigation),

(iv) any non-cash charges (other than (1) amortization of a prepaid cash item that was paid and not expensed in a prior period and (2) write down of current assets) including: (a) write-downs of property, plant and equipment and other assets, (b) impairment of intangible assets, (c) losses resulting from cumulative effect of changes in accounting principles, (d) net foreign currency reevaluation of intercompany indebtedness and remeasurement losses or gains related to the balance sheet of the Company and its Restricted Subsidiaries, (e) losses on sales of accounts receivable, (f) provisions for asset retirement obligations, (g) provisions for environmental restoration and remedial action, (h) net non-cash mark-to-market charges relating to hedging arrangements, (i) unrealized losses from Hedging Agreements and unrealized losses from foreign currency transactions and (j) commercial capital expenses not included in depreciation expenses for such period; provided, that, if such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent,

(v) fees, costs, charges, commissions, operating losses, write-downs and expenses (including (A) fees, costs and expenses related to legal, financial, restructuring and other advisors, auditors and accountants, (B) printer costs and expenses, (C) U.S. Securities and Exchange Commission and other filing fees and (D) underwriting, arrangement, syndication, issuance backstop and placement premiums, discounts, fees, costs and expenses) paid, reimbursed or incurred during such period in connection with the negotiation, execution and ongoing performance of the Loan Documents, the Term Loan Documents, the Supplemental Letter of Credit Facility Documents, the Series B Preferred Stock, the Series C Preferred Stock and the Convertible Note Documents (and any Permitted Refinancing of any of the foregoing), and, in each case, any transaction (including any financing, acquisition or disposition, whether or not consummated) or litigation related thereto or contemplated by any of the foregoing, in each case, regardless of whether initially incurred by the Company or paid by the Company to reimburse others for such fees, costs and expenses,

(vi) any extraordinary expenses, charges or losses,

(vii) any non-recurring or unusual expenses, charges or losses in an amount not to exceed for any four fiscal quarter period, the greater of (A) five percent (5%) of Consolidated EBITDA for such period (calculated after giving effect to any amounts added to Consolidated EBITDA pursuant to this clause (vii) and clauses (xi) and (xii) and Section 1.07) and (B) $10,000,000,

(viii) fees, costs and expenses (including fees, costs and expenses related to (A) legal, financial and other advisors, auditors and accountants, (B) printer costs and expenses, (C) SEC and other filing fees and (D) underwriting, arrangement, syndication, backstop and placement premiums, discounts, fees, charges and expenses) of the Company and its Restricted Subsidiaries, incurred as a result of Permitted Acquisitions, Investments, Dispositions, issuance of equity interests or issuance, waiver, refinancing or amendment of Debt, in each case to the extent permitted hereunder, whether or not consummated, other than any fees paid, or costs or expenses reimbursed to any Restricted Subsidiary of the Company other than from a Person that is the Company or any of its Restricted Subsidiaries,

(ix) deferred or amortized financing fees (and any write-offs thereof) for such period,

(x) any cash expenses or losses funded during such period with payments from assets of the Kodak Retirement Income Plan as in effect on January 19, 2012,

(xi) business optimization expenses and restructuring charges and reserves for such period; provided, that, with respect to each such business optimization expense or restructuring charge or reserve pursuant to this subclause (xi), the Company shall have delivered to the Agent an officer's certificate specifying and quantifying such expense, charge or reserve and stating that such expense, charge or reserve is a business optimization expense or restructuring charge or reserve,

(xii) the amount of cost savings and synergies projected by the Company in good faith to be realized as a result of specified actions taken or expected to be taken prior to or during such period (which cost savings or synergies shall be subject only to certification by a Responsible Officer of the Company and shall be calculated on a pro forma basis as though such cost savings or synergies had been realized on the first day of the relevant period), net of the amount of actual benefits realized during such period from such actions; provided, that, (A) such cost savings or synergies are reasonably identifiable and factually supportable, and (B) such actions have been taken or are to be taken within twelve (12) months after the date of determination to take such action; provided, further, that aggregate amounts added pursuant to this subclause for any period shall not in the aggregate exceed the greater of (1) $10,000,000 or (2) five percent (5%) of the Consolidated EBITDA (calculated without giving effect to this clause or to Section 1.07(c)),

(xiii) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions or insurance in any agreement, to the extent such indemnification or insurance coverage has not been disclaimed or denied and is reasonably expected to be paid within one hundred eighty (180) days of any claim made therefor (provided, that, if such expenses are not reimbursed within such one hundred eighty (180) day period, for purposes of calculating Consolidated EBITDA for any fiscal period in which an addback pursuant to this clause (xiii) has been taken, Consolidated EBITDA shall be re-calculated going forward excluding the addback pursuant to this clause (xiii) for such period),

(xiv) any proceeds from business interruption, casualty or liability insurance received by such Person during such period, to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income,

(xv) expenses, charges and accruals for and reserves in respect of any charges, costs or expenses related to Pension Agreements, minus,

(b) without duplication and to the extent included in Consolidated Net Income for such period, the sum of (i) interest income (except to the extent deducted in determining Consolidated Interest Charges), (ii) income, profits or capital gains tax credits, (iii) other non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent it represents a reversal of an accrual or reserve for potential cash loss that was deducted and not added back to Consolidated EBITDA in any prior period) (provided, that, any cash received with respect to any non-cash items of income (other than extraordinary gains) for any prior period shall be added to the computation of Consolidated EBITDA), (iv) (A) any unusual or non-recurring income or gains not to exceed amounts that can be added back to Consolidated EBITDA pursuant to subclause (a)(vii) or (B) extraordinary income or gains, in each case including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, gains on the sale of assets outside of the ordinary course of business, (v) any other non-cash income arising from the cumulative effect of

changes in accounting principles, (vi) provision for environmental restoration and remedial actions for continuing operations added back pursuant to clause (a)(iv) of this definition to the extent actually paid in cash, (vii) income and gains in respect of Pension Agreements and (viii) cash payments in respect of Pension Agreements, made in the period for which Consolidated EBITDA is being calculated.

Notwithstanding anything herein to the contrary, the add-backs permitted under clauses (vii), (xi) and (xii) above shall not exceed seven and one-half percent (7.5%) of Consolidated EBITDA.

"Consolidated Interest Charges" means, for any Measurement Period, all interest, premium payments, debt discount, fees, charges and related expenses in connection with Debt for Borrowed Money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including all commissions, discounts and other fees and charges owed with respect to Permitted Receivables Financings, letters of credit and bankers' acceptance financing and net costs under Hedging Agreements, but excluding (a) any interest paid, directly or indirectly, to any Loan Party by the Company and its Restricted Subsidiaries, (b) any non-cash or deferred interest and financing costs (including any legal and accounting costs, fees on account of bridge, commitment and other financings, any non-cash accretion or accrual of discounted liabilities not constituting Debt, all as determined on a consolidated basis in accordance with GAAP) and (c) amortization or write-off of deferred financing fees, debt issuance costs, commissions, fees and expenses, including expenses resulting from the discounting of any outstanding Debt in connection with the application of purchase accounting and/or fresh start accounting in connection with any acquisition.

"Consolidated Net Income" means, as of any date of determination, the net income of the Company and its Restricted Subsidiaries for the most recently completed Measurement Period, all as determined on a consolidated basis in accordance with GAAP; provided, however, that there shall be excluded:

(a) the net income (or loss) of any Person that is not a Restricted Subsidiary, except to the extent of the amount of dividends, distributions or other payments actually paid in cash (or to the extent converted into cash) to the Company or any of its wholly owned Restricted Subsidiaries during such period,

(b) the income (or loss) of any Person (other than a Subsidiary of the Company) in which the Company or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Company or any Restricted Subsidiary in the form of dividends or similar distributions,

(c) the income (or loss) of any Person during such Measurement Period and accrued prior to the date it becomes a Restricted Subsidiary of the Company or any of the Company's Restricted Subsidiaries or is merged into or consolidated with the Company or any of its Restricted Subsidiaries or such Person's assets are acquired by the Company or any of its Restricted Subsidiaries (but only the portion attributable to such Person or assets prior to the dates it became or is merged or consolidated with the Company or any Restricted Subsidiary or the assets were so acquired),

(d) any after-tax effect of gains or losses attributable to Dispositions or other dispositions or transfers of assets, in each case other than in the ordinary course of business and discontinued operations or disposal of discontinued operations, as determined in good faith by the Company,

(e) effects of adjustments (including the effects of such adjustments pushed down to the Company and its Restricted Subsidiaries) in such Person's consolidated financial statements (including to property, equipment, inventory and other assets) pursuant to GAAP resulting from the application of purchase accounting in relation to the Loan Documents and the transactions contemplated thereby or any consummated acquisition or the amortization or write-off of any amounts thereof (including the impact on net income (or loss) arising from mark-to-market adjustments with respect to earn-outs), net of taxes,

(f) (i) any non-cash compensation expense recorded from grants or periodic remeasurement of stock appreciation or similar rights, stock options, restricted stock or other rights and any cash charges associated with the rollover, acceleration, or payout of capital stock by management of the Company in connection with the Initial Closing Date Transactions, the Closing Date Transactions and (ii) any costs or expenses incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement or any stock subscription agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the common equity capital of the Company,

(g) any after-tax effect of income (or loss) from the early extinguishment of obligations under Hedging Agreements or other derivative instruments, or Debt,

(h) the undistributed earnings of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation or law applicable to such Subsidiary, and

(i) accruals and reserves and gains, losses or charges with respect to, or relating to, the KPP Settlement Agreement and the completion and implementation of the transactions contemplated thereby and in relation thereto.

"Consolidated Subsidiary" means any Person whose accounts are consolidated with the accounts of the Company in accordance with GAAP.

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

"Convert", "Conversion" and "Converted" each refers to a conversion of Revolving Loans of one Type into Revolving Loans of the other Type pursuant to Section 2.08 or 2.09.

"Control Agreement" means a control agreement with (a) the financial institution, at which any Loan Party maintains a deposit account (other than an Excluded Account) pursuant to which such financial institution shall agree with such Loan Party and the Agent to comply with instructions originated by the Agent directing the disposition of funds in such deposit account without the further consent of such Loan Party, such agreement to be in form and substance reasonably satisfactory to the Agent, and (b) the applicable securities intermediary, at which any Loan Party maintains a securities account pursuant to which such securities intermediary shall agree with such Loan Party and the Agent to comply with the instructions of the Agent with respect to such securities and securities account without the further consent of such Loan Party.

"Convertible Note Debt" means the Debt of the Company and its Subsidiaries under the Convertible Note Documents.

"Convertible Note Documents" means the Convertible Notes and each other agreement, certificate, document, or instrument executed or delivered by the Company or its Subsidiaries with or in favor of the Convertible Noteholders, and any and all renewals, extensions, amendments, modifications, refinancings or restatements of any of the foregoing.

"Convertible Noteholder" means any holder of a Convertible Note.

"Convertible Notes" means 5.0% convertible promissory notes, in an aggregate original principal amount of $25,000,000, issued by the Borrower.

"Covered Entity" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning specified therefor in Section 9.22 of this Agreement.

"Debt" of any Person means (excluding the current portion of accrued liabilities in the ordinary course of business), without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (i) current accounts payable incurred in the ordinary course of business and accrued expenses and (ii) any earn-out obligations, except to the extent not paid after becoming due and payable or such obligations appear as a liability on the balance sheet of such Person in accordance with GAAP), (e) all Debt of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Debt secured thereby has been assumed, but only to the extent of such Lien, and only to the extent of the lesser of the fair market value of the property secured by the Lien and the amount of Debt, (f) all guarantees by such Person of Debt set forth in subclauses (a)-(e) and (g)-(k), (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (j) the obligations of such Person in respect of any Hedging Agreement and (k) all Disqualified Stock of such Person. The Debt of any Person shall include the Debt of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Debt provide that such Person is not liable therefor (but only for the portion so liable). For purposes of determining Debt, (x) the "principal amount" of the obligations of any Person in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if such Hedging Agreement were terminated at such time and (y) in no event shall obligations under any Hedging Agreement be deemed "Debt" for calculating any financial ratio (or component thereof).

"Debt for Borrowed Money" of any Person means all items that, in accordance with GAAP, would be classified as short term borrowings and long term debt on a Consolidated statement of financial position of such Person.

"Default" means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

"Default Interest" has the meaning specified in Section 2.07(b).

"Defaulted Amount" means, with respect to any Lender at any time, any amount required to be paid by such Lender to the Agent or any other Lender hereunder or under any other Loan Document at or prior to such time which has not been so paid as of such time, including, without limitation, any amount required to be paid by such Lender to (a) any Issuing Bank pursuant to Section 2.03(b) to purchase a participation in a Letter of Credit, (b) the Agent pursuant to Section 2.02(d) to reimburse the Agent for the amount of any Revolving Loan made by the Agent for the account of such Lender, (c) any other Lender pursuant to Section 2.15 to purchase any participation in Revolving Loans owing to such other Lender and (d) the Agent or any Issuing Bank pursuant to Section 8.05 to reimburse the Agent or such Issuing Bank for such Lender's ratable share of any amount required to be paid by the Lenders to the Agent or such Issuing Bank as provided therein. In the event that a portion of a Defaulted Amount shall be deemed paid pursuant to Section 2.19(b), the remaining portion of such Defaulted Amount shall be considered a Defaulted Amount originally required to be paid hereunder or under any other Loan Document on the same date as the Defaulted Amount so deemed paid in part.

"Defaulted Revolving Loan" means, with respect to any Lender at any time, the portion of any Revolving Loan required to be made by such Lender to Borrower pursuant to Section 2.01 or 2.02 at or prior to such time which has not been made by such Lender or by the Agent for the account of such Lender pursuant to Section 2.02(d) as of such time. In the event that a portion of a Defaulted Revolving Loan shall be deemed made pursuant to Section 2.19(a), the remaining portion of such Defaulted Revolving Loan shall be considered a Defaulted Revolving Loan originally required to be made pursuant to Section 2.01 on the same date as the Defaulted Revolving Loan so deemed made in part.

"Defaulting Lender" means, at any time, a Lender as to which the Agent has notified the Company that (i) such Lender has failed for three (3) or more Business Days to comply with its obligations under this Agreement to make a Revolving Loan or make a payment to an Issuing Bank in respect of an Issuance (each a "funding obligation"), (ii) such Lender has notified the Agent, or has stated publicly, that it will not comply with any such funding obligation hereunder, (iii) such Lender has, for three (3) or more Business Days, failed to confirm in writing to the Agent, in response to a written request of the Agent, that it will comply with its funding obligations hereunder, (iv) a Lender Insolvency Event has occurred and is continuing with respect to such Lender or (v) such Lender has, or has a direct or indirect Parent Company that has, become the subject of a Bail-In Action. Any determination that a Lender is a Defaulting Lender under clauses (i) through (v) above will be made by the Agent in its sole discretion acting in good faith. The Agent will promptly send to all parties hereto a copy of any notice to the Company provided for in this definition.

"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.

"Deposit Accounts" means any checking or other demand deposit account maintained by a Loan Party.

"Designated Guarantor" means each Guarantor with assets included in the Borrowing Base and designated on Schedule 1.01(d) hereto as a "Designated Guarantor", which Schedule may be amended by the Company from time to time by delivery of an updated Schedule (identified as such) to the Agent.

"Designated Jurisdiction" means a country or territory that is the subject of any Sanction (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

"Dilution" means, as of any date, a percentage, based upon the experience of the twelve (12) month period ending as of the last day of the immediately preceding fiscal month, which is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, profit sharing deductions or other non-cash credits with respect to a Loan Party's Accounts during such period determined consistently with the applicable Loan Party's accounting practices, by (b) such Loan Party's gross sales with respect to Accounts for such Loan Party during such period.

"Dilution Reserve" means, as of any date, an amount sufficient to reduce the advance rate against Eligible Receivables by one percentage point for each percentage point by which Dilution is in excess of five percent (5.0%).

"Disposition" or "Dispose" means the sale, transfer, exclusive license, lease or other disposition (including any sale and leaseback transaction), whether in one transaction or in a series of related transactions, of any property (including any equity interests) by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable; provided, that, for the avoidance of doubt, an issuance of equity interests is not a Disposition; provided, further, for the avoidance of doubt, that a non-exclusive license of intellectual property in the ordinary course of business shall be deemed not to be a Disposition.

"Disqualified Institution" means (a) those Persons identified to the Agent and the Lenders in writing on the Initial Closing Date, and (b) Competitors and their Affiliates that are not a Bona Fide Debt Fund identified to the Agent and the Lenders in writing (it being understood that the Company shall be permitted to supplement the list of Competitors and Affiliates in writing after the date hereof to the extent such supplemented Person becomes a Competitor (or an Affiliate of a Competitor) so long as such supplemented Person is not a Bona Fide Debt Fund). Any supplement shall be made available to the Lenders and shall become effective three (3) Business Days after delivery to the Agent. Notwithstanding anything herein to the contrary, in no event shall a supplement apply retroactively to disqualify any parties that have previously acquired an assignment or participation interest in the Revolving Loans that is otherwise permitted hereunder, but upon the effectiveness of such designation, any such party may not acquire any additional Revolving Loans or participations or other interest in Revolving Loans.

"Disqualified Stock" means any equity interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) except as set forth in the proviso hereto, matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to the 90th day after the Maturity Date, or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any equity interest referred to in clause (a) above, in each case at any time prior to the 90th day after the Maturity Date; provided, that, (i) only the portion of the equity interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; (ii) if such equity interests are issued to any plan for the benefit of employees of any company or by any such plan to such employees, such equity interests shall not constitute Disqualified Stock solely because they may be required to be repurchased by any company in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; and (iii) such equity interest may by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) become mandatorily redeemable or redeemable at the option of the holder thereof upon the occurrence of a change of control or Disposition subject to payment in full in cash of all Obligations (other than contingent indemnification obligations not then due and owing).

"Document" means a document of title, as defined in the UCC.

"Dollar" or "$" means the lawful currency of the United States.

"Domestic Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify Borrower and the Agent.

"EEA Financial Institution" means (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that 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 an EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" means with respect to the Revolving Credit Facility (a) a Lender; (b) an Affiliate or branch of a Lender; and (d) any other Person approved by (i) the Agent, (ii) each Issuing Bank and (iii) unless an Event of Default has occurred and is continuing at the time any assignment is effected in accordance with Section 9.08, the Company, in each case, such approval not to be unreasonably withheld or delayed (it being understood that a proposed assignee's status as other than a financial institution shall be a reasonable basis for the Company to withhold its consent), provided, that, (A) the Company shall be deemed to have consented to such Person if the Company has not responded within five (5) Business Days of a request for such approval and (B) no Loan Party, Affiliate of a Loan Party or any Disqualified Institution shall qualify as an Eligible Assignee.

"Eligible Equipment" means Equipment of the Borrower and the Designated Guarantors subject to the Lien of the Collateral Documents, the value of which shall be determined based upon its Net Orderly Liquidation Value. Criteria and eligibility standards used in determining Eligible Equipment may be fixed and revised from time to time by the Agent in its Permitted Discretion. Unless otherwise from time to time approved in writing by the Agent, no Equipment shall be deemed Eligible Equipment if, without duplication:

(a) any such Equipment is located on leaseholds and is subject to landlord Liens or other Liens arising by operation of law that are senior or pari passu to the Liens in favor of the Agent, unless one of the following applies: (i) the lessor has entered into a Lien Waiver or (ii) a Rent and Charges Reserve has been taken with respect to such Equipment or, in the case of any third party premises, a Rent and Charges Reserve has been taken by the Agent in the exercise of its Permitted Discretion; or

(b) such Equipment is Equipment for which appraisals have not been completed by the Agent or a qualified independent appraiser reasonably acceptable to the Agent utilizing procedures and criteria reasonably acceptable to the Agent for determining the value of such Equipment; or

(c) such Equipment is Equipment in respect of which the Collateral Documents, after giving effect to the related filings of financing statements that have then been made, if any, do not or have ceased to create a valid and perfected first priority Lien or security interest in favor of the Agent, on behalf of the Secured Parties, securing the Secured Obligations; or

(d) Borrower or a Designated Guarantor does not have good, valid and unencumbered title thereto, subject only to Liens permitted under clause (a), (b) or (e) of the definition of Permitted Liens, Liens permitted under clause (ix) of Section 5.02(a) or Liens granted pursuant to any of the Loan Documents ("Permitted Collateral Liens"); or

(e) such Equipment is motor vehicles or other rolling stock that are or are required to be subject to certificates of title under applicable state laws, except as Agent may determine in its Permitted Discretion; or

(f) Equipment that is subject to a voluntary or mandatory recall or is otherwise subject to any similar action that renders it unsaleable.

"Eligible In-Transit Inventory" means Inventory owned by Borrower or a Designated Guarantor that would be Eligible Inventory if it were not subject to a Document and in transit from a location outside of the United States to a location of Borrower or a Designated Guarantor within the United States, and that the Agent, in its Permitted Discretion, deems to be Eligible In-Transit Inventory. Without limiting the foregoing, no Inventory shall be Eligible In-Transit Inventory unless it (a) is subject to a negotiable Document showing the Agent (or, with the consent of the Agent, Borrower or a Designated Guarantor) as consignee, which Document is in the possession of the Agent or such other Person as the Agent shall approve; (b) is fully insured in a manner satisfactory to the Agent; (c) is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against the Inventory, or with respect to whom Borrower or such Designated Guarantor is in default of any obligations; (d) is subject to purchase orders and other sale documentation satisfactory to the Agent, and title has passed to Borrower or such Designated Guarantor; (e) is shipped by a common carrier that is not affiliated with the vendor and is not subject to Sanctions or any specially designated nationals list maintained by OFAC; and (f) is being handled by a customs broker, freight-forwarder or other handler that has delivered a Lien Waiver.

"Eligible Inventory" means, at the time of any determination thereof, without duplication, the Inventory Value of the Borrower and Designated Guarantors at such time that is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (p) below. Criteria and eligibility standards used in determining Eligible Inventory may be fixed and revised from time to time by the Agent in its Permitted Discretion (including, without limitation, criteria and eligibility standards to account for dispositions of Intellectual Property Collateral (as defined in the Security Agreement) that is material to the value or saleability of any Inventory). Unless otherwise from time to time approved in writing by the Agent, no Inventory shall be deemed Eligible Inventory if, without duplication:

(a) Borrower or a Designated Guarantor does not have good, valid and unencumbered title thereto, subject only to Permitted Collateral Liens; or

(b) it is not located in the United States; except for Eligible In-Transit Inventory having an aggregate Value not in excess of $5,000,000 at any time; or

(c) it is either (i) a service part in the possession of or held by field engineers or (ii) located at third party premises or (except in the case of consigned Inventory, which is covered by clause (f) below) in another location not owned by Borrower or a Designated Guarantor, and is subject to landlord or warehousemen Liens or other Liens arising by operation of law, unless one of the following applies: (A) the premises is covered by a Lien Waiver or (B) a Rent and Charges Reserve has been taken with respect to such Inventory or, in the case of any third party premises, a Reserve has been taken by the Agent in the exercise of its Permitted Discretion; or

(d) it is operating supplies, labels, packaging or shipping materials, cartons, repair parts, labels, miscellaneous spare parts and other such materials not held for sale, in each case to the extent not considered used for sale in the ordinary course of business of the Borrower and Designated Guarantors by the Agent in its Permitted Discretion from time to time; or

(e) it is not subject to a valid and perfected first priority Lien in favor of the Agent; or

(f) it is consigned at a customer, supplier, contractor or shipper location but still accounted for in the Borrower's or Designated Guarantor's inventory balance, unless (i) if such Inventory is subject to landlord or consignee Liens or other Liens arising by operation of law, then such location is the subject of a Lien Waiver, (ii) the Agent is reasonably satisfied with the controls and reporting applicable to such Inventory and (iii) the aggregate amount of such Inventory does not exceed $100,000 at any location at any time unless with the consent of the Agent; or

(g) it is Inventory that is in-transit to or from a location not leased or owned by a Borrower or Designated Guarantor other than any such in-transit Inventory (i) to Borrower or a Designated Guarantor or between Borrower and Designated Guarantors, that is physically in-transit within the United States and as to which a Reserve has been taken by the Agent if required in the exercise of its Permitted Discretion or (ii) that is Eligible In-Transit Inventory (subject to the limitations set forth in clause (b) above); or

(h) it is obsolete, slow-moving, nonconforming or unmerchantable or is identified as a write-off, overstock or excess by Borrower or a Designated Guarantor (as determined in accordance with the Company's policies which shall be substantially consistent with those in effect on the Closing Date or with such modifications requested by the Company from time to time and approved by the Agent in its Permitted Discretion), or does not otherwise conform to the representations and warranties contained in this Agreement and the other Loan Documents applicable to Inventory; or

(i) it is Inventory used as a sample or prototype, display or display item; or

(j) any Inventory that is damaged, defective or marked for return to vendor, has been deemed by Borrower or a Designated Guarantor to require rework or is being held for quality control purposes; or

(k) such Inventory does not meet all material applicable standards imposed by any Governmental Authority having regulatory authority over it; or

(l) any Inventory for which field audits and appraisals have not been completed by the Agent or a qualified independent appraiser reasonably acceptable to the Agent utilizing procedures and criteria acceptable to the Agent in its Permitted Discretion or determining the value of such Inventory; or

(m) any Inventory that has been acquired from an entity subject to Sanctions or any specially designated nationals list maintained by OFAC, or constitutes hazardous waste under any Environmental Law; or

(n) is in the possession of a warehouseman, processor, repairman, mechanic, shipper, freight forwarder or other Person, unless the lessor or such Person has delivered a Lien Waiver or an appropriate Rent and Charges Reserve has been established; or

(o) is not Inventory subject to any license or other arrangement that restricts the Borrower's or Designated Guarantors' or Agent's right to dispose of such Inventory, unless the Agent has received an appropriate Lien Waiver; or

(p) Inventory that is subject to a voluntary or mandatory recall or is otherwise subject to any similar action that renders it unsaleable.

"Eligible Receivables" means, at the time of any determination thereof, each Account of Borrower and each Designated Guarantor that satisfies the following criteria: such Account (i) has been invoiced to, and represents the bona fide amounts due to Borrower or a Designated Guarantor from, the purchaser of goods or services, in each case originated in the ordinary course of business of Borrower or such Designated Guarantor, and (ii) is not ineligible for inclusion in the calculation of the Borrowing Base pursuant to any of clauses (a) through (v) below. In determining the amount to be so included, the face amount of an Account shall be reduced by, without duplication and to the extent not included in Reserves, to the extent not reflected in such face amount: (A) the amount of all accrued and actual discounts, claims, credits or credits pending, promotional program allowances, price adjustments, finance charges or other allowances (including any amount that Borrower or a Designated Guarantor may be obligated to rebate to a customer pursuant to the terms of any written agreement or understanding), (B) the aggregate amount of all limits and deductions provided for in this definition and elsewhere in this Agreement, if any, and (C) the aggregate amount of all cash received in respect of such Account but not yet applied by Borrower or a Designated Guarantor to reduce the amount of such Account. Criteria and eligibility standards used in determining Eligible Receivables may be fixed and revised from time to time by the Agent in its Permitted Discretion. Unless otherwise approved from time to time in writing by the Agent, no Account shall be an Eligible Receivable if, without duplication:

(a) (i) Borrower or a Designated Guarantor does not have sole lawful and absolute and unencumbered title to such Account subject only to Permitted Collateral Liens, or (ii) the goods sold with respect to such Account have been sold under a purchase order or pursuant to the terms of a contract or other written agreement or understanding that indicates that any Person other than Borrower or a Designated Guarantor has or has purported to have an ownership interest in such goods; or

(b) (i) it is unpaid for more than sixty (60) days from the original due date or (ii) it arises as a result of a sale with original payment terms in excess of ninety (90) days; or

(c) more than fifty percent (50%) in face amount of all Accounts of the same Account Debtor are ineligible pursuant to clause (b) above; or

(d) the Account Debtor is insolvent or the subject of any bankruptcy or insolvency case or proceeding of any kind (other than postpetition accounts payable of an Account Debtor that is a debtor-in-possession under the Bankruptcy Law and reasonably acceptable to the Agent); or

(e) (i) the Account is not payable in Dollars or other currency approved by the Agent in its Permitted Discretion (the Agent may establish a Reserve in its Permitted Discretion with respect to any currency other than Dollars) or (ii) the Account Debtor is either not organized under the laws of the United States of America, any state thereof, or the District of Columbia, or Canada or any province or territory thereof or is located outside or has its principal place of business or substantially all of its assets outside the United States or Canada, unless such Account is supported by a letter of credit from an institution and in form and substance reasonably satisfactory to the Agent in its sole discretion; or

(f) the Account Debtor is the United States of America or any department, agency or instrumentality thereof, unless Borrower or the relevant Designated Guarantor duly assigns its rights to payment of such Account to the Agent pursuant to the Assignment of Claims Act of 1940, or similar applicable law, each as amended, which assignment and related documents and filings shall be in form and substance reasonably satisfactory to the Agent; or

(g) to the extent of any security deposit, progress payment, retainage or other similar advance made by or for the benefit of the applicable Account Debtor, that portion of the Account as to which the Borrower or applicable Designated Guarantor has received any security deposit (to the extent received from the applicable Account Debtor), progress payment, retainage or other similar advance made by or for the benefit of the applicable Account Debtor; or

(h) (i) it is not subject to a valid and perfected first priority Lien in favor of the Agent or (ii) it does not otherwise conform in all material respects to the representations and warranties contained in this Agreement and the other Loan Documents relating to such Accounts; or

(i) (i) such Account was invoiced in advance of goods being shipped or services being provided (but then only until such goods are shipped or such services are provided) or (ii) the associated revenue has not been earned; or

(j) the sale to the Account Debtor is on a bill-and-hold, guaranteed sale, sale-and-return, ship-and-return, sale on approval or consignment or other similar basis or made pursuant to any other agreement providing for repurchases or return of any merchandise which has been claimed to be defective or otherwise unsatisfactory, which shall not include customary product warranties; or

(k) the goods giving rise to such Account have not been shipped and/or title has not been transferred to the Account Debtor, or the Account represents a progress-billing or otherwise does not represent a complete sale; for purposes hereof, "progress-billing" means any invoice for goods sold or leased or services rendered under a contract or agreement pursuant to which the Account Debtor's obligation to pay such invoice is conditioned upon the completion by Borrower or a Designated Guarantor of any further performance under the contract or agreement; or

(l) it arises out of a sale made by Borrower or a Designated Guarantor to an employee, officer, agent, director, Subsidiary or Affiliate (other than an Affiliate that is a Permitted Holder or an Affiliate of a Permitted Holder (other than any of the Company or its Subsidiaries)) provided, that, such sale arises in the ordinary course of business; or

(m) such Account was not paid in full, and Borrower or a Designated Guarantor created a new receivable for the unpaid portion of the Account without the agreement of the Account Debtor, and other Accounts constituting chargebacks, debit memos and other adjustments for unauthorized deductions or put back on the aging until resolved by the credit department of the Company; or

(n) the Account Debtor (i) has or has asserted a right of set-off, offset, deduction, defense, dispute, or counterclaim against Borrower or a Designated Guarantor (unless such Account Debtor has entered into a written agreement reasonably satisfactory to the Agent to waive such set-off, offset, deduction, defense, dispute, or counterclaim rights), (ii) has disputed its liability (whether by chargeback or otherwise) or made any claim with respect to the Account or any other Account of Borrower or a Designated Guarantor which has not been resolved, in each case of clause (i) and (ii), without duplication, only to the extent of the amount of such actual or asserted right of set-off, or the amount of such dispute or claim, as the case may be or (iii) is also a creditor or supplier of Borrower or a Designated Guarantor (but only to the extent of Borrower's or such Designated Guarantor's obligations to such Account Debtor from time to time); or

(o) the Account does not comply in all material respects with the requirements of all applicable laws and regulations, whether federal, state, municipal, local or foreign including, without limitation, the Federal Consumer Credit Protection Act, Federal Truth in Lending Act and Regulation Z; or

(p) as to any Account, to the extent that (i) a check, promissory note, draft, trade acceptance or other instrument for the payment of money has been received, presented for payment and returned uncollected for any reason or (ii) such Account is otherwise classified as a note receivable and the obligation with respect thereto is evidenced by a promissory note or other debt instrument or agreement; or

(q) the Account is created in cash on delivery terms, bill-and-hold, sale or return, sale on approval, consignment, or other repurchase or return basis, or from a sale for personal, family or household purposes;

(r) 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, is not Solvent, or is subject to Sanctions or any specially designated nationals list maintained by OFAC; or the Borrower or a Designated Guarantor is not able to bring suit or enforce remedies against the Account Debtor through judicial process;

(s) the Account is evidenced by chattel paper or an instrument of any kind, or has been reduced to judgment;

(t) the amount of any net credit balances relating to such Account is unused by the Account Debtor within sixty (60) days from the date the net credit balance was created;

(u) the Account arises from transactions with customers of Borrower or a Designated Guarantor under equipment and vendor financing programs permitted pursuant to Section 5.02(i)(xv); or

(v) at all times prior to the occurrence of the KPP Account Eligibility Date, any Account which is a KPP Account.

After giving effect to the foregoing, if the aggregate amount of Eligible Receivables included in the Borrowing Base with respect to the Accounts of any Account Debtor and its Affiliates that are Account Debtors would exceed fifteen percent (15%) (or such greater percent in the case of any Account Debtor approved in writing by the Agent) of all Eligible Receivables included in the Borrowing Base before giving effect to this provision, a portion of Eligible Receivables in respect of the Accounts shall be excluded from the Borrowing Base only to the extent necessary for the foregoing thresholds not to be exceeded after giving effect to such exclusion.

"Environmental Action" means any action, suit, demand, demand letter, claim, notice of non-compliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement relating to any Environmental Law, Environmental Permit or arising from alleged injury or threat of injury to health or safety as it relates to any Hazardous Materials or the environment, including, without limitation, (a) by any governmental or regulatory authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any governmental or regulatory authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

"Environmental Law" means any federal, state, provincial, municipal, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, health, and safety as it relates to any Hazardous Materials or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

"Environmental Liability" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense or cost, contingent or otherwise (including any liability for costs of Remedial Actions, or natural resource damages, administrative oversight costs, and indemnities), of or related to the Borrower or any Subsidiary (including any predecessor for whom the Borrower or any Subsidiary bears liability contractually or by operation of law) arising under or relating to any Environmental Law, including those resulting from or based upon (a) any compliance or noncompliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment (including as related to indoor air quality) or (e) any of the foregoing for which liability is assumed or imposed by any contract or agreement.

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

"Equipment" has the meaning specified in the UCC.

"Equipment Availability" means the lesser of (a) $11,750,000 and (b) seventy percent (70%) of the Net Orderly Liquidation Value of the Eligible Equipment as reduced as provided below. Equipment Availability shall be reduced as of the first day of each calendar quarter commencing April 1, 2021 (whether or not Equipment Availability is included in the Borrowing Base on the Amendment No. 4 Effective Date) by $1,000,000. Equipment Availability may be included in the Borrowing Base on the Amendment No. 3 Effective Date or thereafter subject to the satisfaction of the conditions set forth below. Equipment Availability will be included in the Borrowing Base if on the Amendment No. 4 Effective Date the following conditions are met: the Agent has received (i) appraisals with respect to the Equipment as provided below for purposes of determining the Net Orderly Liquidation Value of such Equipment, and (ii) perfected first priority security interests and liens on the Equipment of Borrower and Designated Guarantors in favor of the Agent for the benefit of the Secured Parties (subject only to the Permitted Collateral Liens). In addition, the amount of Equipment Availability may be further permanently reduced to the extent that any appraisal of Equipment conducted by the Agent after the Amendment No. 4 Effective Date would result in a lower amount of Equipment Availability pursuant to the formula used by the Agent to calculate Equipment Availability on the Amendment No. 4 Effective Date, and subject to the sale or other disposition of any Eligible Equipment as permitted hereunder.

"ERISA" means the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means any Person that for purposes of Title IV of ERISA is a member of the controlled group of any Loan Party, or under common control with any Loan Party, within the meaning of Section 414 of the Code or Section 4001(b)(1) of ERISA.

"ERISA Event" means (a)(i) the occurrence of a Reportable Event, within the meaning of Section 4043 of ERISA (except as may occur as a result of the transactions contemplated by the KPP Settlement Agreement solely to the extent that they relate to the transactions contemplated by the KPP Settlement Agreement that shall have been consummated within fifteen (15) days of the Initial Closing Date), with respect to any Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC or (ii) the requirements of Section 4043(b) of ERISA apply with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following thirty (30) days; (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan, pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of any Loan Party or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA (except as may a occur as a result of the transactions contemplated by the KPP Settlement Agreement solely to the extent that (x) they relate to the transactions contemplated by the KPP Settlement Agreement that shall have been consummated within fifteen (15) days of the Initial Closing Date and (y) the Company and its Subsidiaries shall have no liability pursuant to Section 4062(e) following such consummation); (e) the withdrawal by any Loan Party or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Plan; (g) a determination that any Plan is in "at risk" status (within the meaning of Section 303 of ERISA); or (h) the institution by the PBGC of proceedings to terminate a Plan pursuant to Section 4042 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.

"Eurodollar Base Rate" means, with respect to any Interest Period, the rate per annum equal to LIBOR as administered by ICE Benchmark Administration (or any other person that takes over the administration of such rate) ("LIBOR"), as published by Reuters (or other commercially available source providing quotations of LIBOR as designated by the Agent from time to time) at approximately 11:00 a.m. (London time) two (2) Business Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period. If such rate is not available at such time for any reason, then the "Eurodollar Base Rate" for such Interest Period shall be the rate per annum determined by the Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Rate Revolving Loan being made, continued or converted by the Agent and with a term equivalent to such Interest Period would be offered by the Agent's London Branch to major banks in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two (2) Business Days prior to the commencement of such Interest Period. In no event shall the Eurodollar Base Rate be less than one-quarter of one percent (0.25%).

"Eurodollar Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify Borrower and the Agent.

"Eurodollar Rate" means for any Interest Period with respect to a Eurodollar Rate Revolving Loan, a rate per annum determined by the Agent pursuant to the following formula:

$$\text{Eurodollar Rate} = \frac{\text{Eurodollar Base Rate}}{1.00 - \text{Eurodollar Reserve Percentage}}$$

"Eurodollar Rate Revolving Loan" means a Revolving Loan that bears interest as provided in Section 2.07(a)(ii).

"Eurodollar Reserve Percentage" means, for any day during any Interest Period, the reserve percentage (expressed as a decimal, carried out to five decimal places) in effect on such day, whether or not applicable to any Lender, under regulations issued from time to time by the FRB for determining the maximum reserve requirement (including any emergency, supplemental or other marginal reserve requirement) with respect to Eurocurrency funding (currently referred to as "Eurocurrency Liabilities"). The Eurodollar Rate for each outstanding Eurodollar Rate Revolving Loan shall be adjusted automatically as of the effective date of any change in the Eurodollar Reserve Percentage.

"Events of Default" has the meaning specified in Section 6.01.

"Excess Availability" means, at any time, (a) the Line Cap minus (b) the Revolving Credit Facility Usage at such time.

"Excess Usage" has the meaning specified in Section 2.10(c).

"Exchange Act" has the meaning specified in the definition of "Change of Control".

"Excluded Account" means any and all of the (i) payroll, employee benefits, healthcare, escrow, fiduciary, defeasance, redemption, trust, tax and other similar accounts, (ii) "zero balance" accounts from which balances are swept daily to a Concentration Account, (iii) other accounts prohibited by applicable law from being pledged to, or having a security interest therein granted to, a third party, and (iv) other Deposit Accounts of the Loan Parties (other than Deposit Accounts and other accounts into which customer or other third party payments in respect of the Collateral are scheduled to be or regularly made) with the aggregate balance for all such accounts under this clause (iv) of less than $5,000,000.

"Excluded Subsidiary" means (a) any Immaterial Subsidiary, (b) any direct or indirect domestic Subsidiary of a direct or indirect Foreign Subsidiary, (c) any Captive Insurance Subsidiary, (d) any domestic Subsidiary that has no material assets other than equity interests in one or more CFCs (a "Qualified CFC Holding Company"), (e) any Foreign Subsidiary, (f) any direct or indirect Subsidiary of a CFC or Qualified CFC Holding Company, (g) any Unrestricted Subsidiary, (h) any Subsidiary that is prohibited by applicable law from guaranteeing the Obligations and (i) any other Subsidiary to the extent the Agent and Borrower agree that the provision of a Guaranty by such Subsidiary of the Obligations would result in a material adverse tax consequence; provided, that, notwithstanding the foregoing, any Subsidiary that provides a guarantee in respect of the Term Loan Documents, the Supplemental Letter of Credit Facility Documents or the Convertible Note Documents shall not be an Excluded Subsidiary hereunder.

"Excluded Swap Obligation" with respect to any Loan Party, means each Swap Obligation as to which, and only to the extent that, such Loan Party's guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Loan Party does not constitute an "eligible contract participant" as defined in the act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Loan Party and all

guarantees of Swap Obligations by other Loan Parties) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Loan Party.

"Existing Credit Agreement" has the meaning set forth in the recitals hereto.

"Existing Debt" has the meaning set forth in Section 5.02(d)(ii).

"Facility" means the Revolving Credit Facility and the Letter of Credit Facility.

"FATCA" means Sections 1471 through 1474 of the Code (including any amended or successor version if substantively comparable and not materially more onerous to comply with), and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that, (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Agent on such day on such transactions as determined by the Agent; provided, further, that in no event shall such rate be less than zero (0.00%).

"Fee Letters" means, collectively, (i) the Fee Letter, dated as of April 28, 2016, among the Company, the Agent and Bank of America, N.A., as an Arranger and (ii) the Supplemental Fee Letter, dated as of April 28, 2016, among the Company, the Agent and Bank of America, N.A., as an Arranger.

"Financial Officer" of any Person (other than a natural person) means the chief financial officer, president, chief executive officer, treasurer or controller or any other officer of such Person designated or authorized by any of the foregoing.

"Fixed Charge Coverage Ratio" means, as determined on the last day of any fiscal quarter, the ratio of (i) Consolidated EBITDA for the most recently completed period of four consecutive fiscal quarters ending on such date minus the aggregate amount of any unfinanced Capital Expenditures paid during such period minus income taxes paid in cash (net of refunds received but not less than zero) during such period to (ii) (A) interest payable on, and amortization of debt discount in respect of, all Debt for Borrowed Money during such period (excluding (1) additional interest in respect of the any debt securities, deferred or amortized financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees and (2) any original issue discount in respect of the Term Loan Debt, the Convertible Note Debt or any other Debt permitted hereunder); plus (B) the aggregate amount of all scheduled principal payments (other than at final maturity); plus (C) the aggregate amount of all cash dividend payments to holders of capital stock (including Disqualified Stock) of the Company (excluding any items eliminated or consolidated) on account of such capital stock; minus (D) interest income for such period, as the case may be, in each case, of the Company and its Restricted Subsidiaries on a Consolidated basis.

"Fixed Charge Coverage Ratio Trigger Event" means the failure of the Borrower to maintain Excess Availability at any time of at least the greater of (a) twelve and one-half percent (12.5%) of the Revolving Credit Facility and (b) $11,250,000; provided, that, the occurrence of a Fixed Charge Coverage Ratio Trigger Event shall be deemed continuing until Excess Availability shall have been equal to or greater than the applicable amount set forth above for thirty (30) consecutive days, at which time such Fixed Charge Coverage Ratio Trigger Event shall no longer be deemed continuing.

"Foreign Subsidiary" means any Subsidiary organized under the laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia.

"Forward-Looking Information" has the meaning specified in Section 4.01(t).

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

"FRBNY" means the Federal Reserve Bank of New York.

"Fund" means any Person (other than an individual) that is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"GAAP" has the meaning specified in Section 1.03.

"German Security Agreement" means any Collateral Document which is governed by German law.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state, local or other, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, in each case, with competent jurisdiction over such Person.

"Guaranteed Obligations" has the meaning specified in Section 7.01(a).

"Guarantors" means, collectively (a) each Subsidiary Guarantor, and (b) each Person who now or hereafter guarantees payment or performance of the whole or any part of the Obligations in accordance with Article VII or otherwise and "Guarantor" means any one of them.

"Guaranty" means the guaranty of each Guarantor set forth in Article VII.

"Guaranty Supplement" has the meaning specified in Section 7.05.

"Hazardous Materials" means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

"Hedging Agreement" means any "swap agreement" as defined in Section 101(53B)(A) of the Bankruptcy Code.

"HMRC" means Her Majesty's Revenue & Customs.

"Immaterial Subsidiary" means each Subsidiary designated by the Company to the Agent as an Immaterial Subsidiary on the Closing Date and thereafter, each Subsidiary of Company designated as an "Immaterial Subsidiary" pursuant to a certificate executed and delivered by a Responsible Officer of the Company to the Agent within sixty (60) days after the delivery of annual financial statements pursuant to Section 5.01(h)(ii) (certifying as to each of the items set forth in this definition), but not including the Company, (a) having total assets (as determined in accordance with GAAP) in an amount of seven and one-half (7.5%) percent or less of the Consolidated total assets of the Company and its Subsidiaries shown on such financial statements or (b) contributing seven and one-half (7.5%) percent or less to the Consolidated net sales of the Company and its Subsidiaries for the fiscal year most recently ended; provided, that, the total assets (as so determined) and net sales (as so determined) of all Immaterial Subsidiaries shall not exceed seven and one-half (7.5%) percent of the Consolidated total assets shown on the Consolidated financial statements of Company and its Subsidiaries, or seven and one-half (7.5%) percent of Consolidated net sales of the Company and its Subsidiaries as of the delivery of financial statements pursuant to Section 5.01(h)(ii). In the event that total assets of all Immaterial Subsidiaries exceed seven and one-half (7.5%) percent of Consolidated total assets of Company and its Subsidiaries, or the total contribution to Consolidated net sales of all Immaterial Subsidiaries exceeds seven and one-half (7.5%) percent of net sales for any such fiscal period for which financial statements have been delivered pursuant to Section 5.01(h)(ii), as the case may be, (i) the Company will designate certain Subsidiaries which shall no longer constitute Immaterial Subsidiaries and will no longer be Immaterial Subsidiaries until redesignated by the Company and (ii) to the extent not otherwise excluded as a Loan Party, shall comply with the provisions of Section 5.01(i) of this Agreement as if they were a new Subsidiary.

"Increase Date" has the meaning specified in Section 2.21(a).

"Increasing Lender" has the meaning specified in Section 2.21(c).

"Indemnified Costs" has the meaning specified in Section 8.05(a).

"Indemnified Party" has the meaning specified in Section 9.04(b).

"Initial Closing Date" means September 3, 2013.

"Initial Closing Date Transactions" means, collectively, (a) the satisfaction and termination of the DIP ABL Credit Agreement and DIP Term Loan Credit Agreement and the Liens created in connection therewith (including the Cash Collateralization or backstopping of letters of credit thereunder), (b) the execution, delivery and performance of, the Existing Credit Agreement and the other Loan Documents, (c) the consummation of the other transactions contemplated by the Chapter 11 Plan (except to the extent such transactions are waived in accordance with the terms of the Chapter 11 Plan) and the Confirmation Order and (d) all other related transactions including the payment of fees and expenses in connection therewith, it being understood that as of the Amendment No. 2 Effective Date, the only Initial Closing Date Transaction is the $14,000,000 reverse earnout payment to be made to account parties in connection with the sale of the Borrower's DI/PI business.

"Initial Issuing Banks" means each Lender (or an Affiliate thereof) with a Letter of Credit Commitment on the Closing Date.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intellectual Property" has the meaning specified in Section 4.01(i).

"Intercreditor Agreements" means collectively (a) the Term Loan Intercreditor Agreement, (b) the Supplemental Letter of Credit Facility Intercreditor Agreement, and (c) each other intercreditor agreement executed and delivered by the Agent in connection with the incurrence by the Company of Debt secured by other priority Liens in the Collateral permitted under Section 5.02(a)(ix); as such agreements may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"Interest Period" means, for each Eurodollar Rate Revolving Loan comprising part of the same Borrowing, the period commencing on the date of such Eurodollar Rate Revolving Loan or the date of the Conversion of any Base Rate Revolving Loan into such Eurodollar Rate Revolving Loan and ending on the last day of the period selected by Borrower pursuant to the provisions below and, thereafter, each subsequent period commencing on the last day of the immediately preceding Interest Period and ending on the last day of the period selected by Borrower pursuant to the provisions below. The duration of each such Interest Period shall be one (1), two (2), three (3) or six (6) months, and subject to clause (c) of this definition twelve (12) months, as Borrower may, upon notice received by the Agent not later than 11:00 a.m. (New York City time) on the third Business Day prior to the first day of such Interest Period, select; provided, however, that:

(a) Borrower may not select any Interest Period that ends after the Termination Date;

(b) Interest Periods commencing on the same date for Eurodollar Rate Revolving Loans comprising part of the same Borrowing shall be of the same duration;

(c) Borrower shall not be entitled to select an Interest Period having duration of twelve (12) months unless, by 2:00 p.m. (New York City time) on the third Business Day prior to the first day of such Interest Period, each Lender notifies the Agent that such Lender will be providing funding for such Borrowing with such Interest Period (the failure of any Lender to so respond by such time being deemed for all purposes of this Agreement as an objection by such Lender to the requested duration of such Interest Period); provided, that, if any or all of the Lenders object to the requested duration of such Interest Period, the duration of the Interest Period for such Borrowing shall be one (1), two (2), three (3) or six (6) months, as specified by Borrower in the applicable Notice of Borrowing as the desired alternative to an Interest Period of twelve months;

(d) whenever the last day of any Interest Period would otherwise occur on a day other than a Business Day, the last day of such Interest Period shall be extended to occur on the next succeeding Business Day, provided, that, if such extension would cause the last day of such Interest Period to occur in the next following calendar month, the last day of such Interest Period shall occur on the next preceding Business Day; and

(e) whenever the first day of any Interest Period occurs on a day of an initial calendar month for which there is no numerically corresponding day in the calendar month that succeeds such initial calendar month by the number of months equal to the number of months in such Interest Period, such Interest Period shall end on the last Business Day of such succeeding calendar month.

"Inventory" has the meaning specified in the UCC.

"Inventory Value" means with respect to any Inventory of Borrower or any Designated Guarantor at the time of any determination thereof, the standard cost determined on a first in first out basis and carried on the general ledger or inventory system of such Loan Party stated on a basis consistent with its current and historical accounting practices, in Dollars, determined in accordance with the standard cost method of accounting less, without duplication, (a) any markup on Inventory from an Affiliate and (b) in the event variances under the standard cost method are expensed, a Reserve reasonably determined by the Agent as appropriate in order to adjust the standard cost of Eligible Inventory to approximate actual cost.

"Investment" by any Person means any purchase, holding or acquisition (including pursuant to any merger with any other Person that was not a wholly owned Subsidiary prior to such merger) of any equity interests in or evidence of Debt or other securities (including any option, warrant or other right to acquire any of the foregoing) of, the making of or permitting to exist any loans or advances to, the guarantee of any obligations of, or the making of or permitting to exist any investment or any other interest in, any other Person, or any purchase or other acquisition of (in one transaction or a series of related transactions) any assets of any other Person constituting a business unit.

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

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

"Issuance" with respect to any Letter of Credit means the issuance, amendment, renewal or extension of such Letter of Credit.

"Issuing Bank" means an Initial Issuing Bank, any Eligible Assignee to which a portion of the Letter of Credit Commitment hereunder has been assigned pursuant to Section 9.08 or any other Lender (or an Affiliate thereof) so long as such Eligible Assignee or Lender (or Affiliate thereof) expressly agrees to perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as an Issuing Bank and notifies the Agent of its Applicable Lending Office (which information shall be recorded by the Agent in the Register), for so long as such Initial Issuing Bank, Eligible Assignee or Lender (or Affiliate thereof), as the case may be, shall have a Letter of Credit Commitment.

"KPP Accounts" means all Accounts owing to Borrower or any Designated Guarantor by KPP Holdco Limited or any of its direct or indirect Subsidiaries.

"KPP Account Eligibility Date" means the earlier of (a) the date that Agent and Borrower agree that KPP Accounts shall not be excluded from the definition of Eligible Receivables solely because they are KPP Accounts or (b) Borrower has certified to Agent for the benefit of Agent and the Secured Parties that the Tolling Agreements (as defined in the Stock and Asset Purchase Agreement) have been terminated (other than pursuant to an event of default thereunder) pursuant to the KPP Settlement Agreement.

"KPP Global Settlement" has the meaning specified in the Chapter 11 Plan.

"KPP Settlement Agreement" means (a) the Stock and Asset Purchase Agreement; (b) the Settlement Agreement, among the Borrower, Kodak Limited, KPP Trustees Limited, Kodak International Finance Limited and Kodak Polychrome Graphics Finance UK Limited, each dated April 26, 2013; and (c) any related contract, agreement, deed and undertaking described in either of the foregoing to the extent entered into in conjunction with the consummation of the transactions and agreements contemplated therein; provided, that, the documents set forth in clauses (a) through (b) may be modified or amended from time to time, which agreements implement the KPP Global Settlement.

"L/C Cash Deposit Account" means an interest bearing cash deposit account to be established and maintained by the Agent, over which the Agent, as provided in Section 6.02, shall have sole dominion and control, upon terms as may be satisfactory to the Agent.

"L/C Related Documents" has the meaning specified in Section 2.06(a).

"Lease" means any agreement pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

"Lender Appointment Period" has the meaning specified in Section 8.07(a).

"Lender Insolvency Event" means that (i) a Lender or its Parent Company is insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, or (ii) such Lender or its Parent Company is the subject of a bankruptcy, insolvency, reorganization, liquidation, winding up or similar proceeding, or a receiver, interim receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its Parent Company, or such Lender or its Parent Company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment.

"Lenders" has the meaning in the introductory paragraph hereto, and shall include each Assuming Lender that shall become a party hereto pursuant to Section 2.21, each Issuing Bank and each Person that shall become a party hereto pursuant to Section 9.08.

"Letter of Credit" means any standby letter of credit or commercial letter of credit issued under the Letter of Credit Facility

"Letter of Credit Agreement" has the meaning specified in Section 2.03(a).

"Letter of Credit Commitment" means, with respect to each Issuing Bank, the obligation of such Issuing Bank to issue Letters of Credit for the account of the Company and its Subsidiaries in (a) the amount set forth opposite such Issuing Bank's name on Schedule I hereto under the caption "Letter of Credit Commitment" or (b) if such Issuing Bank has entered into one or more Assignment and Acceptances or is a Lender that has become an Issuing Bank after the Closing Date in accordance with the definition of "Issuing Bank", the amount set forth for such Issuing Bank in the Register maintained by the Agent pursuant to Section 9.08(e) as such Issuing Bank's "Letter of Credit Commitment", in each case as such amount may be reduced prior to such time pursuant to Section 2.05, and in any event shall not be more than the amount of the Letter of Credit Facility.

"Letter of Credit Facility" means, at any time, an amount equal to the lesser of (a) $90,000,000 and (b) the aggregate amount of the Revolving Credit Commitments, as such amount may be reduced at or prior to such time pursuant to Section 2.05.

"Letter of Credit Fee Rate" means four percent (4.00%) per annum; provided, that, on and after the first Adjustment Date after the Amendment No. 4 Effective Date, the Letter of Credit Fee Rate will be the rate per annum as determined pursuant to the pricing grid below based upon the average daily Excess Availability for the most recently ended fiscal quarter immediately preceding such Adjustment Date:

Tier	Average Daily Excess Availability	Letter of Credit Fee Rate
I	Greater than 67% of the Revolving Credit Facility	3.50%
II	Equal to or greater than 33% of the Revolving Credit Facility but less than or equal to 67% of the Revolving Credit Facility	3.75%
III	Less than 33% of the Revolving Credit Facility	4.00%

Any change in the Letter of Credit Fee Rate resulting from changes in average daily Excess Availability shall become effective on the Adjustment Date; provided, that, the first Adjustment Date after the Amendment No. 4 Effective Date shall occur on the first day of the calendar month following the second full fiscal quarter after the Amendment No. 4 Effective Date. If the Agent is unable to calculate average daily Excess Availability for a fiscal quarter due to Borrower's failure to deliver any Borrowing Base Certificate when required hereunder, then, at the option of the Agent or the Required Lenders, the Letter of Credit Fee Rate shall be determined as if Tier III (rather than the Tier applicable for the prior period) were applicable until the first day of the calendar month following the receipt of the applicable Borrowing Base Certificate.

In the event that at any time after the end of a fiscal quarter it is discovered that the average daily Excess Availability for such fiscal quarter used for the determination of the Letter of Credit Fee Rate was less than the actual amount of the average daily Excess Availability for such fiscal quarter used to calculate the Letter of Credit Fee Rate, the Letter of Credit Fee Rate for such prior fiscal quarter shall be adjusted to the applicable percentage based on such actual average daily Excess Availability for such fiscal quarter and any additional commission for the applicable period payable as a result of such recalculation shall be promptly paid to the Lenders.

"Letter of Credit Obligations" means, at any time, the sum of (i) the Available Amount of all Letters of Credit issued and outstanding and, without duplication, (ii) the aggregate amount of all amounts drawn under Letters of Credit that have not been reimbursed by the Company or converted to Revolving Loans.

"LIBOR" has the meaning specified in the definition of "Eurodollar Base Rate".

"LIBOR Replacement Date" has the meaning specified in Section 2.26.

"LIBOR Screen Rate" means the LIBOR quote on the applicable screen page that Agent designates to determine LIBOR (or such other commercially available source providing such quotations as designated by Agent from time to time).

"LIBOR Successor Rate" has the meaning specified in Section 2.26.

"LIBOR Successor Rate Conforming Changes" means with respect to any proposed LIBOR Successor Rate, any conforming changes to this Agreement, including changes to Base Rate, Eurodollar Base Rate, Interest Period, timing and frequency of determining rates and payments of interest, and other technical, administrative or operational matters (including, for the avoidance of doubt, the definition of Business Day, timing of borrowing requests or prepayment, conversion or continuation notices, and length of look-back periods) as may be appropriate, in Agent's discretion, to reflect the adoption and implementation of such LIBOR Successor Rate and to permit its administration by Agent in a manner substantially consistent with market practice (or, if Agent determines that adoption of any portion of such market practice is not administratively feasible or that no market practice for the administration of such LIBOR Successor Rate exists, in such other manner of administration as Agent determines is reasonably necessary in connection with administration of this Agreement or any other Loan Document).

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any lease having substantially the same economic effect as any of the foregoing) relating to such asset; provided, that, in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien; provided, further, that Liens shall not include any license, sublicense, release, immunity or covenant not to sue or with respect to intellectual property (including any Intellectual Property).

"Lien Waiver" means a customary agreement, in form and substance reasonably satisfactory to the Agent, by which (a) for any ABL Priority Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the ABL Priority Collateral, and agrees to permit the Agent to enter upon the premises and remove the ABL Priority Collateral or to use the premises to store or Dispose of the ABL Priority Collateral; (b) for any ABL Priority Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the ABL Priority Collateral, agrees to hold any Documents in its possession relating to the ABL Priority Collateral as agent for the Agent, and agrees to deliver the ABL Priority Collateral to the Agent upon request; (c) for any ABL Priority Collateral held by a repairman, mechanic or bailee, such Person acknowledges the Agent's Lien, waives or subordinates any Lien it may have on the ABL Priority Collateral, and agrees to deliver the ABL Priority Collateral to the Agent upon request; and (d) for any ABL Priority Collateral subject to a licensor's Intellectual Property rights, the licensor grants to the Agent the right, vis-à-vis such licensor, to enforce the Agent's Liens with respect to the ABL Priority Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under the applicable license.

"Line Cap" means, at any time, the lesser of (a) the Borrowing Base and (b) the aggregate Revolving Credit Commitments of all Lenders.

"Liquidation" means the exercise by the Agent of those rights and remedies accorded to the Agent under the Loan Documents and applicable laws as a creditor of the Loan Parties with respect to the realization of the Collateral, including (after the occurrence and during the continuation of an Event of Default) the conduct by the Loan Parties acting with the consent of the Agent, of any public, private or other similar sale or other Disposition of the Collateral for the purpose of liquidating the Collateral.

"Loan Documents" means (a) this Agreement, (b) the Notes, (c) Collateral Documents, (d) all Intercreditor Agreements, and (e) each Letter of Credit Agreement, and each other document and instrument delivered in connection herewith on or after the Initial Closing Date, in each case as amended, restated, supplemented or otherwise modified from time to time; provided, that, no Bank Product Agreement is a Loan Document.

"Loan Parties" means Borrower and Guarantors.

"Loan Party Materials" has the meaning specified in Section 5.01(h).

"Loan Value" means, at any time of determination, an amount (calculated based on the most recent Borrowing Base Certificate delivered to the Agent in accordance with this Agreement) equal to (a) with respect to Eligible Receivables of Borrower and Designated Guarantors, eighty-five percent (85%) of the Value of Eligible Receivables less the applicable Dilution Reserve plus (b) with respect to Eligible Inventory of Borrower and Designated Guarantors, the lesser of (i) seventy-five percent (75%) of the Value of Eligible Inventory and (ii) eighty-five percent (85%) of the Net Orderly Liquidation Value of Eligible Inventory (based on the then most recent independent inventory appraisal) on any date of determination plus (c) Equipment Availability.

"Margin Stock" has the meaning specified in Regulation U of the Board of Governors.

"Market Disruption Event" has the meaning specified in Section 2.08(b).

"Material Adverse Effect" means a material adverse effect on (a) the business, condition (financial or otherwise), operations, performance or properties of the Company and its Consolidated Subsidiaries taken as a whole, (b) the rights and remedies of the Agent or any Lender under any Loan Document or (c) the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party.

"Material First-Tier Foreign Subsidiary" means any Foreign Subsidiary or Qualified CFC Holding Company that is owned directly by or on behalf of the Borrower or any Guarantor and is not an Immaterial Subsidiary.

"Material Subsidiary" means any Restricted Subsidiary other than an Immaterial Subsidiary.

"Maturity Date" means the earliest of: (a) February 26, 2024, (b) the termination of the Supplemental Letter of Credit Facility (or any Permitted Refinancing thereof), (c) the date that is ninety-one (91) days prior to the final maturity date under the Term Loan Agreement (or any Permitted Refinancing thereof), (d) the date that is ninety-one (91) days prior to the final maturity under the Convertible Note Documents (or any Permitted Refinancing thereof), (e) the date that is ninety-one (91) days prior to the date required for the redemption of the Series B Preferred Stock, or (f) the date that is ninety-one (91) days prior to the date required for the redemption of the Series C Preferred Stock.

"Maximum Rate" has the meaning specified in Section 2.08(i).

"Measurement Period" means, at any date of determination, the most recently completed four fiscal quarters for which financial statements have been delivered or are required to be delivered (or, with respect to determinations to be made prior to the delivery of the first set of financial statements, the most recently completed four fiscal quarters ended at least thirty (30) days prior to the Closing Date).

"Minimum Liquidity" means unrestricted cash and Cash Equivalents of the Loan Parties in one or more deposit accounts or securities accounts in the United States, in each case, that is subject to a Control Agreement.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five (5) plan years made or accrued an obligation to make contributions.

"Multiple Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and at least one Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

"Net Cash Proceeds" means, with respect to any event (a) the cash proceeds actually received in respect of such event including (i) any cash received in respect of any non-cash proceeds, but only as and when received, (ii) in the case of a casualty, insurance proceeds, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, in each case net of (b) the sum of (i) all costs, fees and out-of-pocket fees, commissions, charges and expenses (including fees, costs and expenses related to appraisals, surveys, brokerage, finder, underwriting, arranging, legal, investment banking, placement, printing, auditor, accounting, title, environmental (including remedial expenses), title exceptions and encumbrances, and finder's fees, success fees or similar fees and commissions) paid or payable by the Borrower and the Restricted Subsidiaries to third parties (other than Affiliates) in connection with such event, (ii) in the case of a Disposition of an asset (including pursuant to a casualty or a condemnation or similar proceeding), the amount of all payments required to be made (or required to be escrowed) by the Borrower and the Restricted Subsidiaries as a result of such event to repay (or establish an escrow, trust, defeasance, discharge or redemption account or similar arrangement for the repayment of) Debt (other than the Obligations) secured by a Lien prior to the Lien of the Collateral Agent on such asset (provided, that, if any amounts in such accounts or subject to such agreements are released to the Borrower and its Restricted Subsidiaries, such amounts shall constitute Net Cash Proceeds upon release), (iii) the amount of all taxes (including transfer tax and recording tax) paid (or reasonably estimated to be payable) by the Borrower and the Restricted Subsidiaries, and the amount of any reserves established by the Borrower and the Restricted Subsidiaries to fund contingent liabilities reasonably estimated to be payable, and that are directly attributable to such event (as determined reasonably and in good faith by the chief financial officer or other Financial Officer of the Borrower), (iv) in respect of any casualty or condemnation, any amounts paid to the Borrower or any Restricted Subsidiary related to the casualty or condemnation, and (v) all other amounts deposited in trust or escrow or paid for the benefit of any third party or to which any third party may be entitled in connection with such event, provided, that, any such amounts returned to the Borrower or any Restricted Subsidiary shall constitute Net Cash Proceeds when actually received. All amounts received under the KPP Settlement Agreement and the transactions contemplated thereby and in relation thereto shall be deemed not to be Net Cash Proceeds.

"Net Orderly Liquidation Value" means, with respect to Eligible Equipment and Eligible Inventory, as the case may be, the orderly liquidation value with respect to such Equipment or Inventory, net of expenses estimated to be incurred in connection with such liquidation, based on the most recent third party appraisal by an independent appraisal firm reasonably satisfactory to the Agent (and prior to an Event of Default selected in consultation with the Company).

"Non-Consenting Lenders" has the meaning set forth in the introductory paragraphs.

"Non-Defaulting Lender" means, at any time, a Lender that is not a Defaulting Lender or a Potential Defaulting Lender.

"Non-Extension Notice Date" has the meaning specified in Section 2.03(a).

"Note" means a promissory note of the Borrower payable to the order of any Lender, delivered pursuant to a request made under Section 2.16 in substantially the form of Exhibit A hereto, or such other form agreed to by the Agent, in each case, evidencing the aggregate indebtedness of the Borrower to such Lender resulting from the Revolving Loans made by such Lender.

"Notice of Borrowing" has the meaning specified in Section 2.02(a).

"Notice of Issuance" has the meaning specified in Section 2.03(a).

"Obligations" means all liabilities and obligations of every nature of each Loan Party from time to time owed to the Agent, the Lenders, the other Secured Parties or any of them under (a) the Loan Documents, and (b) all Bank Product Obligations, whether for principal, interest (including interest which, but for the filing of a petition or other proceeding in an Insolvency Proceeding with respect to such Loan Party, would have accrued on any Obligation, whether or not a claim is allowed against such Loan Party for such interest in the related bankruptcy or Insolvency Proceeding), fees, expenses, indemnification or otherwise and whether primary, secondary, direct, indirect, contingent, fixed or otherwise; provided, that, Obligations of a Loan Party shall not include its Excluded Swap Obligations.

"OFAC" means Office of Foreign Assets Control of the U.S. Treasury Department.

"Other Taxes" has the meaning specified in Section 2.14(b).

"Overadvance" has the meaning set forth in Section 2.01(c).

"Overadvance Loan" means a Base Rate Revolving Loan made when an Overadvance exists or is caused by the funding thereof.

"Parallel Debt" has the meaning specified in Section 8.14(a).

"Parent Company" means, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

"Participant Register" has the meaning specified in Section 9.08(i).

"PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001.

"PBGC" means the Pension Benefit Guaranty Corporation (or any successor).

"Pension Agreements" means defined benefit pension plans and defined benefit postretirement plans as defined by Accounting Standards Codification 715, Compensation—Retirement Benefits.

"Permitted Acquisition" means any Acquisition as long as (a) no Default exists or is caused thereby; (b) such acquisition was not preceded by an unsolicited tender offer for such equity interests by, or proxy contest initiated by, the Company or any Subsidiary; (c) the assets, business or Person being acquired are useful or engaged in the business of the Company and Subsidiaries or the acquired entity, line of business or businesses acquired is engaged in a Related Business; (c) no Debt or Liens are assumed or incurred, except for Debt permitted to be incurred pursuant to Section 5.02(d) or

Liens permitted pursuant to Section 5.02(a); (d) upon giving pro forma effect thereto, Excess Availability is at least the amount equal to twenty percent (20%) of the Revolving Credit Facility for the thirty (30) days preceding and as of the date of the Acquisition; (e) the Fixed Charge Coverage Ratio determined on a pro forma basis giving effect to the Acquisition, is not less than 1.00 to 1.00; and (f) the Borrower delivers to Agent, at least five (5) Business Days prior to the consummation of such Acquisition, copies of all material agreements relating thereto and a certificate, in form and substance satisfactory to Agent, stating that the Acquisition is a "Permitted Acquisition" and demonstrating compliance with the foregoing requirements. Notwithstanding the foregoing, if, as of the date of any Acquisition, the Excess Availability at any time during the preceding thirty (30) consecutive day period and as of the date of such Acquisition shall have been not less than thirty percent (30%) of the Revolving Credit Facility, and after giving effect to such Acquisition on a pro forma basis using the most recent calculation of the Borrowing Base, as of the date of such Acquisition and at any time during the thirty (30) consecutive day period immediately preceding such Acquisition, the Excess Availability would have been not less than thirty percent (30%) of the Revolving Credit Facility, satisfaction of the Fixed Charge Coverage Ratio test described in subclause (e) shall not be required with respect to such Acquisition.

"Permitted Collateral Liens" has the meaning specified in the definition of "Eligible Equipment".

"Permitted Discretion" means a determination made in the exercise, in good faith, of reasonable business judgment (from the perspective of a secured, asset-based lender). Prior to the occurrence of any Default, the establishment or increase of any Reserve shall be limited to such Reserves as the Agent may from time to time determine in its Permitted Discretion following consultation with the Company as being appropriate.

"Permitted Holders" means any person or group of persons which includes any of Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited, Deseret Mutual Pension Trust, George Karfunkel, Renee Karfunkel, George Karfunkel Family LLC, Congregation Chemdas Yisroel, Chesed Foundation of America, Marneu Holding Company, Moses Marx, Phillippe Katz, K.F. Investors LLC, United Equities Commodities Company, Momar Corporation, 111 John Realty Corporation and any Lender and any Affiliate of any of the foregoing; provided that (a) a group consisting of Permitted Holders may include any person that forms a group with the persons set forth above and (b) after giving effect to the acquisition of Voting Stock by such person, the persons listed above beneficially own in the aggregate, directly or indirectly, a majority of the aggregate ordinary voting power of all persons in such group.

"Permitted Liens" means:

(a) Liens imposed by law for taxes, assessments and governmental charges or claims that are not yet due or that are being contested in good faith by appropriate proceedings, provided, that, adequate reserves with respect thereto are maintained on the books of the Company or its Subsidiaries, as the case may be, in conformity with GAAP;

(b) carriers', landlord's, warehousemen's, mechanics', materialmen's, brokers', suppliers' and repairmen's liens, statutory liens of banks and rights of setoff and other Liens, in each case, imposed by law (other than obligations imposed pursuant to Section 303(k) or 4068 of ERISA or Section 430(k) of the Code), arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in compliance with Section 5.01(b);

(c) pledges or deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, healthcare and other social security laws or regulations;

(d) (i) Liens on cash, pledges and deposits of cash to secure the performance of bids, tenders, trade contracts or leases, (ii) deposits of cash to secure public or statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature or deposits as security for contested taxes or import duties or for the payment of rent, in each case in the ordinary course of business and (iii) utility deposits made in the ordinary course of business;

(e) judgment Liens in respect of judgments that do not constitute an Event of Default under Section 6.01(f);

(f) leases or subleases granted to others in the ordinary course of business, survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, gas lines, water, cable, television, telegraph and telephone lines and other similar purposes, zoning restrictions, or other restrictions as to the use of real properties or Liens incidental, to the conduct of the business or to the ownership of its properties which were not incurred in connection with Debt and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of the Company or the Restricted Subsidiaries;

(g) encumbrances on assets disposed or to be disposed in a disposition permitted by Section 5.02(e) or created by an agreement(s) providing for such permitted disposition;

(h) any (i) reversionary interest or title of lessor or sublessor under any lease, (ii) Lien, easement, restriction or encumbrance to which the interest or title of such lessor or sublessor may be subject, (iii) subordination of the interest of the lessee or sublessees under such lease to any Lien, restriction or encumbrance referred to in the preceding clause (ii), (iv) lease or sublease of real property granted to others in the ordinary course of business, (v) license, sublicense, release, immunity or covenant not to sue with respect to intellectual property granted to others in the ordinary course of business or in connection with the settlement of any litigation, threatened litigation or other dispute, or (vi) license, sublicense, release, immunity or covenant not to sue encumbering intellectual property acquired by any Loan Party;

(i) Liens arising from filing UCC financing statements for "informational purposes only" relating solely to the leased asset or consignments or operating leases entered into by any Loan Party in the ordinary course of business; and

(j) Environmental and zoning laws, ordinances and regulations, now or hereafter in effect relating to real property and the ownership, use, development of and the right to operate or maintain such property.

"Permitted Receivables Documents" means all documents and agreements evidencing, relating to or otherwise governing a Permitted Receivables Financing.

"Permitted Receivables Financing" means one or more transactions by any Foreign Subsidiary pursuant to which such Foreign Subsidiary may sell, convey or otherwise transfer to one or more Special Purpose Receivables Subsidiaries or to any other person, or may grant a security interest in, any Receivables Assets (whether now existing or arising in the future) of such Foreign Subsidiary, and any assets related thereto including all contracts and all guarantees or other obligations in respect of such

Receivables Assets, the proceeds of such Receivables Assets and other assets which are customarily transferred, or in respect of which security interests are customarily granted, in connection with sales, factoring or securitizations involving Receivables Assets; provided, that, (a) recourse to the Foreign Subsidiaries (other than the Special Purpose Receivables Subsidiary) in connection with such transactions shall be limited to the extent customary for similar transactions in the applicable jurisdictions (including, to the extent applicable, in a manner consistent with the delivery of a "true sale"/"absolute transfer" opinion with respect to any transfer by any Foreign Subsidiary (other than a Special Purpose Receivables Subsidiary)) and (b) the aggregate Receivables Net Investment shall not exceed $25,000,000 at any time.

"Permitted Refinancing" means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement, exchange or extension of any Debt of such Person; provided, that, (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Debt so modified, refinanced, refunded, renewed, replaced, exchanged or extended except by an amount equal to accrued and unpaid interest and a reasonable premium thereon plus other reasonable and customary amounts paid, and customary fees and expenses reasonably incurred (including underwriting, arrangement or placement fees, discounts and commissions), in connection with such modification, refinancing, refunding, renewal, replacement, exchange or extension and by an amount equal to any existing commitments unutilized thereunder; (b) such modification, refinancing, refunding, renewal, replacement, exchange or extension (i) 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, exchanged or extended and (ii) has no scheduled amortization or payments of principal prior to ninety-one (91) days after the Termination Date or, if the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended is subject to scheduled amortization or payments of principal, prior to any such currently scheduled amortization or payments of principal; (c) if the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement, exchange or extension is subordinated in right of payment to the Obligations on terms as favorable in all material respects to the Lenders as those contained in the documentation governing the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended; (d) the terms and conditions (including, if applicable, as to collateral) of any such modified, refinanced, refunded, renewed, replaced, exchanged or extended Debt are, either (i) customary for similar debt securities or bank financings in light of then-prevailing market conditions (it being understood that such Debt shall not include any financial maintenance covenants unless such financial covenant is added to this Agreement for the benefit of Lenders or does not take effect until after the Maturity Date and that any negative covenants shall be incurrence-based) or (ii) not materially less favorable to the Loan Parties or the Lenders, taken as a whole, than the terms and conditions of the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended (provided, that, a certificate of a Responsible Officer of the Company delivered to the Agent in good faith at least five (5) Business Days prior to the incurrence of such Debt, together with a reasonably detailed description of the material terms and conditions of such Debt or drafts of the documentation relating thereto, stating that the Company has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (d), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Agent provides notice to the Company of its objection during such five (5) Business Day period); (e) any such modification, refinancing, refunding, renewal, replacement, exchange or extension is incurred by the Person who is the obligor or guarantor, or a successor to the obligor or guarantor, on the Debt being modified, refinanced, refunded, renewed, replaced or extended unless otherwise permitted hereunder; (f) any such modification, refinancing, refunding, renewal, replacement, exchange or extension of the Term Loan Agreement shall be subject to (and the holders of, and agents and/or trustees in respect of, any such Debt shall be bound by) the Term Loan Intercreditor Agreement; (g) any such modification, refinancing, refunding, renewal, replacement, exchange or extension of the Supplemental Letter of Credit Facility Agreement shall be subject to (and the holders of, and agents and/or trustees in respect of, any such Debt shall be bound by) the Supplemental Letter of Credit Facility Intercreditor Agreement; and (h) at the time of entry into such Agreement, no Event of Default shall have occurred and be continuing.

"Person" means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited or unlimited liability company or other entity, or a government or any political subdivision or agency thereof.

"Plan" means a Single Employer Plan or a Multiple Employer Plan.

"Platform" has the meaning specified in Section 5.01(h).

"Post-Petition Interest" has the meaning specified in Section 7.06(b).

"Potential Defaulting Lender" means, at any time, a Lender (i) as to which the Agent has notified the Company that an event of the kind referred to in the definition of "Lender Insolvency Event" has occurred and is continuing in respect of any financial institution affiliate of such Lender, (ii) as to which the Agent or the Issuing Banks have in good faith reasonably determined and notified the Company that such Lender or its Parent Company or a financial institution affiliate thereof has notified the Agent, or has stated publicly, that it will not comply with its funding obligations under any other loan agreement or credit agreement or other similar/other financing agreement or (iii) that has, or whose Parent Company has, a rating for any class of its long-term senior unsecured debt lower than BBB- by S&P and Baa3 by Moody's. Any determination that a Lender is a Potential Defaulting Lender under any of clauses (i) through (iii) above will be made by the Agent or, in the case of clause (ii), the Issuing Banks, as the case may be, in their sole discretion acting in good faith and upon consultation with the Company. The Agent will promptly send to all parties hereto a copy of any notice to the Company provided for in this definition.

"Pre-Adjustment Successor Rate" has the meaning specified in Section 2.26.

"Primary Currency" has the meaning specified in Section 9.17(b).

"Projections" has the meaning specified in Section 5.01(h)(viii).

"Protective Revolving Loan" has the meaning specified in Section 2.01(d).

"Public Lender" has the meaning specified in Section 5.01(h).

"Purchasers" has the meaning specified in the definition of "Series A Preferred Stock Issuance."

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

"QFC Credit Support" has the meaning specified therefor in Section 9.22 of this Agreement.

"Qualified ECP" means a Loan Party with total assets exceeding $10,000,000, or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of such act.

"Ratable Share" of any amount means, with respect to any Lender at any time, the product of such amount times a fraction the numerator of which is the amount of such Lender's Revolving Credit Commitment at such time (or, if the Revolving Credit Commitments shall have been terminated pursuant to Section 2.05 or 6.01, such Lender's Revolving Credit Commitment as in effect immediately prior to such termination) and the denominator of which is the aggregate amount of all Revolving Credit Commitments at such time (or, if the Revolving Credit Commitments shall have been terminated pursuant to Section 2.05 or 6.01, the aggregate amount of all Revolving Credit Commitments as in effect immediately prior to such termination).

"Real Estate" means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all Leases, tenancies, and occupancies thereof.

"Receivables Assets" means accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by the Company or any Subsidiary.

"Receivables Net Investment" means the aggregate cash amount paid by the lenders or purchasers under any Permitted Receivables Financing in connection with their purchase of, or the making of loans secured by, Receivables Assets or interests therein, as the same may be reduced from time to time by collections with respect to such Receivables Assets or otherwise in accordance with the terms of the Permitted Receivables Documents; provided, however, that, if all or any part of such Receivables Net Investment shall have been reduced by application of any distribution and thereafter such distribution is rescinded or must otherwise be returned for any reason, such Receivables Net Investment shall be increased by the amount of such distribution, all as though such distribution had not been made.

"Received Amount" has the meaning specified in Section 8.14(d).

"Register" has the meaning specified in Section 9.08(e).

"Related Adjustment" means, in determining any LIBOR Successor Rate, the first relevant available alternative set forth in the order below that can be determined by Agent applicable to such LIBOR Successor Rate: (a) the spread adjustment, or method for calculating or determining such spread adjustment, that has been selected or recommended by the Relevant Governmental Body for the relevant Pre-Adjustment Successor Rate (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto) and which adjustment or method (i) is published on an information service selected by Agent from time to time in its discretion, or (ii) solely with respect to Term SOFR, if not currently published, which was previously so recommended for Term SOFR and published on an information service acceptable to Agent; or (b) the spread adjustment that would apply (or has previously been applied) to the fallback rate for a derivative transaction referencing the ISDA Definitions (taking into account the interest period, interest payment date or payment period for interest calculated and/or tenor thereto).

"Related Business" means any business which is the same as or related, ancillary or complementary to, or a reasonable extension or expansion of, any of the businesses of the Company and its Restricted Subsidiaries on the Closing Date.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents, trustees, partners and advisors of such Person and such Person's Affiliates.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), including the migration of any Hazardous Material through the air, soil, surface water or groundwater.

"Remedial Action" means (a) all actions taken under any Environmental Law to (i) clean up, remove, remediate, contain, treat, monitor, assess or evaluate Hazardous Materials present in, or threatened to be Released into, the environment, (ii) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities or (b) any response actions authorized by 42 U.S.C. 9601 et seq. or analogous state law.

"Rent and Charges Reserve" means reserves in such amounts as the Agent, may elect to impose in its Permitted Discretion from time to time in respect of all past due rent and other amounts owing by any Loan Party to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who (a) possesses any ABL Priority Collateral or (b) could assert a Lien on any ABL Priority Collateral; provided, that, with respect to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker or other Person who possesses any ABL Priority Collateral or could assert a Lien on any ABL Priority Collateral, a reserve equal to three (3) months' rent at such location and such other reserve amounts that may be determined by the Agent in its Permitted Discretion.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Plan, other than (a) those events as to which notice is waived pursuant to 29 C.F.R. Section 4043 as in effect on the date hereof (no matter how such notice requirement may be changed in the future) or (b) except as may occur as a result of the transactions contemplated by the KPP Settlement Agreement so long as the Borrower and its Subsidiaries have no liability with respect thereto and only with respect to the portion of the transactions contemplated by the KPP Settlement Agreement that have not been consummated as of the Initial Closing Date.

"Required Lenders" means at any time Lenders owed at least a majority in interest of the sum of (a) the then aggregate unpaid principal amount of the Revolving Loans outstanding at such time, (b) the aggregate Unused Revolving Credit Commitments at such time and (c) the aggregate Letter of Credit Obligations at such time (with the aggregate amount of each Lender's risk participation and funded participation in Letter of Credit Obligations being deemed held by such Lender for purposes of this definition); provided, that, (i) if any Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of Required Lenders at such time (for the avoidance of doubt such exclusion shall apply to both the numerator and denominator (A) the aggregate principal amount of the Revolving Loans owing to such Lender (in its capacity as a Lender) and outstanding at such time, (B) the Unused Revolving Credit Commitment of such Lender at such time and (C) the Letter of Credit Obligations held or deemed held by such Lender at such time and (ii) at any time there are two or more Lenders (who are not Affiliates of one another or Defaulting Lenders), "Required Lenders" must include at least two Lenders (who are not Affiliates of one another).

"Reserves" means, at any time of determination and without duplication, the sum of (a) any Rent and Charges Reserves, (b) the Bank Product Reserve, in effect from time to time, (c) a reserve established from time to time by Agent in its Permitted Discretion following consultation with the Company to reflect the additional costs (including labor and overhead) in connection with the conversion of WIP to finished goods, as determined by Agent in good faith, and (d) such additional reserves, in such amounts and with respect to such matters, as the Agent in its Permitted Discretion may elect to impose from time to time.

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

"Responsible Officer" means the chief executive officer, president, chief financial officer, general counsel, executive vice president, secretary, assistant secretary, treasurer, assistant treasurer or controller (or any affiliate or subsidiary party the foregoing) of a Loan Party. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" has the meaning specified in Section 5.02(h).

"Restricted Subsidiary" means each Subsidiary of Loan Parties that is not an Unrestricted Subsidiary.

"Revolving Credit Commitment" means as to any Lender (a) the amount set forth opposite such Lender's name on Schedule I hereto as such Lender's "Revolving Credit Commitment", which shall be designated as a Commitment under the Revolving Credit Facility, (b) that is an Assuming Lender, the amount set forth in the applicable Assumption Agreement or (c) if such Lender has entered into an Assignment and Acceptance, the amount set forth for such Lender in the Register maintained by the Agent pursuant to Section 9.08(e), as such amount may be reduced pursuant to Section 2.05 or increased pursuant to Section 2.21.

"Revolving Credit Facility" means, at any time, the aggregate amount of the Lenders' Revolving Credit Commitments at such time.

"Revolving Credit Facility Usage" means at any time, the amount obtained by adding (i) the aggregate outstanding principal amount of all Revolving Loans and (ii) the aggregate outstanding Letter of Credit Obligations.

"Revolving Loan" means a loan made by a Lender as part of a Borrowing and refers to a Base Rate Revolving Loan or a Eurodollar Rate Revolving Loan and shall be deemed to include any Swingline Loan, any Overadvance Loan and any Protective Revolving Loan made hereunder.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

"Sanction" means any international economic sanction administered or enforced by the United States Government (including OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions Governmental Authority.

"Scheduled Unavailability Date" has the meaning specified in Section 2.26.

"Secured Parties" means, collectively, the Agent, each Lender, each Issuing Bank and each Bank Product Provider (but in the case of each Bank Product Provider only so long as such Bank Product Provider (or its Affiliate, as the case may be) is a Lender hereunder).

"Secured Debt" means, without duplication, the aggregate principal amount of Debt for Borrowed Money secured by a Lien on assets of the Company and its Restricted Subsidiaries determined on a Consolidated basis.

"Secured Leverage Ratio" means, on any date, the ratio of (a) Secured Debt on such date less the domestic cash and Cash Equivalents of the Loan Parties (excluding cash and Cash Equivalents securing letters of credit, except to the extent such letters of credit constitute Secured Debt under the Supplemental Letter of Credit Facility) on such date, in each case free and clear of all Liens other than any Liens permitted pursuant to Section 5.02(a)(ii) and Section 5.02(a)(xii) to (b) Consolidated EBITDA during the most recently completed Measurement Period.

"Secured Obligations" means the "Secured Obligations", as defined in the Security Agreement.

"Security Agreement" means the Amended and Restated Security Agreement, dated as of the Closing Date, made by Borrower and each Guarantor in favor of Agent for the benefit of the Secured Parties, as such agreement may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"Series A Preferred Certificate of Designations" means the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Borrower setting forth the terms of the Series A Preferred Stock to be delivered to the Agent upon execution thereof in the form provided to the Agent and the Lenders on the date of Amendment No. 1 (for the avoidance of doubt, without giving effect to any subsequent amendments, supplements or other modifications).

"Series A Preferred Stock" has the meaning specified in the definition of "Series A Preferred Stock Issuance.

"Series A Preferred Stock Issuance" means the issuance of the Borrower's 5.50% Series A Convertible Preferred Stock, no par value (the "Series A Preferred Stock"), to Southeastern Asset Management, Inc. and certain other investors (collectively, the "Purchasers") on or prior to the Amendment No. 1 Effective Date in a private placement exempt from registration under the Securities Act of 1933, as amended; provided that (a) the Series A Preferred Stock shall (i) have a liquidation preference of $100 per share and (ii) be convertible into shares of the Borrower's common stock, par value $0.01 per share, at the option of the Purchaser or upon the occurrence of certain events set forth in the Series A Preferred Certificate of Designations, (b) the aggregate liquidation preference of such Series A Preferred Stock shall not exceed $210,000,000, (c) cash dividends paid on such Series A Preferred Stock shall not exceed the amount set forth in the Series A Preferred Certificate of Designations and (d) all other terms of the Series A Preferred Stock and the Series A Preferred Stock Issuance shall be as set forth in the Series A Preferred Certificate of Designations.

"Series B Preferred Stock" has the meaning specified in the definition of "Series B Preferred Stock Issuance.

"Series B Preferred Stock Issuance" means the issuance of the Borrower's 4.00% Series B Convertible Preferred Stock, no par value (the "Series B Preferred Stock"), on or prior to the Amendment No. 4 Effective Date in a private placement exempt from registration under the Securities Act of 1933, as amended.

"Series C Preferred Stock" has the meaning specified in the definition of "Series C Preferred Stock Issuance.

"Series C Preferred Stock Issuance" means the issuance of the Borrower's 5.00% Series C Convertible Preferred Stock, no par value (the "Series C Preferred Stock"), within forty-five (45) days after the Amendment No. 4 Effective Date (or such later date as Agent may agree) in a private placement exempt from registration under the Securities Act of 1933, as amended.

"Single Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and no Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

"SOFR" means, with respect to any Business Day, the secured overnight financing rate that is published for such day by FRBNY as administrator of the benchmark (or a successor administrator) on FRBNY's website (or any successor source) at approximately 8:00 a.m. (New York City time) on the next Business Day and, in each case, that has been selected or recommended by the Relevant Governmental Body.

"Solvent" means, with respect to any Person on a particular date, that on such date (a) the sum of the debt and liabilities (including subordinated and contingent liabilities) of such Person and its Subsidiaries, taken as a whole, does not exceed the fair value of the present assets of such Person and its Subsidiaries, taken as a whole; (b) the present fair saleable value of the assets of such Person and its Subsidiaries, taken as a whole, is greater than the total amount that will be required to pay the probable debt and liabilities (including subordinated and contingent liabilities) of such Person and its Subsidiaries as they become absolute and matured; (c) the capital of such Person and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of such Person or its Subsidiaries, taken as a whole, contemplated as of the date hereof and as proposed to be conducted following the Closing Date; and (d) such Person and its Subsidiaries, taken as a whole, have not incurred, or believe that they will incur, debts or other liabilities including current obligations beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Special Purpose Receivables Subsidiary" means a subsidiary of the Company established in connection with a Permitted Receivables Financing for the acquisition of Receivables Assets or interests therein, and which is organized in a manner intended to reduce the likelihood that it would be substantively consolidated with the Company or any of the Subsidiaries (other than Special Purpose Receivables Subsidiaries) in the event the Company or any such Subsidiary becomes subject to a proceeding under the U.S. Bankruptcy Code or a similar foreign debtor relief law.

"Specified Collateral" has the meaning specified in the Security Agreement.

"Specified Loan Party" means a Loan Party that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to Section 7.08).

"Specified Transaction" means (a) any incurrence or repayment of Debt (other than for working capital purposes) or Investment that results in a Person becoming a Subsidiary, (b) any Permitted Acquisition, (c) any Disposition that results in a Subsidiary ceasing to be a Subsidiary of the Company, (d) any Disposition having an aggregate consideration in excess of $5,000,000 (other than Dispositions in the ordinary course of business), (e) 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 Company or a Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise or (f) any designation of any Restricted Subsidiary as an Unrestricted Subsidiary, or of any Unrestricted Subsidiary as a Restricted Subsidiary, in each case in accordance herewith.

"Stock and Asset Purchase Agreement" means the Amended and Restated Stock and Asset Purchase Agreement, dated August 31, 2013, among the Borrower, Qualex Inc., Kodak (Near East) Inc., as sellers and KPP Trustees Limited.

"Subordinated Obligations" has the meaning specified in Section 7.06.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held. Unless otherwise specified, "Subsidiary" shall mean a Subsidiary of the Company. A "Subsidiary" shall not include any variable interest entity.

"Subsidiary Guarantor" means the direct and indirect wholly-owned (other than directors' qualifying shares or similar holdings under applicable law) Subsidiaries of the Company organized under the laws of a state of the United States of America as listed on Part A of Schedule II hereto (other than Excluded Subsidiaries) and each other Subsidiary of the Company that shall be required to execute and deliver a guaranty pursuant to Section 5.01(i).

"Subsidiary Redesignation" has the meaning specified in the definition of "Unrestricted Subsidiary".

"Supermajority Lenders" means, at any time, Lenders owed or holding at least seventy-five percent (75%) in interest of the sum of (a) the aggregate principal amount of the Revolving Loans outstanding at such time, (b) the aggregate Unused Revolving Credit Commitment at such time and (c) the aggregate Letter of Credit Obligations at such time (with the aggregate amount of each Lender's risk participation and funded participation in Letter of Credit Obligations being deemed held by such Lender for purposes of this definition); provided, however, that if any Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of Supermajority Lenders at such time (for the avoidance of doubt such exclusion shall apply to both the numerator and denominator) (A) the aggregate principal amount of the Revolving Loans owing to such Lender (in its capacity as a Lender) and outstanding at such time, (B) the Unused Revolving Credit Commitment of such Lender at such time and (C) the Letter of Credit Obligations held or deemed held by such Lender at such time.

"Supplemental Letter of Credit Facility Agent" means Bank of America, National Association in its capacity as administrative agent pursuant to the Supplemental Letter of Credit Facility Documents, and its successors, assigns or any replacement agent appointed pursuant to the terms of the Supplemental Letter of Credit Facility Agreement.

"Supplemental Letter of Credit Facility Agreement" means (i) the Letter of Credit Facility Agreement, dated as of the Amendment No. 4 Effective Date, among the Company, as borrower, the lenders from time to time parties thereto, and Supplemental Letter of Credit Facility Agent, as it may

be amended, restated, refinanced, replaced or otherwise modified from time to time and (ii) any other replacement, refinancing, restructuring, extension, renewal or refinancing thereof (in each case whether through one or more credit facilities or other debt issuances pursuant to the agreement set forth in subclause (i) or any other agreement, contract or indenture, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof) to the extent permitted by this Agreement and the Supplemental Letter of Credit Facility Intercreditor Agreement.

"Supplemental Letter of Credit Facility Debt" means the Debt of the Company and its Subsidiaries under the Supplemental Letter of Credit Facility Agreement.

"Supplemental Letter of Credit Facility Documents" means the Supplemental Letter of Credit Facility Agreement, each letter of credit issued in connection therewith and each other agreement, certificate, document, or instrument executed or delivered by the Company or its Subsidiaries to the Supplemental Letter of Credit Facility Agent or any lender thereunder in connection therewith, whether prior to, on, or after the closing of the Supplemental Letter of Credit Facility Agreement, and any and all renewals, extensions, amendments, modifications, refinancings or restatements of any of the foregoing.

"Supplemental Letter of Credit Facility Intercreditor Agreement" means the Intercreditor Agreement, dated as of the Amendment No. 4 Effective Date, among the Agent, as ABL Agent, Supplemental Letter of Credit Facility Agent, as LC Agent, the Company and Guarantors, as the same may from time to time be amended, amended and restated, modified, or replaced.

"Supported QFC" has the meaning specified therefor in Section 9.22 of this Agreement.

"Swap Obligations" means with respect to a Loan Party, its obligations under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Swingline Loan" means any Borrowing of a Base Rate Revolving Loan funded with the Agent's funds, until such Borrowing is settled among Lenders or repaid by Borrower.

"Swingline Loan Notice" has the meaning specified in Section 2.22(a).

"Taxes" has the meaning specified in Section 2.14(a).

"Termination Date" means the earlier of (a) the Maturity Date, or (b) the date of termination in whole of the Revolving Credit Commitments pursuant to Section 2.05, 6.01 or 9.16(b).

"Term Loan Agent" means Alter Domus (US) LLC in its capacity as administrative agent pursuant to the Term Loan Documents, and its successors, assigns or any replacement agent appointed pursuant to the terms of the Term Loan Agreement.

"Term Loan Agreement" means (a) the Credit Agreement, dated as of the Amendment No. 4 Effective Date, among the Company, as borrower, the lenders from time to time parties thereto, and Term Loan Agent, as it may be amended, restated, refinanced, replaced or otherwise modified from time to time and (b) any other replacement, refinancing, restructuring, extension, renewal or refinancing thereof (in each case whether through one or more credit facilities or other debt issuances pursuant to the agreement set forth in subclause (a) or any other agreement, contract or indenture, including any such

replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof) to the extent permitted by this Agreement and the Term Loan Intercreditor Agreement.

"Term Loan Debt" means the Debt of the Company and its Subsidiaries under the Term Loan Agreement.

"Term Loan Documents" means the Term Loan Agreement, and each other agreement, certificate, document, or instrument executed or delivered by the Company or its Subsidiaries to the Term Loan Agent or any lender thereunder in connection therewith, whether prior to, on, or after the closing of the Term Loan Agreement, and any and all renewals, extensions, amendments, modifications, refinancings or restatements of any of the foregoing.

"Term Loan Intercreditor Agreement" means the Intercreditor Agreement, dated as of the Amendment No. 4 Effective Date, among the Agent, as ABL Agent, Supplemental Letter of Credit Facility Agent, as LC Agent, Term Loan Agent, as Term Loan Agent, the Company and Guarantors, as the same may from time to time be amended, amended and restated, modified, or replaced.

"Term Loan Priority Collateral" has the meaning set forth in the Term Loan Intercreditor Agreement.

"Term SOFR" means the forward-looking term rate for any period that is approximately (as determined by Agent) as long as any interest period option set forth in the definition of "Interest Period" and that is based on SOFR and has been selected or recommended by the Relevant Governmental Body, in each case as published on an information service selected by Agent from time to time in its discretion.

"TMM Assets" has the meaning set forth in the Stock and Asset Purchase Agreement.

"Total Assets" means, as of any date of determination, the aggregate amount of assets reflected on the consolidated balance sheet of the Company and its Restricted Subsidiaries most recently delivered by the Company pursuant to Section 5.01 on or prior to such date of determination.

"Total Leverage Ratio" means, at any date, the ratio of (a) the aggregate principal amount of Debt for Borrowed Money of the Borrower and its Restricted Subsidiaries at such date less the domestic cash and Cash Equivalents of the Loan Parties (excluding cash and Cash Equivalents securing letters of credit referred to in Section 5.02(d)(xxviii)) at such date, in each case free and clear of all Liens other than any Liens permitted pursuant to Section 5.02(a) to (b) Consolidated EBITDA during the most recently completed Measurement Period.

"Type" refers to the distinction between Revolving Loans bearing interest at the Base Rate and Revolving Loans bearing interest at the Eurodollar Rate.

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

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Pension Scheme" means the retirement benefits scheme known as the Kodak Pension Plan.

"UK Pensions Regulator" means the Pensions Regulator established in the United Kingdom pursuant to the Pensions Act of 2004.

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

"Unissued Letter of Credit Commitment" means, with respect to any Issuing Bank, the obligation of such Issuing Bank to issue Letters of Credit for the account of the Company or its Subsidiaries in an amount equal to the excess of (a) the amount of its Letter of Credit Commitment over (b) the aggregate Letter of Credit Obligations outstanding to such Issuing Bank.

"United States" and "US" mean the United States of America.

"Unrestricted Subsidiary" means (a) any Subsidiary of the Company designated by the Company as an "Unrestricted Subsidiary" as listed on Schedule 1.01(u), (b) any Subsidiary of the Company designated by the Company as an Unrestricted Subsidiary hereunder by written notice to the Agent and (c) any Subsidiary of an Unrestricted Subsidiary; provided, that, in each case, as to clause (a) and (b), the Company shall only be permitted to so designate a Subsidiary as an Unrestricted Subsidiary so long as each of the following conditions is satisfied: (i) as of the date of the designation thereof and after giving effect thereto, no Default exists or has occurred and is continuing, (ii) immediately after giving effect to such designation, upon giving pro forma effect to such designation, Excess Availability shall be at least the amount equal to 20% of the Revolving Credit Facility for the thirty (30) days preceding and as of the date of designation, (iii) the Fixed Charge Coverage Ratio for the immediately preceding twelve (12) month period, determined on a pro forma basis giving effect to the designation, is not less than 1.00 to 1.00, (iv) such Unrestricted Subsidiary shall be capitalized (to the extent capitalized by Company or any of its Restricted Subsidiaries) through Investments as permitted by, and in compliance with, Section 5.02(i), such that the equity interests in such Subsidiary as of the date of, and after giving effect to, it becoming an Unrestricted Subsidiary shall be an Investment deemed made on such date to a Person that is not a Subsidiary of Company, and any Debt of such Subsidiary owing to any Loan Party or Restricted Subsidiary as of the date of, and after giving effect to, it becoming an Unrestricted Subsidiary shall be an investment deemed made on such date to a Person that is not a Subsidiary of the Company, (v) without duplication of clause (iv), the value of and investments in such Subsidiary will constitute Investments, (vi) such Subsidiary shall have been or will promptly be designated an "Unrestricted Subsidiary" (or otherwise not be subject to the covenants) under the Term Loan Agreement, Supplemental Letter of Credit Facility Loan Agreement and Permitted Refinancing of the Term Loan Debt and Supplemental Letter of Credit Facility Debt, if applicable, and shall not be designated a Restricted Subsidiary for purposes of such Debt, (vii) such Subsidiary shall not have as of the date of the designation thereof or at any time thereafter, create, incur, issue, assume, guarantee or otherwise become directly liable with respect to any Debt pursuant to which the lender, or other party to whom such Debt is owing, has recourse to any Loan Party or any Restricted Subsidiary or their assets unless otherwise permitted hereunder with respect to a third party, (viii) (A) such Subsidiary shall have

total assets (as determined in accordance with GAAP) in an amount of less than seven and one half percent (7.5%) of the Consolidated total assets of Company and its Subsidiaries as of the last day of the fiscal year most recently ended as set forth in the financial statements delivered pursuant to Section 5.01(h)(ii), and (B) such Subsidiary contributed less than seven and one-half percent (7.5%) to the Consolidated net sales of the Company and its Subsidiaries for the fiscal year most recently ended as set forth in the financial statements delivered pursuant to Section 5.01(h)(ii); provided, that, the total assets (as so determined) and net sales (as so determined) of all Unrestricted Subsidiaries shall not exceed seven and one-half percent (7.5%) of the Consolidated total assets shown on the Consolidated financial statements of Company and its Subsidiaries, or seven and one-half percent (7.5%) of Consolidated net sales of the Company and its Subsidiaries for any twelve (12) consecutive fiscal month period, as the case may be, and (ix) the Agent shall have received an officer's certificate executed by a Responsible Officer of the Company, certifying compliance with the requirements of preceding clauses (i) through (viii), and containing the calculations and information required by the preceding clause (ii). In the event that total assets of all Unrestricted Subsidiaries exceed seven and one-half percent (7.5%) of the Consolidated total assets of the Company and its Subsidiaries, or the total contribution to Consolidated net sales of all Unrestricted Subsidiaries exceeds seven and one-half percent (7.5%) of net sales for any such fiscal period for which financial statements have been delivered pursuant to the terms of the Agreement, as the case may be (provided, that, the first two and one-half percent of such thresholds do not count against the calculation of total assets and total net sales for purposes of satisfying the requirements and thresholds for Immaterial Subsidiaries), the Company will designate Subsidiaries which shall no longer constitute Unrestricted Subsidiaries in order to comply with such seven and one half percent (7.5%) thresholds. The Company may designate any Unrestricted Subsidiary to be a Restricted Subsidiary for purposes of this Agreement (each, a "Subsidiary Redesignation"); provided, that, (1) as of the date thereof, and after giving effect thereto, no Default or Event of Default exists or has occurred and is continuing, (2) immediately after giving effect to such Subsidiary Redesignation, the Loan Parties shall be in compliance, on a pro forma basis, with the conditions set forth in clause (iii) above, (3) designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Debt or Liens of such Subsidiary existing at such time, and (4) the Agent shall have received an officer's certificate executed by a Responsible Officer of the Company, certifying compliance with the requirements of preceding clauses (1) and (2), and containing the calculations and information required by the preceding clause (2).

"Unused Revolving Credit Commitment" means, with respect to each Lender at any time, (a) such Lender's Revolving Credit Commitment at such time minus (b) the sum of (i) the aggregate principal amount of all Revolving Loans made by such Lender (in its capacity as a Lender) and outstanding at such time, plus (ii) such Lender's Ratable Share of (A) the aggregate Available Amount of all Letters of Credit outstanding at such time, (B) the aggregate principal amount of all Revolving Loans made by each Issuing Bank pursuant to Section 2.03(c) that have not been ratably funded by such Lender and outstanding at such time and (C) any outstanding Swingline Loans.

"US Cash" means, at any time, the amount of cash and Cash Equivalents of the Loan Parties which (a) is maintained in an account located in the United States, subject to the Agent's first priority perfected security interest pursuant to an account control agreement satisfactory to the Agent, (b) is available for use by a Loan Party, without condition or restriction and (c) is free and clear of any pledge, security interest, lien, claim or other encumbrance (other than in favor of the Agent on behalf of the Secured Parties, the Term Loan Agent on behalf of the holders of the Term Loan Debt pursuant to the Term Loan Documents, and other than in favor of the securities intermediary with which such cash is maintained for its customary fees and charges).

"U.S. Special Resolution Regimes" has the meaning specified therefor in Section 9.22 of this Agreement.

"Value" means (a) for Inventory, its value determined on the basis of the lower of cost or market, calculated on a first-in, first-out basis, and excluding any portion of cost attributable to intercompany profit among the Loan Parties and their Affiliates; and (b) for an Account, its face amount, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or taxes (including sales, excise or other taxes) that have been or could be claimed by the Account Debtor or any other Person.

"Voting Stock" means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

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

"Withdrawal Liability" has the meaning specified in Part I of Subtitle E of Title IV of ERISA.

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

SECTION 1.02. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

SECTION 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America ("GAAP"). If at any time any change in GAAP or the application thereof would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Agent, the Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP or the application thereof (subject to the approval of the Required Lenders); provided, that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP or the application thereof prior to such change therein and (b) the Borrower shall provide to the Agent financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP or the application thereof. 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, without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification having a similar result or effect) to value any Debt or other liabilities of the Company or any Subsidiary at "fair value", as defined therein and (ii) any treatment of Debt in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification 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).

SECTION 1.04. Reserves. Reserves may be established by Agent or Agent may change the amount, percentage, reserve, eligibility criteria or other item in the definitions of the terms "Borrowing Base", "Eligible Inventory", "Eligible Receivables", "Eligible Equipment" and "Rent and Charges Reserve" in each case in the Agent's Permitted Discretion.

SECTION 1.05. Letter of Credit Amount. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, that, with respect to any Letter of Credit that, by its terms or the terms of any L/C Related Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

SECTION 1.06. Currency Equivalents Generally. Any amount specified in this Agreement (other than in Article II) or in any other Loan Document to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars to the extent necessary to give effect to the intent of this Agreement, such equivalent amount thereof in the applicable currency to be determined by the Agent at such time on the basis of the exchange rate for the purchase of such currency with Dollars as quoted by the Agent.

SECTION 1.07. Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, Consolidated EBITDA and the Fixed Charge Coverage Ratio (except in each case with respect to any transaction contemplated by the KPP Settlement Agreement) shall be calculated in the manner prescribed by this Section 1.07 for purposes other than in connection with the compliance of Section 5.03 hereof.

(b) For purposes of calculating Consolidated EBITDA and the Fixed Charge Coverage Ratio, Specified Transactions (and the incurrence or repayment of any Debt in connection therewith) that have been made (i) during the applicable Measurement Period and (ii) subsequent to such Measurement 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 Measurement Period. If since the beginning of any applicable Measurement 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 Measurement Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.07, then the Fixed Charge Coverage Ratio shall be calculated to give pro forma effect thereto in accordance with this Section 1.07 (but for the avoidance of doubt, not in connection with the calculation of Consolidated EBITDA and the Fixed Charge Coverage Ratio required under Section 5.03).

(c) Whenever pro forma effect is to be given to a Specified Transaction for purposes of this Section 1.07, the pro forma calculations shall be made in good faith by a Financial Officer of the Borrower and include, for the avoidance of doubt, the amount of cost savings, operating expense reductions, other operating improvements and synergies actually realized as of the date of such pro forma calculation (calculated on a pro forma basis as though such cost savings, operating expense reductions, other operating improvements and synergies had been realized on the first day of such period as if such cost savings, operating expense reductions, other operating improvements and synergies were realized during the entirety of such period) relating to such Specified Transaction, net of the amount of actual benefits realized during such period from such actions.

(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 Debt included in the calculations of the Fixed Charge Coverage Ratio (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 Measurement Period and (ii) subsequent to the end of the applicable Measurement Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Fixed Charge Coverage Ratio 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 first day of the applicable Measurement Period.

SECTION 1.08. Divisions. Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company or other type of entity under Delaware law, or an allocation of assets to a series of a limited liability company or other type of entity under Delaware law (or the unwinding of such a division or allocation) as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company or other type of entity under Delaware law shall constitute a separate Person hereunder.

ARTICLE II
AMOUNTS AND TERMS OF THE REVOLVING LOANS AND LETTERS OF CREDIT

SECTION 2.01. The Revolving Loans and Letters of Credit.

(a) Revolving Credit Facility. Each Lender severally agrees, on the terms and conditions hereinafter set forth, to make Revolving Loans in Dollars to the Borrower from time to time on any Business Day during the period from the Closing Date until the Termination Date, in each case (A) in an amount for each such Revolving Loan not to exceed such Lender's Unused Revolving Credit Commitment at such time and (B) in an aggregate amount for all such Revolving Loans not to exceed such Lender's ratable portion (based on the aggregate amount of the Unused Revolving Credit Commitments at such time) of the Line Cap at such time. Each Borrowing shall be in an aggregate amount of $10,000,000 or an integral multiple of $1,000,000 in excess thereof (or such lesser amount as may be applied and reborrowed in accordance with Section 2.18) and shall consist of Revolving Loans of the same Type made on the same day by the Lenders ratably according to their respective Revolving Credit Commitments. Within the limits of each Lender's Revolving Credit Commitment, Borrower may borrow under this Section 2.01(a), prepay pursuant to Section 2.10 and reborrow under this Section 2.01(a).

(b) Letters of Credit. Each Issuing Bank agrees, on the terms and conditions hereinafter set forth, and in reliance upon the agreements of the other Lenders set forth in this Agreement, to issue or continue Letters of Credit for the account of the Company and its Subsidiaries from time to time on any Business Day during the period from the Closing Date until thirty (30) days before the Termination Date in an aggregate Available Amount not to exceed (i) for all Letters of Credit at any time the Letter of Credit Facility at such time, (ii) for all Letters of Credit issued by each Issuing Bank at any time such Issuing Bank's Letter of Credit Commitment at such time, and (iii) for each such Letter of Credit an amount equal to the Unused Revolving Credit Commitments of the Lenders at such time. No Letter of Credit shall have an expiration date (including all rights of the Company or the beneficiary to require renewal) later than ten (10) Business Days before the Termination Date. Within the limits referred to above, the Company may from time to time request the Issuance of Letters of Credit under this Section 2.01(b).

(c) Overadvances. If Revolving Credit Facility Usage exceeds the Borrowing Base ("Overadvance") at any time, the excess amount shall be payable by Borrower within one (1) Business Day after demand by the Agent, but all such Revolving Loans shall nevertheless constitute Obligations secured by the Collateral and entitled to all benefits of the Loan Documents. Agent may require Lenders to honor requests for Overadvance Loans and to forbear from requiring Borrower to cure an Overadvance, (a) when no other Event of Default is known to Agent, as long as (i) 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 (ii) the Overadvance is not known by Agent to exceed when taken together with the aggregate outstanding amount of any Protective Revolving Loans, the greater of (A) $20,000,000 and (B) 10% of the aggregate Revolving Credit Commitments at any time outstanding; and (b) 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 is not increased by more than an amount such that the outstanding amount of such Overadvance when taken together with all outstanding Protective Revolving Loans does not exceed the greater of (A) $20,000,000 and (B) ten percent (10%) of the aggregate Revolving Credit Commitments in the aggregate and does not continue for more than thirty (30) consecutive days. In no event shall Overadvance Loans be required that would cause Revolving Credit Facility Usage to exceed the aggregate Revolving Credit 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 Borrower or other Loan Party be deemed a beneficiary of this Section nor shall it be authorized to enforce any of its terms.

(d) Protective Revolving Loans. The Agent shall be authorized, in its Permitted Discretion, at any time that any conditions in Section 3.02 are not satisfied, to make Revolving Loans in Dollars that are Base Rate Revolving Loans (any such Revolving Loans made pursuant to this Section 2.01(d), "Protective Revolving Loans") in an aggregate amount (when aggregated with any outstanding Overadvance Loans not to exceed the greater of (i) $20,000,000 and (ii) ten percent (10%) of the aggregate Revolving Credit Commitments at any time outstanding, if the Agent reasonably deems such Revolving Loans necessary to preserve or protect Collateral, or to enhance the collectability or repayment of Obligations; provided, that, no Protective Revolving Loan shall continue for more than ninety (90) consecutive days (and no further Protective Revolving Loan may be made for at least five (5) consecutive days after the repayment by the Borrower of any outstanding Protective Revolving Loans). Protective Revolving Loans shall constitute Obligations secured by the Collateral and shall be entitled to all of the benefits of the Loan Documents. Immediately upon the making of a Protective Revolving Loan, each applicable Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Agent a risk participation in such Protective Revolving Loan in an amount equal to the product of such applicable Lender's Ratable Share times the amount of such Protective Revolving Loan. From and after the date, if any, on which any Lender is required to fund its participation in any Protective

Revolving Loan purchased hereunder, the Agent shall promptly distribute to such Lender, such Lender's Ratable Share of all payments of principal and interest and all proceeds of Collateral received by the Agent in respect of such Protective Revolving Loan (and prior to such date, all payments on account of the Protective Revolving Loans shall be payable to Agent solely for its own account). The Required Lenders may at any time revoke the Agent's authority to make further Protective Revolving Loans by written notice to the Agent. Absent such revocation, the Agent's determination that funding of a Protective Revolving Loan is appropriate shall be conclusive. In no event shall Protective Revolving Loans cause the aggregate outstanding amount of the Revolving Loans of any Lender, plus such Lender's Ratable Share of the outstanding amount of all Letter of Credit Obligations to exceed such Lender's Revolving Credit Commitment. Protective Revolving Loans shall be payable by the Borrower on demand.

SECTION 2.02. Making the Revolving Loans.

(a) Except as otherwise provided in Section 2.03(a), each Borrowing shall be made on notice, given not later than (x) 11:00 a.m. (New York City time) on the third Business Day prior to the date of the proposed Borrowing in the case of a Borrowing consisting of Eurodollar Rate Revolving Loans or (y) 11:00 a.m. (New York City time) on the date of the proposed Borrowing in the case of a Borrowing consisting of Base Rate Revolving Loans, by the Borrower (or the Company on behalf of the Borrower) to the Agent, which shall give to each applicable Lender prompt notice thereof by telecopier or any other electronic means agreed to by the Agent. Each such notice of a Borrowing (a "Notice of Borrowing") shall be by telephone, confirmed promptly in writing, or by telecopier (or any other electronic means agreed to by the Agent), in substantially the form of Exhibit B-1 hereto, specifying therein the requested (i) date of such Borrowing, (ii) Type of Revolving Loans comprising such Borrowing, (iii) aggregate amount of such Borrowing, and (iv) in the case of a Borrowing consisting of Eurodollar Rate Revolving Loans, the initial Interest Period for each such Revolving Loan. Except for Borrowings to be made as Swingline Loans, each Lender shall, before 1:00 p.m. (New York City time) on the date of such Borrowing make available for the account of its Applicable Lending Office to the Agent at the Agent's Account, in same day funds, such Lender's Ratable Share of such Borrowing. After the Agent's receipt of such funds and upon fulfillment of the applicable conditions set forth in Article III, the Agent will make such funds available to the Borrower at the Agent's address referred to in Section 9.02(a).

(b) Anything in subsection (a) above to the contrary notwithstanding, (i) the Borrower (or the Company on behalf of the Borrower) may not select Eurodollar Rate Revolving Loans for any Borrowing if the aggregate amount of such Borrowing is less than $10,000,000 or if the obligation of the Lenders to make Eurodollar Rate Revolving Loans shall then be suspended pursuant to Section 2.08 or 2.12 and (ii) the Eurodollar Rate Revolving Loans may not be outstanding as part of more than eighteen (18) separate Borrowings.

(c) Each Notice of Borrowing shall be irrevocable and binding on the Borrower delivering such notice. In the case of any Borrowing that the related Notice of Borrowing specifies is to be comprised of Eurodollar Rate Revolving Loans, the Borrower shall indemnify each applicable Lender against any loss, cost or expense incurred by such Lender as a result of any failure of Borrower to fulfill on or before the date specified in such Notice of Borrowing for such Borrowing the applicable conditions set forth in Article III, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund the Revolving Loan to be made by such Lender as part of such Borrowing when such Revolving Loan, as a result of such failure, is not made on such date.

(d) Unless the Agent shall have received notice from a Lender prior to the time of any Borrowing that such Lender will not make available to the Agent such Lender's ratable portion of such Borrowing, the Agent may assume that such Lender has made such portion available to the Agent on the date of such Borrowing in accordance with subsection (a) of this Section 2.02, as applicable, and the Agent may, in reliance upon such assumption, make available to the Borrower on such date a corresponding amount. If and to the extent that such Lender shall not have so made such ratable portion available to the Agent, such Lender and the Borrower severally agree to repay to the Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to Borrower until the date such amount is repaid to the Agent, at (i) in the case of Borrower, the interest rate applicable at the time to the Revolving Loans comprising such Borrowing and (ii) in the case of such Lender, the Federal Funds Rate. If such Lender shall repay to the Agent such corresponding amount, such amount so repaid shall constitute such Lender's Revolving Loan as part of such Borrowing for purposes of this Agreement.

(e) The failure of any Lender to make the Revolving Loan to be made by it as part of any Borrowing shall not relieve any other Lender of its obligation, if any, hereunder to make its Revolving Loan on the date of such Borrowing, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Loan to be made by such other Lender on the date of any Borrowing.

SECTION 2.03. Issuance of and Drawings and Reimbursement Under Letters of Credit.

(a) Request for Issuance. (i) Each Letter of Credit shall be issued upon notice, given not later than 11:00 a.m. (New York City time) on the fifth Business Day prior to the date of the proposed Issuance of such Letter of Credit (or on such shorter notice as the applicable Issuing Bank may agree), by the Company to any Issuing Bank, and such Issuing Bank shall give the Agent, prompt notice thereof. Each such notice by the Company of Issuance of a Letter of Credit (a "Notice of Issuance") shall be by telephone, confirmed promptly in writing, or by telecopier (or any other electronic means agreed to by the Agent), specifying therein (A) the requested date of such Issuance (which shall be a Business Day), (B) the Available Amount of such Letter of Credit, (C) expiration date of such Letter of Credit (which shall not be later than five (5) Business Days before the Termination Date), (D) the name and address of the beneficiary of such Letter of Credit, (E) the form of such Letter of Credit, and that such Letter of Credit shall be issued pursuant to such application and agreement for letter of credit as such Issuing Bank and the Company shall agree for use in connection with such requested Letter of Credit (a "Letter of Credit Agreement") and (F) such other matters as the applicable Issuing Bank may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Notice of Issuance shall specify in form and detail reasonably satisfactory to the applicable Issuing Bank, (A) the Letter of Credit to be amended, (B) the proposed date of amendment thereof (which shall be a Business Day), (C) the nature of the proposed amendment and (D) such other matters as the applicable Issuing Bank may require. Additionally, the Company shall furnish to the applicable Issuing Bank and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, as such Issuing Bank or the Agent may require. If the requested form of such Letter of Credit is acceptable to the applicable Issuing Bank in its reasonable discretion (it being understood that any such form shall have only explicit documentary conditions to draw and shall not include discretionary conditions), such Issuing Bank will, upon fulfillment of the applicable conditions set forth in Section 3.02, make such Letter of Credit available to the Company at its office referred to in Section 9.02 or as otherwise agreed with the Company in connection with such Issuance. In the event and to the extent that the provisions of any Letter of Credit Agreement shall conflict with this Agreement, the provisions of this Agreement shall govern.

(ii) No Issuing Bank shall be under any obligation to issue any Letter of Credit if: (A) any order, judgment or decree of any Governmental Authority shall by its terms purport to enjoin or restrain such Issuing Bank from issuing the Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon such Issuing Bank with respect to the Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which such Issuing Bank in good faith deems material to it; (B) except as otherwise agreed by the Agent and such Issuing Bank, the Letter of Credit is in an initial stated amount less than $100,000, in the case of a commercial Letter of Credit, or $100,000, in the case of a standby Letter of Credit; (C) the Letter of Credit is to be denominated in a currency other than Dollars; (D) any Lender is at that time a Defaulting Lender, unless such Issuing Bank has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such Issuing Bank (in its sole discretion) with the Company or such Lender to eliminate such Issuing Bank's actual or potential fronting exposure (after giving effect to Section 2.19(f)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other Letter of Credit Obligations as to which such Issuing Bank has actual or potential fronting exposure, as it may elect in its sole discretion; or (E) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder.

(iii) No Issuing Bank shall amend or continue any Letter of Credit if such Issuing Bank would not be permitted at such time to issue the Letter of Credit in its amended or continued form under the terms hereof.

(iv) Each Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and each Issuing Bank shall have all of the benefits and immunities (A) provided to the Agent in Article VIII with respect to any acts taken or omissions suffered by such Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article VIII included such Issuing Bank with respect to such acts or omissions, and (B) as additionally provided herein with respect to such Issuing Bank.

(v) If the Borrower so requests in an applicable Notice of Issuance, the Issuing Bank may, in its discretion, agree to issue a Letter of Credit that has automatic extension provisions (each an "Auto-Extension Letter of Credit"); provided, that, any such Auto-Extension Letter of Credit must permit the Issuing Bank to prevent any such extension at least once in each twelve (12) month period commencing with the date of issuance of such Letter of Credit by giving prior notice to the beneficiary thereof not later than a day (the "Non-Extension Notice Date") in each such twelve (12) month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Issuing Bank, the Borrower shall not be required to make a specific request to the Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the Issuing Bank to permit the extension of such Letter of Credit at any time to a date not later than the expiration date of such Letter of Credit; provided, however, that the Issuing Bank shall not permit any such extension if (A) the Issuing Bank has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Non-Extension Notice Date (x) from the Agent that the Required Lenders have elected not to permit such extension or (y) from the Agent, any Lender or any Loan Party that one or more of the applicable conditions specified in Section 3.02 is not then satisfied, and in each case directing the Issuing Bank not to permit such extension.

(vi) No Issuing Bank shall have any obligation to issue any Letter of Credit hereunder if the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension thereof (without giving effect to any auto-extension features).

(vii) No Issuing Bank shall have any obligation to issue any Letter of Credit hereunder if the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension thereof (without giving effect to any auto-extension features).

(b) Participations. By the Issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing or decreasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Lenders, such Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Ratable Share of the Available Amount of such Letter of Credit. The Company hereby agrees to each such participation. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Agent, for the account of such Issuing Bank, such Lender's Ratable Share of each drawing made under a Letter of Credit funded by such Issuing Bank and not reimbursed by the Company on the date funded, or of any reimbursement payment required to be refunded to the Company for any reason, which amount will be advanced, and deemed to be a Revolving Loan hereunder, regardless of the satisfaction of the conditions set forth in Section 3.02. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Ratable Share of the Available Amount of such Letter of Credit at each time such Lender's Revolving Credit Commitment is amended pursuant to an assignment in accordance with Section 9.08 or otherwise pursuant to this Agreement.

(c) Drawing and Reimbursement. The payment by an Issuing Bank of a draft drawn under any Letter of Credit which is not reimbursed by the Company or the Borrower on the date funded shall constitute for all purposes of this Agreement the making by any such Issuing Bank of a Revolving Loan under the Revolving Credit Facility which shall be a Base Rate Revolving Loan, in the amount of such draft, without regard to whether the making of such a Revolving Loan would exceed such Issuing Bank's Unused Revolving Credit Commitment. Each Issuing Bank shall give prompt notice to the Company and the Agent of each drawing under any Letter of Credit issued by it. Upon written demand by such Issuing Bank, with a copy of such demand to the Agent and the Company, each applicable Lender shall pay to the Agent such Lender's Ratable Share of such outstanding Revolving Loan pursuant to Section 2.03(b). Each applicable Lender acknowledges and agrees that its obligation to make Revolving Loans pursuant to this paragraph (c) in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Promptly after receipt thereof, the Agent shall transfer such funds to such Issuing Bank. Each Lender agrees to fund its Ratable Share of an outstanding Revolving Loan on (i) the Business Day on which demand therefor is made by such Issuing Bank, provided, that, notice of such demand is given not later than 11:00 a.m. (New York City time) on such Business Day, or (ii) the first Business Day next succeeding such demand if notice of such demand is given after such time. If and to the extent that any Lender shall not have so made the amount of such Revolving Loan available to the Agent, such Lender agrees to pay to the Agent forthwith on demand such amount together with interest thereon, for each day from the date of demand by any such Issuing Bank

until the date such amount is paid to the Agent, at the Federal Funds Rate for its account or the account of such Issuing Bank, as applicable. If such Lender shall pay to the Agent such amount for the account of any such Issuing Bank on any Business Day, such amount so paid in respect of principal shall constitute a Revolving Loan made by such Lender on such Business Day for purposes of this Agreement, and the outstanding principal amount of the Revolving Loan made by such Issuing Bank shall be reduced by such amount on such Business Day.

(d) Letter of Credit Reports. Each Issuing Bank shall furnish (i) to the Agent (with a copy to the Company) on the first Business Day of each month a written report summarizing Issuance and expiration dates of Letters of Credit issued by such Issuing Bank during the preceding month and drawings during such month under all Letters of Credit and (ii) to the Agent (with a copy to the Company) on the first Business Day of each calendar quarter a written report setting forth the average daily aggregate Available Amount during the preceding calendar quarter of all Letters of Credit issued by such Issuing Bank.

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

(f) Failure to Make Revolving Loans. The failure of any Lender to make the Revolving Loan to be made by it on the date specified in Section 2.03(c) shall not relieve any other Lender of its obligation hereunder to make its Revolving Loan on such date, but no Lender shall be responsible for the failure of any other Lender to make the Revolving Loan to be made by such other Lender on such date. No failure by any Lender to make such Revolving Loans shall limit or restrict the availability of any Letter of Credit to the Company.

(g) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Company shall be obligated to reimburse the applicable Issuing Bank hereunder for any and all drawings under such Letter of Credit. The Company hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Company, and that the Company's business derives substantial benefits from the businesses of such Subsidiaries.

SECTION 2.04. Fees.

(a) Commitment Fee. The Borrower agrees to pay to the Agent for the account of each applicable Lender a commitment fee on the aggregate amount of such Lender's Unused Revolving Credit Commitment (without giving effect to such Lender's Ratable Share of any outstanding Swingline Loans) from the Closing Date until the Termination Date calculated by multiplying such Lender's Unused Revolving Credit Commitment by the Applicable Percentage in effect from time to time, payable in arrears monthly on the first day of each calendar month and on the Termination Date; provided, however, that no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(b) Letter of Credit Fees.

(i) The Borrower shall pay to the Agent for the account of each applicable Lender (other than a Defaulting Lender) a commission on such Lender's Ratable Share of the average daily aggregate Available Amount of all Letters of Credit issued and outstanding from time to time at a rate per annum equal to the Letter of Credit Fee Rate in effect from time to time during such calendar quarter, payable in arrears monthly on the first day of each calendar month, and on the Termination Date; provided, that, the Letter of Credit Fee Rate shall be deemed to be 200 basis points above the Letter of Credit Fee Rate in effect if the Borrower is required to pay default interest pursuant to Section 2.07(b).

(ii) The Borrower shall pay to each Issuing Bank, for its own account, a fronting fee of one-quarter percent (0.25%) of the face amount of all Letters of Credit issued by such Issuing Bank and outstanding from time to time, payable in arrears monthly on the first day of each calendar month and on the Termination Date and such other customary commissions, issuance fees, transfer fees and other customary fees and charges in connection with the Issuance or administration of each Letter of Credit as the Borrower and such Issuing Bank shall agree.

(c) Other Fees. The Company shall pay the fees set forth in the Fee Letters, as such Fee Letters may from time to time be amended by the Company and the Agent and, to the extent any such amendment is adverse to the interests of any Arranger, by such Arranger, it being agreed that an increase in the amount of any administrative agency or other similar fee payable to the Agent is not adverse to the Arrangers.

SECTION 2.05. Termination or Reduction of the Commitments.

(a) Optional. The Borrower shall have the right at any time and without penalty, upon at least three (3) Business Days' notice to the Agent, to terminate in whole or permanently reduce in part the Unissued Letter of Credit Commitments and the Unused Revolving Credit Commitments; provided, that, each partial reduction of a Facility (i) shall be in an aggregate amount of $5,000,000 and an integral multiple of $1,000,000 in excess thereof and (ii) if made under the Revolving Credit Facility, shall be made ratably among the Lenders in accordance with their Revolving Credit Commitments in respect of the Revolving Credit Facility.

(b) Mandatory. Unless previously terminated, the Revolving Credit Commitments shall automatically terminate on the Maturity Date. The Letter of Credit Facility shall be permanently reduced from time to time on the date of each reduction in the Revolving Credit Facility by the amount, if any, by which the amount of the Letter of Credit Facility exceeds the Revolving Credit Facility after giving effect to such reduction of the Revolving Credit Facility.

SECTION 2.06. Letter of Credit Drawings. The obligations of the Company under any Letter of Credit Agreement and any other agreement or instrument relating to any Letter of Credit shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement, such Letter of Credit Agreement and such other agreement or instrument under all circumstances, including, without limitation, the following circumstances (it being understood that any such payment by the Company is without prejudice to, and does not constitute a waiver of, any rights the Company might have or might acquire as a result of the payment by any Lender of any draft or the reimbursement by the Company thereof, including, without limitation, pursuant to Section 9.14):

(a) any lack of validity or enforceability of this Agreement or any Note, or of any Letter of Credit Agreement, any Letter of Credit or any other agreement or instrument relating thereto (such Letter of Credit Agreement, Letter of Credit and related instruments or instruments being, collectively, the "L/C Related Documents");

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of Borrower in respect of any L/C Related Document or any other amendment or waiver of or any consent to departure from all or any of the L/C Related Documents;

(c) the existence of any claim, set-off, defense or other right that Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Persons for which any such beneficiary or any such transferee may be acting), any Issuing Bank, the Agent, any Lender or any other Person, whether in connection with the transactions contemplated by the L/C Related Documents or any unrelated transaction;

(d) any statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(e) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit;

(f) any exchange, release or non-perfection of any Collateral or other collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the obligations of the Borrower in respect of the L/C Related Documents; or

(g) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including, without limitation, any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Company or a guarantor.

SECTION 2.07. Interest on Revolving Loans.

(a) Scheduled Interest. Borrower shall pay interest on the unpaid principal amount of each Revolving Loan owing by Borrower to the Agent (or the Company, at its option, may make such payment on behalf of Borrower) for the account of each Lender from the date of such Revolving Loan until such principal amount shall be paid in full, at the following rates per annum:

(i) Base Rate Revolving Loans. During such periods as such Revolving Loan is a Base Rate Revolving Loan, a rate per annum equal at all times to the sum of (A) the Base Rate in effect from time to time plus (B) the Applicable Margin in effect from time to time, payable in arrears monthly on the first day of each calendar month and on the date such Base Rate Revolving Loan shall be Converted or paid in full.

(ii) Eurodollar Rate Revolving Loans. During such periods as such Revolving Loan is a Eurodollar Rate Revolving Loan, a rate per annum equal at all times during each Interest Period for such Revolving Loan to the sum of (A) the Eurodollar Rate for such Interest Period for such Revolving Loan plus (B) the Applicable Margin in effect from time to time, payable in arrears on the last day of such Interest Period and, if such Interest Period has a duration of more than three (3) months, on the day of every third (3) month during such Interest Period corresponding to the first day of such Interest Period and on the date such Eurodollar Rate Revolving Loan shall be Converted or paid in full.

(b) Default Interest. Upon the occurrence and during the continuance of an Event of Default under Section 6.01(a), the Agent may, and upon the request of the Required Lenders shall, require and notify the Borrower to pay interest ("Default Interest") on (i) the unpaid principal amount of each Revolving Loan owing to each Lender, payable in arrears on the dates referred to in clause (a)(i) or (a)(ii) above, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be

paid on such Revolving Loan pursuant to clause (a)(i) or (a)(ii) above and (ii) to the fullest extent permitted by law, the amount of any interest, fee or other amount payable hereunder that is not paid when due, from the date such amount shall be due until such amount shall be paid in full, payable in arrears on the date such amount shall be paid in full and on demand, at a rate per annum equal at all times to 2% per annum above the rate per annum required to be paid on Base Rate Revolving Loans pursuant to clause (a)(i) above, provided, however, that following acceleration of the Revolving Loans pursuant to Section 6.01, Default Interest shall accrue and be payable hereunder whether or not previously required by the Agent.

SECTION 2.08. Interest Rate Determination.

(a) The Agent shall give prompt notice to the Company and the Lenders of the applicable interest rate determined by the Agent for purposes of Section 2.07(a)(i) or (ii).

(b) If, with respect to any Eurodollar Rate Revolving Loans, Lenders owed at least 50% of the then aggregate principal amount of such outstanding Eurodollar Rate Revolving Loans thereof notify the Agent that the Eurodollar Rate for any Interest Period for such Revolving Loans will not adequately reflect the cost to such Lenders of making, funding or maintaining their respective Eurodollar Rate Revolving Loans for such Interest Period (a "Market Disruption Event"), the Agent shall forthwith so notify the Company and the Lenders, whereupon (i) each Eurodollar Rate Revolving Loan will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Revolving Loan, and (ii) the obligation of the Lenders to make, or to Convert Revolving Loans into, Eurodollar Rate Revolving Loans shall be suspended until the Agent shall notify the Borrower and such Lenders that the circumstances causing such suspension no longer exist. During any period in which a Market Disruption Event is in effect, Borrower may request that the Agent confirm that the circumstances giving rise to the Market Disruption Event continue to be in effect; provided, that, (A) Borrower shall not be permitted to submit any such request more than once in any 30 day period and (B) nothing contained in this Section 2.08 or the failure to provide confirmation of the continued effectiveness of such Market Disruption Event shall in any way affect the Agent's or Required Lenders' right to provide any additional notices of a Market Disruption Event as provided in this Section 2.08. If the Agent has not confirmed after request of such report from the Borrower that a Market Disruption Event has occurred, then such Market Disruption Event shall be deemed to be no longer existing.

(c) If Borrower shall fail to select the duration of any Interest Period for any Eurodollar Rate Revolving Loans in accordance with the provisions contained in the definition of "Interest Period" in Section 1.01, the Agent will forthwith so notify Borrower and the Lenders and such Revolving Loans will automatically, on the last day of the then existing Interest Period therefor, Convert into Base Rate Revolving Loans.

(d) On the date on which the aggregate unpaid principal amount of Eurodollar Rate Revolving Loans comprising any Borrowing shall be reduced, by payment or prepayment or otherwise, to less than $5,000,000, such Revolving Loans shall automatically Convert into Base Rate Revolving Loans.

(e) Upon the occurrence and during the continuance of any Event of Default under Section 6.01(a) or any Borrowing Base Deficiency, (i) each Eurodollar Rate Revolving Loan will automatically, on the last day of the then existing Interest Period therefor, Convert into a Base Rate Revolving Loan and (ii) the obligation of the Lenders to make, or to Convert Revolving Loans into, Eurodollar Rate Revolving Loans shall be suspended.

(f) Intentionally Deleted.

(g) Intentionally Deleted.

(h) Intentionally Deleted.

(i) Maximum Interest Rates. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the applicable Revolving Loans or, if it exceeds such unpaid principal, refunded to the Borrower, as applicable. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

(j) Intentionally Deleted.

SECTION 2.09. Optional Conversion of Revolving Loans. Borrower may on any Business Day, upon notice given to the Agent not later than 11:00 a.m. (New York City time) on the third Business Day prior to the date of the proposed Conversion and subject to the provisions of Sections 2.08 and 2.12, Convert all or any portion of the Revolving Loans made to it of one Type comprising the same Borrowing into Revolving Loans of the other Type; provided, however, that any Conversion of Eurodollar Rate Revolving Loans into Base Rate Revolving Loans shall be made only on the last day of an Interest Period for such Eurodollar Rate Revolving Loans, any Conversion of Base Rate Revolving Loans into Eurodollar Rate Revolving Loans shall be in an amount not less than the minimum amount specified in Section 2.02(b), no Conversion of any Revolving Loans shall result in more separate Borrowings than permitted under Section 2.02(b) and each Conversion of Revolving Loans comprising part of the same Borrowing shall be made ratably among the Lenders in accordance with their Commitments. Each such notice of a Conversion shall, within the restrictions specified above, specify (i) the date of such Conversion, (ii) the Revolving Loans to be Converted, and (iii) if such Conversion is into Eurodollar Rate Revolving Loans, the duration of the initial Interest Period for each such Revolving Loan. Each notice of Conversion shall be irrevocable and binding on the Borrower giving such notice.

SECTION 2.10. Repayments of Revolving Loans; Prepayments of Revolving Loans.

(a) Repayment of Revolving Loans. The Borrower shall repay to the Agent for the ratable account of each applicable Lender on the Termination Date the aggregate principal amount of the Revolving Loans made by such Lender to Borrower then outstanding. Subject to 2.01(c), if an Overadvance exists at any time, Borrower shall, on the sooner of the Agent's demand or the first Business Day after Borrower has knowledge thereof, repay Revolving Loans or Cash Collateralize Letters of Credit in an amount sufficient to reduce Revolving Credit Facility Usage to the Borrowing Base. If, after the occurrence and during the continuation of any Cash Control Trigger Event, any asset disposition includes the disposition of Accounts, Inventory, or Eligible Equipment, Borrower shall apply Net Cash Proceeds to repay Revolving Loans in an amount equal to the greater of (a) the net book value of such Accounts, Inventory, and Eligible Equipment or (b) the reduction in the Borrowing Base resulting from the disposition.

(b) Optional Prepayments. Borrower may, at any time, upon notice at least two (2) Business Days' prior to the date of such prepayment, in the case of Eurodollar Rate Revolving Loans, and not later than 11:00 a.m. (New York City time) on the date of such prepayment, in the case of Base Rate Revolving Loans, to the Agent stating the proposed date and aggregate principal amount of the prepayment, and if such notice is given Borrower shall, prepay the outstanding principal amount of the Revolving Loans comprising part of the same Borrowing made to it in whole or in part, together with accrued interest to the date of such prepayment on the principal amount prepaid; provided, that, (x) each partial prepayment shall be in an aggregate principal amount of $5,000,000, or an integral multiple of $1,000,000 in excess thereof and (y) in the event of any such prepayment of a Eurodollar Rate Revolving Loan, Borrower shall be obligated to reimburse the Lenders in respect thereof pursuant to Section 9.04(c).

(c) Mandatory Prepayments. (i) Borrower shall, in the time periods set forth in Section 2.01(c), prepay (with no corresponding commitment reduction) an aggregate principal amount of the Revolving Loans owed by Borrower and comprising part of the same Borrowings or Cash Collateralize Letters of Credit in an amount equal to the amount by which Revolving Credit Facility Usage exceeds the Line Cap (except as a result of Protective Revolving Loans made under Section 2.01(d) and not outstanding for more than ninety (90) consecutive days) (such amount, the "Excess Usage"); provided, that, in respect of any prepayment under this subsection directly attributable to any adjustment of Reserves, such prepayment shall be made not later than the Business Day immediately following the date such adjusted Reserves became effective.

(ii) Each prepayment made pursuant to this Section 2.10(c) shall be made together with any interest accrued to the date of such prepayment on the principal amounts prepaid and, in the case of any prepayment of a Eurodollar Rate Revolving Loan on a date other than the last day of an Interest Period or at its maturity, any additional amounts which the Borrower shall be obligated to reimburse to the Lenders in respect thereof pursuant to Section 9.04(c).

(iii) The Agent shall give prompt notice of any prepayment required under this Section 2.10(c) to Lenders.

(d) After the occurrence and during the continuation of any Cash Control Trigger Event, the Net Cash Proceeds of all insurance payments in respect of Equipment or Inventory shall be paid to the Agent and shall, in the Agent's sole discretion, (i) be released to the Borrower or applicable Guarantor for the repair, replacement or restoration thereof, (ii) be held as additional Collateral hereunder or applied as specified in Section 19(b)of the Security Agreement or (iii) be released to the Agent Sweep Account and applied as provided in Section 2.18(h) hereof.

SECTION 2.11. Increased Costs.

(a) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining Eurodollar Rate Revolving Loans or of agreeing to issue or of issuing or maintaining or participating in Letters of Credit (excluding for purposes of this Section 2.11 any such increased costs resulting from (x) Taxes (which for purposes of this exclusion shall include withholding taxes that are excluded from Taxes pursuant to Sections 2.14(a) and (e)) or Other Taxes (as to which Section 2.14 shall govern) and (y) changes in the basis of taxation of overall net income or overall gross income by the United States or by the foreign jurisdiction or state under the laws of which such Lender is organized or has its Applicable Lending Office or any political subdivision thereof), then the Borrower shall from time to time, upon written demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender additional

amounts sufficient to compensate such Lender for such increased cost; provided, however, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office if the making of such a designation would avoid the need for, or reduce the amount of, such increased cost and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to the amount of such increased cost, submitted to the Borrower and the Agent by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in law", regardless of the date enacted, adopted or issued.

(b) If any Lender determines that compliance with any law or regulation or any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) affects or would affect the amount of capital or liquidity required or expected to be maintained by such Lender or any corporation controlling such Lender and that the amount of such capital or liquidity is increased by or based upon the existence of such Lender's commitment to lend or to issue or participate in Letters of Credit hereunder and other commitments of such type or the issuance or maintenance of or participation in the Letters of Credit (or similar contingent obligations), then, upon demand by such Lender (with a copy of such demand to the Agent), the Borrower shall pay to the Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender or such corporation in the light of such circumstances, to the extent that such Lender reasonably determines such increase in capital or liquidity to be allocable to the existence of such Lender's commitment to lend or to issue or participate in Letters of Credit hereunder or to the issuance or maintenance of or participation in any Letters of Credit. A certificate as to such amounts submitted to the Borrower and the Agent by such Lender shall be conclusive and binding for all purposes, absent manifest error.

(c) A Lender will only be entitled to such compensation if such Lender provides a certificate to the Agent and the Company setting forth in reasonable detail (i) the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and (ii) stating that the claim for additional amounts referred to therein is generally consistent with such Lender's treatment of similarly situated customers of such Lender whose transactions with such Lender are similarly affected by the change in circumstances giving rise to such payment. Such certificate, when delivered to the Company, shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.11(c) shall not constitute a waiver of such Lender's right to demand such compensation; provided, that, Borrower shall not be required to compensate a Lender or the Agent pursuant to this Section 2.11(c) for any increased costs or reductions incurred more than one hundred twenty (120) days prior to the date that such Lender or the Agent notifies the Company of the change in law giving rise to such increased costs or reductions and of such Lender's or the Agent's intention to claim compensation therefor; provided, further, that, if the change in law giving rise to such increased costs or reductions is retroactive, then the 120-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.12. Illegality. Notwithstanding any other provision of this Agreement, if any Lender shall notify the Agent that the introduction of or any change in or in the interpretation of any law or regulation makes it unlawful, or any central bank or other Governmental Authority asserts that it is unlawful, for any Lender or its Eurodollar Lending Office to perform its obligations hereunder to make Eurodollar Rate Revolving Loans or to fund or maintain Eurodollar Rate Revolving Loans hereunder, (i) each Eurodollar Rate Revolving Loan will automatically, upon such demand, Convert into a Base Rate Revolving Loan and (ii) the obligation of the Lenders to make, or to Convert Revolving Loans into, Eurodollar Rate Revolving Loans shall be suspended until the Agent shall notify the Company, on behalf of the Borrower, the Borrower and the Lenders that the circumstances causing such suspension no longer exist; provided, however, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Eurodollar Lending Office if the making of such a designation would allow such Lender or its Eurodollar Lending Office to continue to perform its obligations to make Eurodollar Rate Revolving Loans or to continue to fund or maintain Eurodollar Rate Revolving Loans and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender.

SECTION 2.13. Payments and Computations.

(a) The Borrower shall make each payment hereunder without condition or deduction for any right of counterclaim, defense, recoupment or set-off, not later than 11:00 a.m. (New York City time) on the day when due in Dollars to the Agent at the Agent's Account in same day funds. The Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal, interest, fees or commissions ratably (other than amounts payable pursuant to Section 2.04, 2.11, 2.14 or 9.04(c)) to the Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon any Assuming Lender becoming a Lender hereunder as a result of a Commitment Increase pursuant to Section 2.21, and upon the Agent's receipt of such Lender's Assumption Agreement and recording of the information contained therein in the Register, from and after the applicable Increase Date the Agent shall treat each Assuming Lender as a Lender under this Agreement and shall make all payments hereunder and under any Notes issued in connection therewith pro rata among the Lenders taking into account the interest assumed thereby by the Assuming Lender. Upon its acceptance of an Assignment and Acceptance and recording of the information contained therein in the Register pursuant to Section 9.08(c), from and after the effective date specified in such Assignment and Acceptance, the Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Acceptance shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) Borrower hereby authorizes each Lender, if and to the extent payment owed to such Lender is not made when due hereunder or under the Note held by such Lender, to charge from time to time against any or all of Borrower's accounts with such Lender any amount so due.

(c) All computations of interest and of fees and Letter of Credit commissions shall be made by the Agent on the basis of a year of three hundred sixty (360) days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees or commissions are payable. Each determination by the Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(d) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest, fee or commission, as the case may be; provided, however, that, if such extension would cause payment of interest on or principal of Eurodollar Rate Revolving Loans to be made in the next following calendar month, such payment shall be made on the next preceding Business Day.

(e) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that Borrower will not make such payment in full, the Agent may assume that Borrower has made such payment in full to the Agent on such date and the Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrower shall not have so made such payment in full to the Agent, each Lender shall repay to the Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Agent, at the Federal Funds Rate.

(f) Subject to Section 6.04, if the Agent receives funds for application to the Obligations of the Borrower under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify, or the Borrower does not direct, the Revolving Loans to which, or the manner in which, such funds are to be applied, the Agent may, but shall not be obligated to, elect to distribute such funds ratably to the outstanding Obligations, (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of principal and unreimbursed amounts drawn under Letters of Credit then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of principal and such Letter of Credit obligations then due to such parties.

(g) Except to the extent a time of payment of, or period within which payment is required in respect of, any amount payable hereunder or under any of the other Loan Documents is specified in any Loan Document, all amounts payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first day of each month at any time that Obligations or Commitments are outstanding. Borrower hereby authorizes Agent, from time to time without prior notice to Borrower, to charge all interest, fees, costs, expenses and other amounts payable hereunder or under any of the other Loan Documents when due and payable to the loan account, provided, that, interest and fees (including pursuant to Sections 2.04(a), (b) and (c) and Section 2.07(a)(ii) above shall not be charged to any loan account until three (3) Business Days after Agent has provided Borrower with an invoice for any such amount. Any interest, fees, costs, expenses, or other amounts payable hereunder or under any other Loan Document that are charged to a loan account shall thereupon constitute Loans hereunder and shall initially accrue interest at the rate then applicable to Loans that are Base Rate Revolving Loans (unless and until converted into Eurodollar Rate Revolving Loans in accordance with the terms of this Agreement).

SECTION 2.14. Taxes.

(a) Any and all payments by any Loan Party to or for the account of any Lender, any Arranger or the Agent hereunder or under the Notes shall be made, in accordance with Section 2.13 or the applicable provisions of such other documents, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, remittances, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender, each Arranger and the Agent (i) taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction under the laws of which such Lender, such Arranger or the Agent (as the case may be) is organized or in which its principal executive office is located, or any political subdivision thereof and, in the case of each Lender, taxes imposed on its overall net income, and franchise taxes imposed on it in lieu

of net income taxes, by the jurisdiction of such Lender's Applicable Lending Office or any political subdivision thereof, (ii) any amounts required to be withheld under FATCA that would not have been imposed but for the failure of the Agent, Arranger or Lender, as applicable, to satisfy the applicable requirements of FATCA, and (iii) any amounts that are required to be withheld as a result of a Lender's failure to comply with the requirements of paragraph (e) or (j) of this Section (all such non-excluded taxes, levies, imposts, deductions, remittances, charges, withholdings and liabilities in respect of payments hereunder or under the Notes being hereinafter referred to as "Taxes"). If any Loan Party shall be required by law to deduct, remit or withhold any Taxes from or in respect of any sum payable hereunder or under any Note to any Lender, any Arranger or the Agent, (i) the sum payable to such Loan Party shall be increased as may be necessary so that after making all required deductions, remittances or withholdings (including deductions applicable to additional sums payable under this Section 2.14), such Lender, such Arranger or the Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party shall make such deductions and (iii) such Loan Party shall pay the full amount deducted, remitted or withheld to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, each Loan Party shall pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made by such Loan Party hereunder or under any other Loan Documents or from the execution, delivery or registration of, performing under, or otherwise with respect to, this Agreement or the other Loan Documents (hereinafter referred to as "Other Taxes").

(c) The Loan Parties shall indemnify each Lender, each Arranger and the Agent for and hold it harmless against the full amount of Taxes or Other Taxes (including, without limitation, taxes of any kind imposed or asserted by any jurisdiction on amounts payable under this Section 2.14) imposed on or paid or remitted by such Lender, such Arranger or the Agent (as the case may be) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be made within thirty (30) days from the date such Lender, such Arranger or the Agent (as the case may be) makes written demand therefor with appropriate supporting documentation.

(d) Within thirty (30) days after the date of any payment of taxes, the appropriate Loan Party shall furnish to the Agent, at its address referred to in Section 9.02, the original or a certified copy of a receipt evidencing such payment to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Agent. In the case of any payment hereunder or under the Notes or any other documents to be delivered hereunder by or on behalf of a Loan Party through an account or branch outside the United States or by or on behalf of a Loan Party by a payor that is not a United States person, if such Loan Party determines that no Taxes are payable in respect thereof, such Loan Party shall furnish, or shall cause such payor to furnish, to the Agent, at such address, an opinion of counsel reasonably acceptable to the Agent stating that such payment is exempt from Taxes. For purposes of this subsection (d) and subsection (e), the terms "United States" and "United States person" shall have the meanings specified in Section 7701 of the Code.

(e) Each Lender organized under the laws of a jurisdiction outside the United States, on or prior to the date of its execution and delivery of this Agreement on or prior to the designation of any different Applicable Lending Office and on the date of the Assumption Agreement or the Assignment and Acceptance pursuant to which it becomes a Lender in the case of each other Lender, and from time to time thereafter as reasonably requested in writing by the Company (but only so long as such Lender remains lawfully able to do so), shall provide each of the Agent and the Company with two original Internal Revenue Service Forms W-8BEN, W-8BEN-E or W-8ECI or (in the case of a Lender that has certified in writing to the Agent that it is not (i) a "bank" as defined in Section 881(c)(3)(A) of the Code, (ii) a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of any Loan Party

or (iii) a CFC related to any Loan Party (within the meaning of Section 864(d)(4) of the Code)), Internal Revenue Service Form W-8BEN or W-8BEN-E, as appropriate, or any successor or other form prescribed by the Internal Revenue Service, certifying that such Lender is exempt from or entitled to a reduced rate of United States withholding tax on payments pursuant to this Agreement or any other Loan Document or, in the case of a Lender that has certified that it is not a "bank" as described above, certifying that such Lender is a foreign corporation, partnership, estate or trust. If the form provided by a Lender at the time such Lender first becomes a party to this Agreement indicates a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from Taxes unless and until such Lender provides the appropriate forms certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered excluded from Taxes for periods governed by such form; provided, however, that, if at the date of the Assignment and Acceptance pursuant to which a Lender assignee becomes a party to this Agreement, the Lender assignor was entitled to payments under subsection (a) in respect of United States withholding tax with respect to interest paid at such date, then, to such extent, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) United States withholding tax, if any, applicable with respect to the Lender assignee on such date. If any form or document referred to in this subsection (e) requires the disclosure of information, other than information necessary to compute the tax payable and information required on the Closing Date by Internal Revenue Service Form W-8BEN, W-8BEN-E or W-8ECI or the related certificate described above, that the Lender reasonably considers to be confidential, the Lender shall give notice thereof to the Company and shall not be obligated to include in such form or document such confidential information, except directly to a Governmental Authority or other Person subject to a reasonable confidentiality agreement. In addition, upon the written request of the Company, any other certification, identification, information, documentation or other reporting requirement shall be delivered if (i) delivery thereof is required by a change in the law, regulation, administrative practice or any applicable tax treaty as a precondition to exemption from or a reduction in the rate of deduction or withholding; (ii) the Agent or Lender, as the case may be, is legally entitled to make delivery of such item; and (iii) delivery of such item will not result in material additional costs unless Borrower shall have agreed in writing to indemnify Lender or the Agent for such costs.

(f) For any period with respect to which a Lender has failed to provide the Company with the appropriate form, certificate or other document described in Section 2.14(e) (other than if such failure is due to a change in law, or in the interpretation or application thereof, occurring subsequent to the date on which a form, certificate or other document originally was required to be provided, or if such form, certificate or other document otherwise is not required under subsection (e) above), such Lender shall not be entitled to indemnification under Section 2.14(a) or (c) with respect to Taxes imposed by the United States of America by reason of such failure; provided, however, that should a Lender become subject to Taxes because of its failure to deliver a form, certificate or other document required hereunder, the Loan Parties, at such Lender's expense, shall take such steps as the Lender shall reasonably request to assist the Lender to recover such Taxes.

(g) Any Lender claiming any additional amounts payable pursuant to this Section 2.14 agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Eurodollar Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender.

(h) If any Lender determines, in its sole discretion, that it has actually and finally realized, by reason of a refund, deduction or credit of any Taxes paid or reimbursed by a Loan Party pursuant to subsection (a) or (c) above in respect of payments under this Agreement or the other Loan Documents, a current monetary benefit that it would otherwise not have obtained, and that would result in the total payments under this Section 2.14 exceeding the amount needed to make such Lender whole, such

Lender shall pay to the applicable Loan Party, with reasonable promptness following the date on which it actually realizes such benefit, an amount equal to the lesser of the amount of such benefit or the amount of such excess, in each case net of all out-of-pocket expenses in securing such refund, deduction or credit; provided, that, the Borrower, upon the request of the Agent or such Lender, agrees to repay the amount paid over to any Loan Party to the Agent or such Lender in the event the Agent or such Lender is required to repay such amount to such Governmental Authority.

(i) If any Loan Party determines in good faith that a reasonable basis exists for contesting the applicability of any Tax or Other Tax, the Agent, the relevant Arranger or the relevant Lender shall cooperate with such Loan Party, upon the request and at the expense of such Loan Party, in challenging such Tax or Other Tax. Nothing in this Section 2.14(i) shall require the Agent, any Arranger or any Lender to disclose the contents of its tax returns or other confidential information to any Person.

(j) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the applicable Loan Party and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the applicable Loan Party or the 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 applicable Loan Party or the Agent as may be necessary for the applicable Loan Party and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (j), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding taxes imposed under FATCA, from and after the Closing Date, the Loan Parties and the Agent shall treat (and the Lenders hereby authorize the Agent to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

SECTION 2.15. Sharing of Payments, Etc. Without expanding the rights of any Lender under this Agreement and, except as otherwise expressly provided in Section 6.04, if any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Revolving Loans owing to it (other than (x) as payment of a Revolving Loan made by an Issuing Bank pursuant to the first sentence of Section 2.03(c) or (y) pursuant to Section 2.11, 2.14 or 9.04(c)) in excess of its ratable share (according to the proportion of (i) the amount of such Revolving Loans due and payable to such Lender at such time to (ii) the aggregate amount of the Revolving Loans due and payable at such time to all Lenders hereunder) of payments on account of the Revolving Loans obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in the Revolving Loans owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such Lender's ratable share (according to the proportion of (i) the purchase price paid to such Lender to (ii) the aggregate purchase price paid to all Lenders) of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered; provided, further, that, so long as the Revolving Loans

shall not have become due and payable pursuant to Section 6.01, any excess payment received by any Lender shall be shared on a pro rata basis only with other Lenders. The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.15 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Loan Parties in the amount of such participation.

SECTION 2.16. Evidence of Debt.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to such Lender resulting from each Revolving Loan owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder in respect of Revolving Loans. Borrower agrees that upon notice by any Lender to Borrower (with a copy of such notice to the Agent) to the effect that a Note is required or appropriate in order for such Lender to evidence (whether for purposes of pledge, enforcement or otherwise) the Revolving Loans owing to, or to be made by, such Lender, Borrower shall promptly execute and deliver to such Lender a Note, as applicable, properly completed, payable to the order of such Lender in a principal amount up to the Revolving Credit Commitment of such Lender.

(b) The Register maintained by the Agent pursuant to Section 9.08(e) shall include a control account, and a subsidiary account for each Lender, in which accounts (taken together) shall be recorded (i) the date and amount of each Borrowing made hereunder, the Type of Revolving Loans comprising such Borrowing and, if appropriate, the Interest Period applicable thereto, (ii) the terms of each Assumption Agreement and each Assignment and Acceptance delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder and (iv) the amount of any sum received by the Agent from each Borrower hereunder and each Lender's share thereof.

(c) Entries made in good faith by the Agent in the Register pursuant to subsection (b) above, and by each Lender in its account or accounts pursuant to subsection (a) above, shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement, absent manifest error; provided, however, that the failure of the Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of Borrower under this Agreement with respect to Revolving Loans made and not repaid.

SECTION 2.17. Use of Proceeds. On the Closing Date, the proceeds of the Revolving Loans and the issuance of Letters of Credit hereunder shall be to pay costs and expenses related to the Closing Date Transactions and thereafter to issue Letters of Credit and finance ongoing working capital needs and general corporate purposes of the Borrower.

SECTION 2.18. Cash Management.

(a) Within sixty (60) days after the Initial Closing Date (or such later date as the Agent may specify in its sole discretion), and at all times thereafter, the Loan Parties shall enter into and maintain Control Agreements, with respect to each Concentration Account.

(b) Each Control Agreement for each Concentration Account shall require, during the continuance of a Cash Control Trigger Event (and delivery of notice thereof from the Agent), the ACH or wire transfer on each Business Day of all ledgers or available, as applicable, cash receipts held in the Concentration Account to a concentration account maintained by the Agent (an "Agent Sweep Account") located in the United States.

(c) If (i) at any time during the continuance of a Cash Control Trigger Event, any cash or Cash Equivalents owned by a Loan Party are deposited in any account (other than an Excluded Account), or held or invested in any manner (other than (w) in an Excluded Account, (x) in a Concentration Account that is subject to the Control Agreement, or (y) in a Deposit Account which is swept daily to a Concentration Account subject to a Control Agreement), or (ii) at any time, a Concentration Account shall cease to be subject to a Control Agreement, the applicable Loan Party shall immediately furnish the Agent with written notice thereof and the Agent may require such Loan Party to close such account and have any such funds transferred to a Concentration Account which is subject to a Control Agreement or maintained with the Agent.

(d) A Loan Party may close any Deposit Account or a Concentration Account, maintain existing Deposit Accounts or Concentration Accounts and/or open new Deposit Accounts or Concentration Accounts, subject to the execution and delivery to the Agent of appropriate Control Agreements with respect to each Concentration Account (except with respect to any Concentration Account maintained with the Agent) consistent with the provisions of this Section 2.18 and otherwise reasonably satisfactory to the Agent. The applicable Loan Party shall furnish the Agent with prior written notice of its intention to open or close a Concentration Account and the Agent shall promptly notify such Loan Party as to whether the Agent shall require a Control Agreement with the Person with whom such account will be maintained.

(e) Each Agent Sweep Account shall at all times be under the sole dominion and control of the Agent. Each Loan Party hereby acknowledges and agrees that (i) it has no right of withdrawal from the Agent Sweep Account until the applicable Cash Control Trigger Event is no longer continuing as set forth in subclause (f), (ii) the funds on deposit in an Agent Sweep Account shall at all times continue to be collateral security for all of the Secured Obligations, and (iii) the funds on deposit in an Agent Sweep Account, shall be applied as provided in Section 2.18(h) of this Agreement and in the Security Agreement. In the event that, notwithstanding the provisions of this Section 2.18, during the continuance of a Cash Control Trigger Event, a Loan Party receives or otherwise has dominion and control of any such proceeds or collections, such proceeds and collections shall be held in trust by such Loan Party for the Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall promptly be deposited into a Concentration Account or dealt with in such other fashion as such Loan Party may be instructed by the Agent (except for (i) funds required to be deposited into an Excluded Account and (ii) funds necessary to fund working capital needs of the Company and its Subsidiaries, which funds will be deposited in an account subject to a Control Agreement in the case of this subclause (ii)).

(f) Any amounts remaining in an Agent Sweep Account (i) at any time when a Cash Control Trigger Event is no longer continuing for purposes of this Agreement or (ii) after application of amounts received in such Agent Sweep Account as set forth in subsection (h) below, shall be remitted to the primary Concentration Account of the Company maintained with the Agent.

(g) The Agent shall promptly (but in any event within two (2) Business Days) furnish written notice to each Person with whom a Concentration Account is maintained when a Cash Control Trigger Event is no longer continuing for purposes of this Agreement.

(h) (i) Any amounts received in an Agent Sweep Account in the United States shall be applied to the payment (without a corresponding reduction of Commitments) of all of the Revolving Loans made to the Borrower (whether then due or not) and to the payment of all of the other Obligations under the Loan Documents of the Loan Parties (other than contingent obligations) (whether then due or not) in accordance with Section 6.04 (with all Revolving Loans deemed due for purposes thereof); (ii) all payments to be made in accordance with this subsection (h) in respect of Eurodollar Rate Revolving Loans shall be made on the last day of the applicable Interest Period therefor, and shall be held in the applicable Agent Sweep Account pending such payment and (iii) any remaining amounts shall be available for use by the Company and its Subsidiaries for additional working capital needs.

(i) The following shall apply to deposits and payments under and pursuant to this Agreement:

(i) funds shall be deemed to have been deposited to an Agent Sweep Account on the Business Day on which deposited, provided, that, such deposit is available to the Agent by 2:00 p.m. on that Business Day (except that if the Obligations are being paid in full, by 2:00 p.m. on that Business Day);

(ii) funds paid to the Agent, other than by deposit to an Agent Sweep Account, shall be deemed to have been received on the Business Day when they are good and collected funds, provided, that, such payment is available to the Agent by 2:00 p.m. on that Business Day (except that if the Obligations are being paid in full, by 2:00 p.m. on that Business Day); and

(iii) if a deposit to an Agent Sweep Account or payment is not available to the Agent until after 2:00 p.m. on a Business Day, such deposit or payment shall be deemed to have been made at 9:00 a.m. on the then next Business Day.

SECTION 2.19. Defaulting Lenders.

(a) In the event that, at any time, (i) any Lender shall be a Defaulting Lender, such Defaulting Lender shall owe a Defaulted Revolving Loan to Borrower and (iii) Borrower shall be required to make any payment hereunder or under any other Loan Document to or for the account of such Defaulting Lender, then Borrower may, to the fullest extent permitted by applicable law, set off and otherwise apply the Obligation of the Borrower to make such payment to or for the account of such Defaulting Lender against the obligation of such Defaulting Lender to make such Defaulted Revolving Loan. In the event that, on any date, Borrower shall so set off and otherwise apply its obligation to make any such payment against the obligation of such Defaulting Lender to make any such Defaulted Revolving Loan on or prior to such date, the amount so set off and otherwise applied by Borrower shall constitute for all purposes of this Agreement and the other Loan Documents a Revolving Loan by such Defaulting Lender made on the date under the Revolving Credit Facility pursuant to which such Defaulted Revolving Loan was originally required to have been made pursuant to Section 2.01. Such Revolving Loan shall be considered, for all purposes of this Agreement, to comprise part of the Borrowing in connection with which such Defaulted Revolving Loan was originally required to have been made pursuant to Section 2.01, even if the other Revolving Loans comprising such Borrowing shall be Eurodollar Rate Revolving Loans on the date such Revolving Loan is deemed to be made pursuant to this subsection (a). Borrower shall notify the Agent at any time Borrower exercises its right of set-off pursuant to this subsection (a) and shall set forth in such notice (A) the name of the Defaulting Lender and the Defaulted Revolving Loan required to be made by such Defaulting Lender and (B) the amount set off and otherwise applied in respect of such Defaulted Revolving Loan pursuant to this subsection (a). Any portion of such payment otherwise required to be made by the Borrower to or for the account of such Defaulting Lender which is paid by the Borrower, after giving effect to the amount set off and otherwise applied by the Borrower pursuant to this subsection (a), shall be applied by the Agent as specified in subsection (b) or (c) of this Section 2.19.

(b) In the event that, at any time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall owe a Defaulted Amount to the Agent or other applicable Lenders and (iii) Borrower shall make any payment hereunder or under any other Loan Document to the Agent for the account of such Defaulting Lender, then the Agent may, on its behalf or on behalf of such other Lenders and to the fullest extent permitted by applicable law, apply at such time the amount so paid by Borrower to or for the account of such Defaulting Lender to the payment of each such Defaulted Amount to the extent required to pay such Defaulted Amount. In the event that the Agent shall so apply any such amount to the payment of any such Defaulted Amount on any date, the amount so applied by the Agent shall constitute for all purposes of this Agreement and the other Loan Documents payment, to such extent, of such Defaulted Amount on such date. Any such amount so applied by the Agent shall be retained by the Agent or distributed by the Agent to such other Lenders, ratably in accordance with the respective portions of such Defaulted Amounts payable at such time to the Agent and such other Lenders and, if the amount of such payment made by Borrower shall at such time be insufficient to pay all Defaulted Amounts owing at such time to the Agent and the other Lenders, in the following order of priority:

(i) *first*, to the Agent for any Defaulted Amount then owing to the Agent in its capacity as Agent; and

(ii) *second*, to the Issuing Banks for any Defaulted Amounts then owing to them, in their capacities as such, ratably in accordance with such respective Defaulted Amounts then owing to the Issuing Banks; and

(iii) *third*, to any other Lenders for any Defaulted Amounts then owing to such other Lenders, ratably in accordance with such respective Defaulted Amounts then owing to such other Lenders.

Any portion of such amount paid by Borrower for the account of such Defaulting Lender remaining, after giving effect to the amount applied by the Agent pursuant to this subsection (b), shall be applied by the Agent as specified in subsection (c) of this Section 2.19.

(c) In the event that, at any time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall not owe a Defaulted Revolving Loan or a Defaulted Amount and (iii) Borrower, the Agent or any other Lender shall be required to pay or distribute any amount hereunder or under any other Loan Document to or for the account of such Defaulting Lender, then Borrower or such other Lender shall pay such amount to the Agent to be held by the Agent, to the fullest extent permitted by applicable law, in escrow or the Agent shall, to the fullest extent permitted by applicable law, hold in escrow such amount otherwise held by it. Any funds held by the Agent in escrow under this subsection (c) shall be deposited by the Agent in an account with the Agent, in the name and under the control of the Agent, but subject to the provisions of this subsection (c). The terms applicable to such account, including the rate of interest payable with respect to the credit balance of such account from time to time, shall be the Agent's standard terms applicable to escrow accounts maintained with it. Any interest credited to such account from time to time shall be held by the Agent in escrow under, and applied by the Agent from time to time in accordance with the provisions of, this subsection (c). The Agent shall, to the fullest extent permitted by applicable law, apply all funds so held in escrow from time to time to the extent necessary to make any Revolving Loans required to be made by such Defaulting Lender and to pay any amount payable by such Defaulting Lender hereunder and under the other Loan Documents to the Agent or any other Lender, as and when such Revolving Loans or amounts are required to be made or paid and, if the amount so held in escrow shall at any time be insufficient to make and pay all such Revolving Loans and amounts required to be made or paid at such time, in the following order of priority:

(i) *first*, to the Agent for any amount then due and payable by such Defaulting Lender to the Agent hereunder in its capacity as Agent;

(ii) *second*, to the Issuing Banks for any amounts then due and payable to them hereunder, in their capacities as such, by such Defaulting Lender, ratably in accordance with such respective amounts then due and payable to the Issuing Banks;

(iii) *third*, to the Agent for any amount then due and payable by such Defaulting Lender in respect of Swingline Loans ratably in accordance with such respective amounts and payable to Agent in respect of Swingline Loans;

(iv) *fourth*, to any other Lenders for any amount then due and payable by such Defaulting Lender to such other Lenders hereunder, ratably in accordance with such respective amounts then due and payable to such other Lenders; and

(v) *fifth*, to the Company, as applicable for any Revolving Loan then required to be made by such Defaulting Lender pursuant to a Commitment of such Defaulting Lender.

In the event that any Lender that is a Defaulting Lender shall, at any time, cease to be a Defaulting Lender, any funds held by the Agent in escrow at such time with respect to such Lender shall be distributed by the Agent to such Lender and applied by such Lender to the Obligations owing to such Lender at such time under this Agreement and the other Loan Documents ratably in accordance with the respective amounts of such Obligations outstanding at such time.

(d) The rights and remedies against a Defaulting Lender under this Section 2.19 are in addition to other rights and remedies that Borrower may have against such Defaulting Lender with respect to any Defaulted Revolving Loan and that the Agent or any Lender may have against such Defaulting Lender with respect to any Defaulted Amount.

(e) Anything contained herein to the contrary notwithstanding, in the event that (i) any Lender shall become a Defaulting Lender and (ii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five (5) Business Days after the Company's request that it cure such default, the Company shall have the right (but not the obligation) to repay such Defaulting Lender in an amount equal to the principal of, and all accrued interest on, all outstanding Revolving Loans owing to such Lender, together with all other amounts due and payable to such Lender under the Loan Documents, and such Lender's Commitment hereunder shall be terminated immediately thereafter.

(f) If any Lender becomes, and during the period it remains, a Defaulting Lender or a Potential Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.03, the "Ratable Share" of each Non-Defaulting Lender under the Revolving Credit Facility shall be computed without giving effect to the Letter of Credit Commitment of that Defaulting Lender; provided, that: (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default exists; and (ii) the aggregate obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit under the Revolving Credit Facility shall not exceed the positive difference, if any, of (1) the applicable Revolving Credit Commitment of that Non-Defaulting Lender minus (2) the aggregate Revolving Loans of that Lender under such Revolving Credit Facility.

(g) Each Issuing Bank, may, by notice to the Company and such Defaulting Lender or Potential Defaulting Lender through the Agent, require the Borrower to Cash Collateralize the obligations of Borrower to such Issuing Bank in respect of such Letter of Credit in amount at least equal to the aggregate amount of the unreallocated obligations (contingent or otherwise) of such Defaulting Lender or such Potential Defaulting Lender in respect thereof, or to make other arrangements satisfactory to the Agent, and to the applicable Issuing Bank, in their sole discretion to protect them against the risk of non-payment by such Defaulting Lender or Potential Defaulting Lender.

(h) If Borrower Cash Collateralizes any portion of a Defaulting Lender's or a Potential Defaulting Lender's exposure with respect to an outstanding Letter of Credit, Borrower shall not be required to pay any fees under Section 2.04(b)(i) to any Defaulting Lender or Potential Defaulting Lender that is a Lender at any time when the Letter of Credit is so Cash Collateralized.

(i) If any Lender becomes, and during the period it remains, a Defaulting Lender or a Potential Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to settle Swingline Loans pursuant to Sections 2.22, the "Ratable Share" of each Non-Defaulting Lender under the Revolving Credit Facility shall be computed without giving effect to such obligation of that Defaulting Lender; provided, that, the aggregate obligation of each Non-Defaulting Lender to settle Swingline Loans shall not exceed the Unused Revolving Credit Commitment of such Non-Defaulting Lender.

SECTION 2.20. Replacement of Certain Lenders. In the event a Lender ("Affected Lender") shall have (i) become a Defaulting Lender under Section 2.19, (ii) requested compensation from the Borrower under Section 2.14 with respect to Taxes or Other Taxes or with respect to increased costs or capital or under Section 2.11 or other additional costs incurred by such Lender which, in any case, are not being incurred generally by the other Lenders, (iii) has not agreed to any consent, waiver or amendment that requires the agreement of all Lenders or all affected Lenders in accordance with the terms of Section 9.01 and as to which the Required Lenders have agreed, or (iv) delivered a notice pursuant to Section 2.12 claiming that such Lender is unable to extend Eurodollar Rate Revolving Loans to the Borrower for reasons not generally applicable to the other Lenders, then, in any case, the Company or the Agent may make written demand on such Affected Lender (with a copy to the Agent in the case of a demand by the Company and a copy to the Company in the case of a demand by the Agent) for the Affected Lender to assign at par, and such Affected Lender shall use commercially reasonable efforts to assign pursuant to one or more duly executed Assignments and Acceptances five (5) Business Days after the date of such demand, to one or more financial institutions that comply with the provisions of Section 9.08 which the Company or the Agent, as the case may be, shall have engaged for such purpose, all of such Affected Lender's rights and obligations under this Agreement and the other Loan Documents (including, without limitation, its Commitment, all Revolving Loans owing to it, all of its participation interests in existing Letters of Credit, and its obligation to participate in additional Letters of Credit hereunder) in accordance with Section 9.08. The Agent is authorized to execute one or more of such Assignments and Acceptances as attorney-in-fact for any Affected Lender failing to execute and deliver the same within five (5) Business Days after the date of such demand. Further, with respect to such assignment, the Affected Lender shall have concurrently received, in cash, all amounts due and owing to the Affected Lender hereunder or under any other Loan Document; provided, that, upon such Affected Lender's replacement, such Affected Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.11, 2.14 and 9.04, as well as to any fees accrued for its account hereunder and not yet paid, and shall continue to be obligated under Section 8.05 with respect to losses, obligations, liabilities, damages, penalties, actions, judgments, costs, expenses or disbursements for matters which occurred prior to the date the Affected Lender is replaced.

SECTION 2.21. Increase in the Aggregate Revolving Credit Commitments.

(a) Borrower may, at any time, and from time to time, by notice to the Agent, request an increase of the Revolving Credit Facility (a "Commitment Increase"), either from existing Lenders or from additional parties approved by the Agent and the Issuing Banks after consultation with the Borrower (such approval not to be unreasonably withheld, delayed or conditioned and to be limited to approval rights that such party would have with respect to an assignment of the loan). Each Commitment Increase shall be for an amount of $5,000,000 or an integral multiple of $1,000,000 in excess thereof (or the remainder of such amount so that all such increases equal $25,000,000), to be effective as of a date that is at least ninety (90) days prior to the Termination Date (the "Increase Date") as specified in the related notice to the Agent; provided, however that (i) in no event shall the aggregate amount of all such Commitment Increases exceed $25,000,000, (ii) on the date of any request by the Company for a Commitment Increase and on the related Increase Date, no event shall have occurred and be continuing that constitutes a Default, and (iii) the Revolving Credit Commitment of each Lender or Eligible Assignee shall be in an amount of $5,000,000 or an integral multiple of $1,000,000 in excess thereof.

(b) If the applicable Lenders and Eligible Assignees that are asked to participate in the Commitment Increase notify the Agent that they are willing to so increase their respective Revolving Credit Commitments by an aggregate amount that exceeds the amount of the requested Commitment Increase, the requested Commitment Increase shall be allocated among such Lenders and Eligible Assignees willing to participate therein in such amounts as are determined by the Company in consultation with the Agent.

(c) On each Increase Date, each party participating in the Commitment Increase that is not an existing Lender (an "Assuming Lender") shall become a Lender party to this Agreement as of such Increase Date and the Revolving Credit Commitment under the Revolving Credit Facility of each existing Lender participating in the Commitment Increase (an "Increasing Lender") shall be increased by the amount allocated to such Lender by Borrower as of such Increase Date; provided, that, (i) the Agent shall have received on or before such Increase Date the following, each dated such date: (A) certified copies of resolutions of the Board of Directors of Borrower or the Executive Committee of such Board approving the Commitment Increase and the corresponding modifications to this Agreement, (B) a customary opinion of counsel for the Borrower in form and substance reasonably satisfactory to the Agent, (C) an assumption agreement from each Assuming Lender, if any, in form and substance satisfactory to the Company and the Agent (each an "Assumption Agreement"), duly executed by such Eligible Assignee, the Agent and the Company, and (D) confirmation from each Increasing Lender of the increase in the amount of its Revolving Credit Commitment under the Revolving Credit Facility in a writing satisfactory to the Company and the Agent; and (ii) there shall have been paid to each Lender providing an additional Commitment in connection with such increase in the Revolving Credit Facility all fees and expenses due and payable to such Person on or before the effectiveness of such increase.

On each Increase Date, upon fulfillment of the conditions set forth in the immediately preceding sentence of this Section 2.21(c), the Agent shall notify the Lenders (including, without limitation, each Assuming Lender) and the Borrower, on or before 1:00 p.m. (New York City time), by telecopier, of the occurrence of the Commitment Increase to be effected on such Increase Date and shall record in the Register the relevant information with respect to each Increasing Lender and each Assuming Lender on such date. Each Increasing Lender and each Assuming Lender shall, before 2:00 p.m. (New York City time) on the

Increase Date, make available for the account of its Applicable Lending Office to the Agent at the Agent's Account, in same day funds, in the case of such Assuming Lender, an amount equal to such Assuming Lender's ratable portion of the Borrowings under the Revolving Credit Facility then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments under the Revolving Credit Facility outstanding after giving effect to the relevant Commitment Increase) and, in the case of such Increasing Lender, an amount equal to the excess of (i) such Increasing Lender's ratable portion of the Borrowings under the Revolving Credit Facility then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments under the Revolving Credit Facility outstanding after giving effect to the relevant Commitment Increase) over (ii) such Increasing Lender's ratable portion of the Borrowings under the Revolving Credit Facility then outstanding (calculated based on its Revolving Credit Commitment (without giving effect to the relevant Commitment Increase) as a percentage of the aggregate Revolving Credit Commitments under the Revolving Credit Facility (without giving effect to the relevant Commitment Increase). After the Agent's receipt of such funds from each such Increasing Lender and each such Assuming Lender, the Agent will promptly thereafter cause to be distributed like funds to the other applicable Lenders for the account of their respective Applicable Lending Offices in an amount to each other applicable Lender such that the aggregate amount of the outstanding Revolving Loans owing to each applicable Lender after giving effect to such distribution equals such Lender's ratable portion of the Borrowings under the Revolving Credit Facility then outstanding (calculated based on its Revolving Credit Commitment as a percentage of the aggregate Revolving Credit Commitments under the Revolving Credit Facility outstanding after giving effect to the relevant Commitment Increase).

(d) In connection with any Commitment Increase, this Agreement and the other Loan Documents may be amended in a writing (which may be executed and delivered by the Borrower and the Agent) to reflect any technical changes necessary to give effect to such increase in accordance with its terms as set forth herein.

SECTION 2.22. Swingline Loans; Settlement.

(a) Each Borrowing of Swingline Loans shall be made upon the Borrower's irrevocable notice to the Agent, which may be given by telephone. Each such notice must be received by the Agent not later than 1:00 p.m. on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of $250,000, (ii) all Swingline Loans then outstanding shall not exceed $10,000,000 and (iii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Agent of a written notice substantially in the form of Exhibit B-2 ("Swingline Loan Notice"). Subject to the terms and conditions hereof, the Agent shall not later than 3:00 p.m. on the borrowing date specified in such Swingline Loan Notice, make the amount of such Swingline Loan available to the Borrower. Swingline Loans shall constitute Revolving Loans for all purposes, except that payments thereon shall be made to the Agent for its own account until Lenders have funded their participations therein as provided below.

(b) Settlement of Revolving Loans, including Swingline Loans, among the Lenders and the Agent shall take place on a date determined from time to time by the Agent (but at least weekly), on a pro rata basis in accordance with a settlement report delivered by the Agent to the Lenders. Between settlement dates, the Agent may in its discretion apply payments on Revolving Loans to Swingline Loans, regardless of any designation by Borrower or any provision herein to the contrary. Each Lender hereby purchases, without recourse or warranty, an undivided pro rata participation in all Swingline Loans outstanding from time to time until settled. If a Swingline Loan cannot be settled among Lenders, whether due to a Loan Party's Insolvency Proceeding or for any other reason, each Lender shall pay the amount of its participation in the Loan to the Agent, in immediately available funds, within one Business Day after the Agent's request therefor. Lenders' obligations to make settlements and to fund participations are absolute, irrevocable and unconditional, without offset, counterclaim or other defense, and whether or not the Commitments have terminated, an Overadvance exists or the conditions in Article III are satisfied.

SECTION 2.23. Failure to Satisfy Conditions Precedent. If any Lender makes available to the Agent funds for any Revolving Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrower by the Agent because the conditions to the applicable Revolving Loan set forth in Article III are not satisfied or waived in accordance with the terms hereof, the Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

SECTION 2.24. Obligations of Lenders Several. The obligations of the Lenders hereunder to make Revolving Loans, to fund participations in Letters of Credit and to make payments are several and not joint. The failure of any Lender to make any Revolving Loan, to fund any such participation or to make any payment on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Revolving Loan, to purchase its participation or to make its payment hereunder.

SECTION 2.25. Closing Date Transactions. The Lenders party hereto include all of the Lenders under the Existing Credit Agreement immediately prior to execution of this Agreement. The Lenders hereby consent to and approve the execution of this Agreement, the Security Agreement, the amendment and restatement of the Existing Credit Agreement and the transactions contemplated thereby, including the execution and delivery of the Term Loan Intercreditor Agreement and the Letter of Credit Facility Intercreditor Agreement by Agent on behalf of Lenders.

SECTION 2.26. Inability to Determine Rates; Replacement of LIBOR.

(a) Inability to Determine Rate. Agent will promptly notify Borrower and Lenders if, in connection with any Revolving Loan or request with respect to a Revolving Loan, (a) Agent determines that (i) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable Revolving Loan amount or Interest Period, or (ii) adequate and reasonable means do not exist for determining LIBOR for the Revolving Loan or Interest Period (including with respect to calculation of the Base Rate or the Eurodollar Base Rate); or (b) Agent or Required Lenders determine for any reason that LIBOR for the Interest Period does not adequately and fairly reflect the cost to Lenders of funding or maintaining the Revolving Loan. Thereafter, Lenders' obligations to make or maintain affected Eurodollar Rate Revolving Loans and utilization of the LIBOR component (if affected) in determining Base Rate shall be suspended until Agent determines (or is instructed by Required Lenders) to withdraw the notice. Upon receipt of such notice, Borrower may revoke any pending request for funding, conversion or continuation of a Eurodollar Rate Revolving Loan or, failing that, will be deemed to have requested a Base Rate Loan, and Agent may (or shall upon request by Required Lenders) immediately convert any affected Eurodollar Rate Revolving Loan to a Base Rate Loan.

(b) Replacement of LIBOR. Notwithstanding anything to the contrary in any Loan Document, if Agent determines (which determination shall be conclusive absent manifest error), or Borrower or Required Lenders notify Agent (with, in the case of Required Lenders, a copy to Borrower) that Borrowers or Required Lenders (as applicable) have determined, that:

(i) adequate and reasonable means do not exist for ascertaining LIBOR for any Interest Period hereunder or any other tenors of LIBOR, including because the LIBOR Screen Rate is not available or published on a current basis, and such circumstances are unlikely to be temporary; or

(ii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over Agent or such administrator has made a public statement identifying a specific date after which LIBOR or the LIBOR Screen Rate shall no longer be made available or used for determining the interest rate of loans, provided that, at the time of such statement, there is no successor administrator satisfactory to Agent that will continue to provide LIBOR after such specific date (such specific date, "Scheduled Unavailability Date"); or

(iii) the administrator of the LIBOR Screen Rate or a Governmental Authority having jurisdiction over such administrator has made a public statement announcing that all Interest Periods and other tenors of LIBOR are no longer representative; or

(iv) syndicated loans currently being executed, or that include language similar to that contained in this Section, are being executed or amended (as applicable) to incorporate or adopt a new benchmark interest rate to replace LIBOR;

then, in the case of clauses (i) through (iii) above, on a date and time determined by Agent (any such date, "LIBOR Replacement Date"), which date shall be at the end of an Interest Period or on the relevant interest payment date, as applicable, for interest calculated and shall occur within a reasonable time after the occurrence of any of the events or circumstances under clauses (i), (ii) or (iii) above and, solely with respect to clause (ii) above, no later than the Scheduled Unavailability Date, LIBOR will be replaced hereunder and under the other Loan Documents with, subject to the proviso below, the first available alternative set forth in the order below for any payment period for interest calculated that can be determined by Agent, in each case, without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document ("LIBOR Successor Rate"; and any such rate before giving effect to the Related Adjustment, "Pre-Adjustment Successor Rate"):

(x) Term SOFR plus the Related Adjustment; and

(y) SOFR plus the Related Adjustment;

and in the case of clause (iv) above, Agent and Borrower may amend this Agreement solely for the purpose of replacing LIBOR under this Agreement and the other Loan Documents in accordance with the definition of "LIBOR Successor Rate" and such amendment will become effective at 5:00 p.m. on the fifth Business Day after Agent has notified Lenders and Borrower of the occurrence of the circumstances described in clause (iv) above unless, prior to such time, Required Lenders have delivered to Agent written notice that such Required Lenders object to the implementation of a LIBOR Successor Rate pursuant to such clause; provided that if Agent determines that Term SOFR has become available, is administratively feasible for Agent and would have been identified as the Pre-Adjustment Successor Rate

in accordance with the foregoing if it had been so available at the time that the LIBOR Successor Rate then in effect was so identified, and notifies Borrower and Lenders of such availability, then from and after the beginning of the Interest Period, relevant interest payment date or payment period for interest calculated, in each case, commencing no less than thirty (30) days after the date of such notice, the Pre-Adjustment Successor Rate shall be Term SOFR and the LIBOR Successor Rate shall be Term SOFR plus the relevant Related Adjustment.

Agent will promptly (in one or more notices) notify Borrower and Lenders of (x) any occurrence of any events, periods or circumstances under clauses (i) through (iii) above, (y) a LIBOR Replacement Date, and (z) the LIBOR Successor Rate. Any LIBOR Successor Rate shall be applied in a manner consistent with market practice; provided that to the extent such market practice is not administratively feasible for Agent, such LIBOR Successor Rate shall be applied in a manner as otherwise reasonably determined by Agent. Notwithstanding anything to the contrary in any Loan Document, if at any time any LIBOR Successor Rate as so determined would otherwise be less than 0.25%, the LIBOR Successor Rate will be deemed to be 0.25% for the purposes of this Agreement and the other Loan Documents.

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

If events or circumstances of the type described in clauses (i) through (iii) above occur with respect to any LIBOR Successor Rate then in effect, the successor rate thereto shall be determined in accordance with the definition of "LIBOR Successor Rate."

(c) Alternate Benchmark Rate. Notwithstanding anything to the contrary herein, (i) after any such determination by Agent or receipt by Agent of any such notice described in Section 2.26(b)(i) through (iii), as applicable, if Agent determines that none of the LIBOR Successor Rates is available on or prior to the LIBOR Replacement Date, (ii) if the events or circumstances described in Section 2.26(b)(iv) have occurred but none of the LIBOR Successor Rates is available, or (iii) if the events or circumstances of the type described in 2.26(b)(i) through (iii) have occurred with respect to the LIBOR Successor Rate then in effect and Agent determines that none of the LIBOR Successor Rates is available, then in each case, Agent and Borrower may amend this Agreement solely for the purpose of replacing LIBOR or any then current LIBOR Successor Rate in accordance with this Section at the end of any Interest Period, relevant interest payment date or payment period for interest, as applicable, with another alternate benchmark rate giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such alternative benchmarks and, in each case, including any Related Adjustments and any other mathematical or other adjustments to such benchmark giving due consideration to any evolving or then existing convention for similar U.S. dollar denominated syndicated credit facilities for such benchmarks, which adjustment or method for calculating

such adjustment shall be published on an information service as selected by Agent from time to time in its discretion and may be periodically updated. For the avoidance of doubt, any such proposed rate and adjustments shall constitute a LIBOR Successor Rate. Any such amendment shall become effective at 5:00 p.m. on the fifth Business Day after Agent has posted such proposed amendment to Lenders and Borrower unless, prior to such time, Required Lenders have delivered to Agent written notice that such Required Lenders object to such amendment.

(d) No Successor Rate. If, at the end of any Interest Period, relevant interest payment date or payment period for interest calculated, no LIBOR Successor Rate has been determined in accordance with Section 2.26(b) or 2.26(c) and the circumstances under Section 2.26(b)(i) or (iii) exist or the Scheduled Unavailability Date has occurred (as applicable), Agent will promptly so notify Borrower and Lenders. Thereafter, (i) the obligation of Lenders to make or maintain Eurodollar Rate Revolving Loans shall be suspended (to the extent of the affected Eurodollar Rate Revolving Loans, Interest Periods, interest payment dates or payment periods), and (ii) the LIBOR component shall no longer be utilized in determining Base Rate, until the LIBOR Successor Rate has been determined in accordance with Section 2.26(b) or (c). Upon receipt of such notice, Borrowers may revoke any pending request for a borrowing of, conversion to or continuation of Eurodollar Rate Revolving Loans (to the extent of the affected Revolving Loans, Interest Periods, interest payment dates or payment periods) or, failing that, will be deemed to have converted such request into a request for Base Rate Loans (subject to clause (ii) above).

ARTICLE III
CONDITIONS TO EFFECTIVENESS AND LENDING

SECTION 3.01. Conditions Precedent to Effectiveness. This Agreement shall be effective upon the satisfaction or waiver of the following conditions precedent in the determination of Agent:

(a) The Agent shall have received executed counterparts to this Agreement from the Company, each other Loan Party and each Lender;

(b) The Agent shall have received the following, each dated as of the Closing Date and in form and substance satisfactory to the Agent:

(i) A guarantee and collateral acknowledgement and reaffirmation executed and delivered by each Loan Party,

(ii) Notes to the order of the Lenders to the extent requested by any Lender pursuant to Section 2.16,

(iii) Certified copies of the resolutions of the Board of Directors of each Loan Party approving each Loan Document to which it is a party, and of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to each Loan Document to which it is a party,

(iv) A certificate of the secretary or an assistant secretary of each Loan Party certifying the names and true signatures of the officers of such Loan Party authorized to sign each Loan Document to which it is or is to be a party and the other documents to be delivered hereunder and thereunder,

(v) Such certificates of good standing (to the extent such concept exists in such jurisdiction) from the applicable secretary of state or similar official of the jurisdiction of organization, formation documents and organizational documents of each Loan Party as the Agent may reasonably require, and such other documents as the Agent may reasonably require to evidence that each Loan Party qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except for such jurisdictions to the extent that the Company reasonably determines the failure to so qualify in such jurisdiction would not reasonably be expected to have a Material Adverse Effect;

(vi) a certificate of the chief financial officer of the Company, in the form attached hereto as Exhibit D,

(vii) Copies of a recent Lien and judgment search in each jurisdiction reasonably requested by the Agent with respect to the Loan Parties,

(viii) A certificate from the Responsible Officer of the Company as to the matters set forth in Sections 3.01(d), 3.01(g) and 3.01(k),

(ix) certificates of insurance with respect to the Loan Parties' property and liability insurance, together with a loss payable endorsement naming the Agent as loss payee; provided that the Agent and the Arrangers acknowledge and confirm they have received the certificates required by this subclause (ix) in form and substance that is reasonably satisfactory,

(x) A customary legal opinion of Sullivan & Cromwell, special counsel for the Company, in form and substance reasonably satisfactory to the Agent, and

(xi) A customary legal opinion of Day Pitney LLP, New Jersey counsel for the Company, in form and substance reasonably satisfactory to the Agent.

(c) The Agent shall have received a Borrowing Base Certificate as of the most recent calendar month-end if the Closing Date is after the 20th day of a month or otherwise as of the end of the second most recent prior calendar month with customary supporting documentation and supplemental reporting to be reasonably agreed by the Agent and the Company.

(d) No material adverse change in the business, operations, financial condition or assets of Loan Parties (taken as a whole) shall have occurred since December 31, 2015.

(e) The Agent and Arrangers, shall have received, in form and substance satisfactory to them, unaudited interim consolidated financial statements of the Company for each quarterly period ended subsequent to the date of the latest financial statements delivered to Arrangers prior to the Closing Date; provided, that, the Agent and the Arrangers acknowledge and confirm they have received the information required by this paragraph in form and substance that is reasonably satisfactory.

(f) Satisfactory evidence that the Company has received all governmental and third party consents and approvals as may be required in connection with the Revolving Credit Facility and the transactions contemplated thereby.

(g) Minimum opening Excess Availability on the Closing Date of not less than $20,000,000 after the application of proceeds of the initial Revolving Loans and issuance of the initial Letters of Credit and after provision for payment of all fees and expenses of the Closing Date Transactions.

(h) The Lenders shall have received at least three (3) Business Days prior to the Closing Date all documentation and information as is reasonably requested by the Lenders that is required by regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case to the extent requested in writing at least ten (10) Business Days prior to the Closing Date.

(i) All fees and expenses required to be paid under the Loan Documents, the Commitment Letter or the Fee Letters and invoiced at least three (3) Business Days prior to the Closing Date (provided, that, the three (3) Business Day invoice requirement shall not apply to amounts due pursuant to the Fee Letters (other than with respect to out of pocket fees and expenses, including legal fees)) shall have been, or will be paid on the Closing Date or arrangements satisfactory to Agent and the Arrangers have been made with regard to the payment thereof.

(j) All documents and instruments required to create and perfect the Agent's first priority (as to the ABL Priority Collateral) or other priority security interest in and Lien on the Collateral (free and clear of all other Liens other than Permitted Collateral Liens and subject to exceptions permitted by Section 5.02(a)) shall have been executed and delivered and, if applicable, be in proper form for filing.

(k) (i) the representations and warranties of the Borrower and each other Loan Party contained in each Loan Document to which it is a party shall be correct on and as of the Closing Date in all material respects (except to the extent qualified by materiality or "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects), before and after giving effect to the effectiveness of this Agreement and the transactions contemplated hereby, as though made on and as of such date; provided, that, any representation or warranty as of a specific date shall only be true or correct in all material respects as of such date and (ii) no event shall have occurred and be continuing, or would result from the effectiveness of this Agreement or the transactions contemplated hereby, that would constitute a Default.

(l) No Default under the Loan Documents shall exist on the Closing Date.

(m) The Agent shall have received reasonably satisfactory evidence that all Revolving Loans (if any) under and as defined in the Existing Credit Agreement shall be repaid, the commitments of the Non-Consenting Lenders hereunder shall have been terminated pursuant to Section 2.25 (and the Commitments of all continuing and new Lenders shall be as set forth on Schedule I) and all accrued interest and fees under the Existing Credit Agreement shall have been paid, or arrangements satisfactory to the Administrative Agent in respect thereof shall have been made. For the avoidance of doubt, all Letters of Credit outstanding immediately prior to execution of this Agreement shall continue to and remain outstanding.

SECTION 3.02. Conditions Precedent to Each Borrowing and Issuance. The obligation of each Lender to make a Revolving Loan (other than a Revolving Loan made by any Issuing Bank pursuant to Section 2.03(c) or any Lender pursuant to Section 2.03(c)) on the occasion of each Borrowing and the obligation of each Issuing Bank to issue a Letter of Credit shall be subject to the conditions precedent that the Closing Date shall have occurred and on the date of such Borrowing or such Issuance the following statements shall be true (and each of the giving of the applicable Notice of Borrowing, Notice of Issuance and the acceptance by the Borrower of the proceeds of such Borrowing or such Issuance shall constitute a representation and warranty by the Company that on the date of such Borrowing or such Issuance such statements are true):

(a) the representations and warranties of the Borrower and each other Loan Party contained in each Loan Document to which it is a party are correct in all material respects (except to the extent qualified by materiality or "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects) on and as of such date, before and after giving effect to such Borrowing or such Issuance and to the application of the proceeds therefrom, as though made on and as of such date; provided, that, any representation or warranty as of a specific date shall only need be true or correct in all material respects as of such date;

(b) no event has occurred and is continuing, or would result from such Borrowing or such Issuance or from the application of the proceeds therefrom, that constitutes a Default; and

(c) no Borrowing Base Deficiency will exist after giving effect to such Borrowing, issuance or renewal and to the application of the proceeds therefrom (other than as permitted by Section 2.01(c) or (d)).

SECTION 3.03. Additional Conditions to Issuances. In addition to the other conditions precedent herein set forth, if any Lender becomes, and during the period it remains, a Defaulting Lender or a Potential Defaulting Lender, no Issuing Bank will be required to issue any Letter of Credit or to amend any outstanding Letter of Credit to increase the face amount thereof, alter the drawing terms thereunder or extend the expiry date thereof, unless such Issuing Bank is satisfied that any exposure that would result from a Defaulted Revolving Loan of such Defaulting Lender or Potential Defaulting Lender is eliminated or fully covered by the Commitments of the Non-Defaulting Lenders or by Cash Collateralization or a combination thereof satisfactory to such Issuing Bank.

SECTION 3.04. Determinations Under this Agreement. For purposes of determining compliance with the conditions specified in this Agreement, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Agent responsible for the transactions contemplated by this Agreement shall have received notice from such Lender prior to the date that the Company, by notice to the Lenders, designates as the proposed Closing Date, specifying its objection thereto. The Agent shall promptly notify the Lenders of the occurrence of the Closing Date.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties of the Company. The Company and each other Loan Party represents and warrants (as applicable) as follows:

(a) Each Loan Party is duly organized, validly existing and, to the extent such concept is applicable, in good standing under the laws of the jurisdiction of its organization, except as to any Loan Party, other than the Company, where such failure to be organized, existing or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and is qualified to do business and in good standing as a foreign entity in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not be reasonably expected to have, a Material Adverse Effect.

(b) The execution, delivery and performance by each Loan Party of each Loan Document to which it is or is to be party, and the consummation of the transactions contemplated hereby and thereby, are within such Loan Party's corporate, limited liability company or partnership powers, as applicable, have been duly authorized by all necessary corporate, limited liability company or partnership action, as applicable, and do not (i) contravene such Loan Party's charter or by-laws, (ii) violate law, rule, regulation (including, without limitation, with respect to the Borrower, Regulation X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination or award, (iii) conflict with or result in the breach of, or constitute a default or require any payment to be made under, any material contractual restriction, binding on or affecting such Loan Party or (iv) except for the Liens created under the Loan Documents, result in or require the creation or imposition of any Lien upon or with respect to any of the properties of any Loan Party or any of its Restricted Subsidiaries (other than Liens permitted under Section 5.02(a)).

(c) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or any other third party is required for (i) the due execution, delivery, recordation, filing or performance by any Loan Party of any Loan Document to which it is or is to be a party, (ii) other than as set forth in Section 6(m) of the Security Agreement, the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (iii) other than in respect of the Specified Collateral as set forth in Section 6(m) of the Security Agreement, the perfection or maintenance of the Liens created under the Collateral Documents (including the priority required thereunder) or (iv) except for any notices that may be required pursuant to any applicable Intercreditor Agreement, the exercise by the Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents.

(d) This Agreement has been, and each other Loan Document when delivered hereunder will have been, duly executed and delivered by each Loan Party party thereto. This Agreement is, and each other Loan Document when delivered hereunder will be, the legal, valid and binding obligation of each Loan Party party thereto enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and by general principles of equity, whether enforcement is sought in a proceeding in equity or at law.

(e) The Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as at December 31, 2019, and the related Consolidated statement of earnings and Consolidated statement of cash flows of the Company and its Consolidated Subsidiaries for the fiscal year then ended, accompanied by an opinion of PricewaterhouseCoopers, LLP, independent public accountants, copies of which have been furnished to each Lender, fairly present, in all material respects, the Consolidated financial condition of the Company and its Consolidated Subsidiaries as at such date and the Consolidated statement of earnings and Consolidated statement of cash flows of the Company and its Consolidated Subsidiaries for the period ended on such date, all in accordance with GAAP. Since December 31, 2019, there has been no Material Adverse Effect except as disclosed in filings made with, or documents furnished to, the Bankruptcy Court or the Securities and Exchange Commission or as described in any press release, in each case prior to the date of this Agreement.

(f) Other than as disclosed on Schedule 4.01(f), there is no pending or, to the knowledge of the Company, threatened in writing action, suit, investigation, litigation or proceeding, including, without limitation, any Environmental Action, affecting any Loan Party before any court, governmental agency or arbitrator that (i) is reasonably likely to have a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document or the consummation of the transactions contemplated hereby.

(g) Neither Borrower nor any other Loan Party is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Revolving Loan will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(h) Neither Borrower nor any other Loan Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

(i) Except as disclosed on Schedule 4.01(i), each Loan Party and each of their respective Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents, technology, know-how and processes necessary for the conduct of its business as currently conducted except for those the failure to own or license which are not reasonably expected to have a Material Adverse Effect (the "Intellectual Property"). To the knowledge of the Company, no claim has been asserted and is pending against any Intellectual Property by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Loan Party know of any valid basis for any such claim, except, in either case, for such claims that in the aggregate are not reasonably expected to have a Material Adverse Effect. The use of such Intellectual Property by the Company and its Subsidiaries and the operation of their businesses does not infringe on the rights of any Person, except for such claims and infringements that, in the aggregate, are not reasonably expected to have a Material Adverse Effect.

(j) No ERISA Event has occurred or is reasonably expected to occur with respect to any Plan that has resulted in or is reasonably expected to result in a material liability of any Loan Party or any ERISA Affiliate.

(k) Neither any Loan Party nor any ERISA Affiliate has incurred or is reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan that in the aggregate could reasonably be expected to have a Material Adverse Effect.

(l) Neither any Loan Party nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or has been terminated, within the meaning of Title IV of ERISA, or has been determined to be in "endangered" or "critical" status within the meaning of Section 432 of the Code or Section 305 of ERISA, and no such Multiemployer Plan is reasonably expected to be insolvent or to be terminated, within the meaning of Title IV of ERISA or in endangered or critical status.

(m) Except as would not reasonably be expected to result in a Material Adverse Effect, as of the Closing Date, no event comprising (i) the commencement of winding up of the UK Pension Scheme, except pursuant to the KPP Settlement Agreement, (ii) the cessation of participation in the UK Pension Scheme by any Affiliate of the Borrower, except pursuant to the KPP Settlement Agreement, or (iii) the issue of a warning notice by the UK Pensions Regulator that it is considering issuing a financial support direction or contribution notice in relation to the UK Pension Scheme, has occurred, and (to the knowledge of the Borrower or Kodak Limited) the UK Pensions Regulator has not stated any intention to do so.

(n) As of the Closing Date, no Loan Party nor any Affiliate of any Loan Party has incurred any liability to the UK Pension Scheme as a result of ceasing to participate in the UK Pension Scheme and (to the knowledge of the Borrower or Kodak Limited) no Affiliate of any Loan Party has stated any intention to cease to participate in the UK Pension Scheme, except pursuant to the KPP Settlement Agreement.

(o) As of the Closing Date, no Loan Party nor any Affiliate of any Loan Party has been notified by the trustees of the UK Pension Scheme that the UK Pension Scheme is being wound up and (to the knowledge of the Borrower or Kodak Limited) the trustees of the UK Pension Scheme have not stated any intention to do so, except pursuant to the KPP Settlement Agreement.

(p) Except as would not reasonably be expected to result in a Material Adverse Effect or, except pursuant to the KPP Settlement Agreement, as of the Closing Date, the UK Pension Schemes are duly registered for HMRC tax purposes, all material obligations of each Affiliate required to be performed in connection with the UK Pension Schemes and any funding agreements therefor have been performed in a timely fashion; and there are no material outstanding disputes involving the Borrower or any of its Affiliates concerning the UK Pension Schemes.

(q) None of the Loan Parties or their Subsidiaries is a party to or bound by any collective bargaining or similar agreement with any union, labor organization or other bargaining agent except as set forth on Schedule 4.01(q).

(r) Except to the extent the Company or a Subsidiary has set aside on its books adequate reserves in accordance with GAAP, the operations and properties of the Company and each of its Consolidated Subsidiaries comply in all material respects with all applicable Environmental Laws and Environmental Permits, except as could not reasonably be expected to have a Material Adverse Effect, all past non-compliance with such Environmental Laws and Environmental Permits has been or is reasonably expected to be resolved without ongoing obligations or costs that have had or are reasonably expected to have a Material Adverse Effect, and no circumstances exist that are reasonably likely to (A) form the basis of an Environmental Action against the Company or any of its Subsidiaries or any of their properties that is reasonably expected to have a Material Adverse Effect or (B) cause any such property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law that is reasonably expected to have a Material Adverse Effect.

(s) The Company and each of its Subsidiaries has good and marketable fee simple title to or valid leasehold interests in all of the real property owned or leased by the Company or such Subsidiary and good title to all of their personal property, except where the failure to hold such title or leasehold interests, individually or in the aggregate is not reasonably expected to have a Material Adverse Effect. To the knowledge of the Company, the Company and each of its Subsidiaries enjoy peaceful and undisturbed possession under all of their respective leases except where the failure to enjoy such peaceful and undisturbed possession, individually or in the aggregate, is not reasonably expected to have a Material Adverse Effect.

(t) All factual information (other than information of an industry specific or general economic nature), taken as a whole, furnished by or on behalf of the Company, in writing to the Agent, the Arrangers or any Lender on or prior to the Closing Date, for purposes of this Agreement and all other such factual information (other than information of an industry specific or general economic nature), taken as a whole, furnished by the Company in writing to the Agent, the Arrangers or any Lender pursuant to the terms of this Agreement (after the date of this Agreement) will be, true and accurate in all material respects on the date as of which such information is dated or furnished and not incomplete by knowingly omitting to state any material fact necessary to make such information, taken as a whole, not

materially misleading at such time, provided, that, with respect to any projected financial information (including the Projections), estimates or other forward-looking statements (collectively, "Forward-Looking Information"), the Company represents only that such information was prepared in good faith based upon assumptions, and subject to such qualifications, believed to be reasonable at the time; provided, it is understood that such Projections are not to be viewed as facts or as a guarantee of performance of achievement of any particular results and that actual results may vary from projected results (many of which factors are beyond the control of the Company and Subsidiaries and their respective officers, representatives and advisors) and that such variances may be material and that no assurance can be given that such Forward-Looking Information will be realized. The information included in the Beneficial Ownership Certification most recently provided to Agent and each Lender is true and complete in all respects.

(u) All filings and other actions necessary to perfect and protect the security interest in the Collateral (other than in respect of the Specified Collateral as set forth in Section 6(m) of the Security Agreement) created under the Collateral Documents have been duly made or taken and are in full force and effect, and the Collateral Documents create in favor of the Agent for the benefit of the Secured Parties a valid and, together with such filings and other actions, perfected except as otherwise provided in the Intercreditor Agreements security interest with the applicable priority in the Collateral (other than the Specified Collateral), securing the payment of the Secured Obligations (as defined in each Security Agreement), and all filings and other actions necessary to perfect and protect such security interest have been duly taken. The Loan Parties are the legal and beneficial owners of the Collateral free and clear of any Lien, except for the liens and security interests created or permitted under the Loan Documents.

(v) The Company, together with its Restricted Subsidiaries, on a Consolidated basis is Solvent.

(w) (i) Set forth on Part A of Schedule II hereto is a complete and accurate list of all direct and indirect Subsidiaries of the Company that are organized under the laws of a state of the United States of America, and (ii) set forth on Part B of Schedule II hereto is a complete and accurate list of all Subsidiaries of Company, showing, in each case, as of the Closing Date (as to each such Subsidiary) the jurisdiction of its formation, the number of shares, membership interests or partnership interests (as applicable) of each class of its equity interests authorized, and the number outstanding, on the Closing Date and the percentage of each such class of its equity interests owned directly by the applicable Loan Party and the number of shares covered by all outstanding options, warrants, rights of conversion or purchase and similar rights at the Closing Date. Except as set forth on Part C of Schedule II hereto, all of the outstanding equity interests in each Loan Party's Subsidiaries have been validly issued, are fully paid and non-assessable and, except as otherwise provided herein, are owned by such Loan Party or one or more of its Subsidiaries, other than director's qualifying shares or similar minority interests required under the laws of the Subsidiary's formation, free and clear of all Liens, except those created under the Collateral Documents or permitted under the Loan Documents.

(x) Part I of Schedule III sets forth all Deposit Accounts that are maintained by the Loan Parties as of the Closing Date, which schedule shall include, with respect to each depository as of the Closing Date (i) the name and address of such depository; (ii) the account number(s) maintained with such depository; and (iii) a contact person at such depository. Part II of Schedule III sets forth all lock boxes that are maintained by the Loan Parties as of the Closing Date.

(y) [Reserved].

(z) (i) The Company and its Restricted Subsidiaries have timely filed with the appropriate United States federal, state, local and foreign taxing authorities all federal income tax returns and reports and all other material tax returns and reports that were required to be filed by them and all such tax returns are true and correct in all material respects, (ii) the Company and its Restricted Subsidiaries have timely paid and discharged all taxes owed by them, whether or not shown on such tax returns or reports, and (iii) there is no proposed tax assessment against the Company or any of its Restricted Subsidiaries except, in the cases of clauses (ii) and (iii) of this clause (z), for the payment of any such taxes or any tax assessments which are being actively contested by the Company or such Restricted Subsidiary in good faith and by appropriate proceedings or which have not had, and would not be reasonably expected to have, a Material Adverse Effect; provided, appropriate reserves, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

(aa) Each of the Borrower and its Restricted Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(bb) Neither the advance of the Revolving Loans to the Borrower nor the use of the proceeds of any thereof will violate any Sanction or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order"). Furthermore, neither the Borrower nor any Subsidiary, nor to the knowledge of the Borrower and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof is a Person that is (x) included on OFAC's List of Specifically Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority, (y) operating, organized or resident in a Designated Jurisdiction or (z) controlled by any Person or Persons described in clauses (x) and (y). The Borrower has instituted and maintains in effect policies and procedures designed to promote and achieve compliance by the Borrower, its Subsidiaries and its and their respective directors, officers, employees, agents and affiliates with Sanctions laws and regulations.

(cc) Each Loan Party is in compliance, in all material respects, with the PATRIOT Act. No part of the proceeds of the Revolving Loans will be used by the Borrower or any Subsidiary, directly or, to the knowledge of the Borrower or any Subsidiary, 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 any Anti-Corruption Law, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended. Each Loan Party is in compliance with Anti-Corruption Laws in all material respects. The Borrower has instituted and maintained in effect policies and procedures designed to promote and achieve compliance by the Borrower, its Subsidiaries and its and their respective directors, officers, employees, agents and affiliates with Anti-Corruption Laws.

(dd) As of the Closing Date and except as set forth on Schedule 4.01(dd), there are no strikes, lockouts or slowdowns against the Borrower or any Restricted Subsidiary pending or, to the knowledge of the Borrower, threatened. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) the Borrower and its Restricted Subsidiaries are in compliance with the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with hours worked by or payments made to employees or any similar matters (including but not limited to the appropriate classification of employees as exempt or non-exempt), (ii) the Borrower and its Restricted Subsidiaries have properly classified all individuals engaged as contractors as such under all applicable Federal, state, local or foreign law, (iii) the Borrower and its Restricted Subsidiaries are in compliance with the Worker Adjustment and Retraining Notification Act and all other state, local or

foreign laws relating to plant closings or mass layoffs and (iv) all payments due from the Borrower or any Restricted Subsidiary, or for which any claim may be made against the Borrower or any Restricted Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Borrower or such Subsidiary. Neither the Borrower nor any Subsidiary is subject to any claims arising out of any employment matter, whether pending as of the Closing Date or to its knowledge threatened, which would, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect. Except as does not, or would not reasonably be expected to, have a Material Adverse Effect, the consummation of the Closing Date Transactions 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 the Borrower or any Restricted Subsidiary is bound.

(ee) No Loan Party is an EEA Financial Institution.

(ff) No Loan Party is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No Revolving Loan proceeds or Letters of Credit will be used by the Company to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose governed by Regulations T, U or X of the Board of Governors.

ARTICLE V
COVENANTS OF THE LOAN PARTIES

SECTION 5.01. Affirmative Covenants. So long as any Revolving Loan or any other payment Obligation (other than contingent indemnification obligations not yet due and payable) of any Loan Party under any Loan Document shall remain unpaid, any Letter of Credit is outstanding or any Lender shall have any Commitment hereunder, each Loan Party shall and shall cause each of its Restricted Subsidiaries to:

(a) Compliance with Laws. Comply, and cause each of its Restricted Subsidiaries to comply, in all material respects, with (x) all applicable laws, rules, regulations and orders, such compliance to include, without limitation, compliance with ERISA, Environmental Laws, and the PATRIOT Act, except where such non-compliance is not reasonably expected to have a Material Adverse Effect and (y) Sanctions laws and regulations.

(b) Payment of Taxes, Etc. Pay and discharge, and cause each of its Restricted Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all material lawful claims that, if unpaid, might by law become a Lien upon its property; provided, however, that neither the Company nor any of its Restricted Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained, unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors. If an obligation providing the basis for a Lien covered by paragraph (b) of the definition of Permitted Liens is not an obligation of the Company or any of its Restricted Subsidiaries, the Company or any of its Restricted Subsidiaries shall be deemed to be contesting such obligation for purposes of this paragraph 5.01(b) so long as the obligor thereof is contesting such obligation or the Company or any of its Restricted Subsidiaries is using commercially reasonable efforts to contest the Lien or to cause the obligor thereof to satisfy the obligation providing the basis for such Lien; provided, that, neither the Company nor any of its Restricted Subsidiaries shall have any obligation to perform the obligation providing the basis for such Lien.

(c) Maintenance of Insurance. Maintain, and cause each Restricted Subsidiary to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Company or such Restricted Subsidiary operates; provided, however, that the Company and its Restricted Subsidiaries may self-insure to the extent consistent with prudent business practice.

(d) Preservation of Corporate Existence. Preserve and maintain, and cause each of its Restricted Subsidiaries (other than Immaterial Subsidiaries) to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises; provided, however, that the Company and its Restricted Subsidiaries may consummate any amalgamation, merger or consolidation permitted under Section 5.02(b) and provided, further, that neither the Company nor any of its Restricted Subsidiaries shall be required to preserve any right or franchise if the Company determines that the preservation thereof is no longer desirable in the conduct of the business of the Company or such Restricted Subsidiary, as the case may be, and that the loss thereof is not reasonably expected to have a Material Adverse Effect.

(e) Visitation Rights.

(i) At any reasonable time, on reasonable notice and from time to time, permit the Agent or any of the Lenders (accompanied by the Agent) or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Company and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Company and any of its Subsidiaries with any of their officers or directors and with their independent certified public accountants, provided, that, all such information is subject to the provisions of Section 9.09. At any time prior to the occurrence of a continuing Event of Default, the right of the Agent and any of the Lenders (accompanied by the Agent) to visit the property of the Company and any of its Subsidiaries shall be subject to reasonable rules and restrictions of the Company for such access, and such visit shall not unreasonably interfere with the ongoing conduct of the business of the Company and its Subsidiaries at such properties.

(ii) At any reasonable time and from time to time (except as may be limited by subsections (iii) and (iv) below) during regular business hours, upon reasonable notice, permit the Agent or any of the Lenders (accompanied by the Agent) or any agents or representatives thereof (including any consultants, accountants, lawyers and appraisers retained by the Agent) to visit the properties of the Company and its Subsidiaries to conduct evaluations, appraisals, environmental assessments and ongoing maintenance and monitoring in connection with the Company's computation of the Borrowing Base and the assets included in the Borrowing Base and such other assets and properties of the Company or its Subsidiaries as the Agent may require, and to monitor the Collateral and all related systems.

(iii) Permit the Agent to conduct, at the sole cost and expense of the Company field examinations, provided, that, such examinations may be conducted (a) so long as Excess Availability is greater than or equal to the greater of (i) twelve and one-half percent (12.5%) of the Revolving Credit Facility and (ii) $11,250,000, not more than one (1) time per twelve (12) month period, and (b) so long as Excess Availability is less than the greater of (i) twelve and one-half percent (12.5%) of the Revolving Credit Facility and (ii) $11,250,000, not more than two (2) times per twelve (12) month period. Notwithstanding the foregoing, following the occurrence and during the continuation of an Event of Default such field examinations may be conducted at the Company's expense as many times as the Agent shall consider reasonably necessary.

(iv) Permit the Agent, to conduct, at the sole cost and expense of the Loan Company: (a) inventory appraisals, provided, that, such appraisals may be conducted (i) so long as Excess Availability is greater than or equal to the greater of (i) twelve and one-half percent (12.5%) of the Revolving Credit Facility and (ii) $11,250,000, not more than one (1) time per twelve (12) month period, and (ii) so long as Excess Availability is less than the greater of (i) twelve and one-half percent (12.5%) of the Revolving Credit Facility and (ii) $11,250,000, not more than two (2) times per twelve (12) month period and (b) no more than one (1) machinery and equipment appraisal in any consecutive twelve (12) month period. Notwithstanding the foregoing, following the occurrence and during the continuation of an Event of Default such appraisals may be conducted at the Company's expense as many times as the Agent shall consider reasonably necessary.

(f) Keeping of Books. Keep and maintain proper books of record and account on a Consolidated basis for Company and its Subsidiaries in conformity in all material respects with GAAP in effect from time to time.

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Restricted Subsidiaries to maintain and preserve in all material respects, all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to so maintain or preserve is not reasonably expected to have a Material Adverse Effect.

(h) Reporting Requirements. Furnish to the Agent and Lenders:

(i) as soon as available and in any event within forty-five (45) days after the end of each of the first three quarters of each fiscal year of the Company, the Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as of the end of such quarter and Consolidated statements of earnings and cash flows of the Company and its Consolidated Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, duly certified by the chief financial officer of the Company as having been prepared in accordance with GAAP subject to normal year-end audit adjustments and other items, such as footnotes, omitted in interim statements, and concurrently with delivery of financial statements under this clause (i), or more frequently (but no more frequently than monthly) if requested by Agent while a Default or Event of Default exists, a Compliance Certificate executed by the chief financial officer of the Company, which shall include setting forth in reasonable detail the calculations necessary to demonstrate compliance with Section 5.03 (regardless of whether such covenant is then in effect) provided, that, to the extent such financial statements include information regarding Unrestricted Subsidiaries, the Company shall include a note and or notes containing reconciliation statements eliminating all financial information pertaining to Unrestricted Subsidiaries;

(ii) as soon as available and in any event within ninety (90) days after the end of each fiscal year of the Company, a copy of the annual audit report for such year for the Company and its Consolidated Subsidiaries, containing the Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as of the end of such fiscal year and Consolidated statements of earnings and cash flows of the Company and its Consolidated Subsidiaries for such fiscal year, in each case accompanied by an opinion by Ernst & Young LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit or other material qualification or exception, except for any such qualification or exception with respect to (i) any Debt maturing within three hundred sixty-four (364) days after the date of such financial statements, (ii) changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent public accountants or (iii) prospective or actual financial covenant breaches; provided, that, for avoidance of

doubt, any "explanatory paragraph," "emphasis-of-matter paragraph" or like statement shall not constitute a "going concern" or like qualification or exception for purposes of this paragraph) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Company and its Consolidated Subsidiaries on a Consolidated basis, and certificates of a Responsible Officer of the Company as to compliance with the terms of this Agreement and setting forth in reasonable detail the calculations necessary to demonstrate compliance with Section 5.03 (regardless of whether such covenant is then in effect); provided, that, to the extent such financial statements include information regarding Unrestricted Subsidiaries, the Company shall include a note and or notes containing reconciliation statements eliminating all financial information pertaining to Unrestricted Subsidiaries;

(iii) as soon as possible and in any event within five (5) days after the Company has knowledge of the occurrence of each Default continuing on the date of such statement, a statement of a Responsible Officer of the Company setting forth details of such Default and the action that the Company has taken and/or proposes to take with respect thereto;

(iv) promptly after the same become publicly available, copies of all reports that the Company sends to any of its stockholders generally, and copies of all reports and registration statements that the Company or any Subsidiary files with the Securities and Exchange Commission or any national securities exchange;

(v) notice of all actions and proceedings before any court, governmental agency or arbitrator affecting the Company or any of its Subsidiaries of the type which would have been required to be disclosed under Section 4.01(f), promptly after the later of the commencement thereof or knowledge that such actions or proceedings are reasonably likely to be of a type which would have been required to be disclosed under Section 4.01(f);

(vi) as soon as available and in any event no later than ninety (90) days after the end of each fiscal year, amended or supplemented Schedules setting forth such information as would be required to make the representations set forth in Section 6(a), (f), (g), (k), (l), (o) and (s)(iii) of the Security Agreement true and correct as if the Schedules referenced therein were delivered on such date;

(vii) as soon as available and in any event no later than twenty-one (21) days after the end of each month, and more frequently as the Agent may reasonably request (to the extent available) during a Cash Control Trigger Event, (A) inventory reports, agings of accounts receivable, agings of accounts payable, and reports with respect to US Cash, a roll-forward of accounts, and (B) such other information with respect to the Company or any of its Restricted Subsidiaries, as the Agent may from time to time reasonably request;

(viii) as soon as available, and in any event no later than ninety (90) days after the end of each fiscal year of the Company, a reasonably detailed consolidated budget of the Company and its Consolidated Subsidiaries for the fiscal year immediately following such fiscal year on a quarterly basis, and for each year thereafter through the Termination Date on an annual basis (including a projected Consolidated balance sheet of the Company and its Consolidated Subsidiaries as of the end of the following fiscal year), the related projected Consolidated statements of cash flow and income for such fiscal year and the projected Excess Availability (detailing the respective Borrowing Bases and the amount of aggregate Revolving Loans) expected as of the end of each month during such fiscal year (collectively, the "Projections"), which Projections shall be accompanied by a certificate of a Responsible Officer of the Company stating that such Projections are based on then reasonable estimates and then available information and assumptions; it being understood that the Projections are made on the basis of the Company's then current good faith views and assumptions believed to be reasonable when made with

respect to future events, and assumptions that the Company believes to be reasonable as of the date thereof and further being understood that projections, including the Projections, are subject to significant uncertainties and contingencies, many of which are beyond the Company's control, inherently unreliable and that actual performance may differ materially from the Projections and no assurance is given by the delivery of such Projections or otherwise that the Projections will be realized;

(ix) a Borrowing Base Certificate substantially in the form of Exhibit F as of the date required to be delivered or so requested, in each case with supporting documentation (including, without limitation, the documentation described in Schedule 1 to Exhibit F) shall be furnished to the Agent: (A) on or before the 21st day following the end of each fiscal month, which monthly Borrowing Base Certificate shall reflect the Collateral contained in the Borrowing Base updated as of the end of each such month; (B) in addition to such monthly Borrowing Base Certificates, upon the occurrence and continuance of an Event of Default or if Excess Availability is less than twelve and one-half percent (12.5%) of the Revolving Credit Facility, then bi-monthly on or before the third (3rd) Business Day following the fifteenth day of each month and the third (3rd) Business Day following the last day of each month, each of which bimonthly Borrowing Base Certificates shall reflect the Collateral included in the Borrowing Base updated as of the immediately preceding fourteen (14) days; provided, that, if Excess Availability is equal to or greater than twelve and one-half percent (12.5%) of the Revolving Credit Facility for thirty (30) consecutive days, such Borrowing Base Certificate shall be delivered pursuant to clause (A) herein; and (C) if requested by the Agent at any other time when the Agent reasonably believes that the then existing Borrowing Base Certificate is materially inaccurate, as soon as reasonably available after such request; in each case with supporting documentation as the Agent may reasonably request (including, without limitation, the documentation described on Schedule 1 to Exhibit F).

(x) Promptly and in any event within twenty (20) days after any Loan Party or any ERISA Affiliate (A) knows or has reason to know that any ERISA Event has occurred, a statement of a Responsible Officer of such Loan Party describing such ERISA Event and the action, if any, that such Loan Party or such ERISA Affiliate has taken and proposes to take with respect thereto and (B) furnishes any records, documents or other information to the PBGC with respect to any Plan pursuant to Section 4010 of ERISA.

(xi) Promptly and in any event within two (2) business days after receipt thereof by any Loan Party, copies of each notice from the PBGC or other governmental or regulatory authority stating its intention to terminate any Plan or to have a trustee appointed to administer any Plan.

(xii) Promptly and in any event within five (5) Business Days after receipt thereof by any Loan Party or any ERISA Affiliate from the sponsor of a Multiemployer Plan, copies of each notice concerning (A) the imposition of Withdrawal Liability by any such Multiemployer Plan, (B) the termination, within the meaning of Title IV of ERISA, of any such Multiemployer Plan or (C) the amount of liability incurred, or that may be incurred, by such Loan Party or any ERISA Affiliate in connection with any event described in clause (A) or (B).

(xiii) Except to the extent prohibited by the Pensions Act 2004, promptly and in any event within three (3) Business Days after a Responsible Officer of the Borrower or Kodak Limited knows or has reason to know that (A) the UK Pension Scheme has commenced winding up, (B) the UK Pensions Regulator has issued a warning notice that it is considering issuing a financial support direction or contribution notice to the Borrower or any of its Affiliates in relation to the UK Pension Scheme or (C) the Borrower or any of its Affiliates which currently participates in the UK Pension Scheme has ceased to participate and thus triggered a liability on its cessation of participation, a statement of a Responsible Officer of the Borrower (or, if applicable, cause to be furnished to the Lenders a statement of a Responsible Officer of Kodak Limited) noting such event and the action, if any, which is proposed to be taken with respect thereto.

(xiv) Notice of the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against any Loan Party with respect to the Chapter 11 Plan or the Confirmation Order, promptly after the commencement thereof.

(xv) Promptly upon the effectiveness thereof, copies of any amendment, supplement, waiver or other modification with respect to any of the Term Loan Documents, Convertible Note Documents, Series B Preferred Stock or Series C Preferred Stock.

Documents required to be delivered pursuant to Section 5.01(h)(i), (ii) and (iv) (to the extent any such documents are included in materials otherwise filed with or furnished to the Securities Exchange Commission), shall be deemed to have been delivered on the date (i) on which the Company provides such documents to the Agent, or provides a link thereto on the Company's website on the Internet at the website address listed on Schedule 9.02; or (ii) on which such documents are posted on the Company's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided, that, upon written reasonable request of the Agent, the Company shall deliver paper copies of such documents to the Agent until a written request to cease delivering paper copies is given by the Agent and (B) the Company shall notify the Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request by a Lender for delivery, and each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Agent and maintaining its copies of such documents.

Each Loan Party hereby acknowledges that (a) the Agent and the Arrangers will make available to the Lenders and the Issuing Banks materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Loan Party Materials") by posting the Loan Party Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Company or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Loan Party hereby agrees that it will use commercially reasonable efforts to identify that portion of the Loan Party Materials that may be distributed to the Public Lenders and that (w) all such Loan Party Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Loan Party Materials "PUBLIC", the Loan Parties shall be deemed to have authorized the Agent, and the Arrangers, the Issuing Banks and the Lenders to treat such Loan Party Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Company or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Loan Party Materials constitute Borrower Information, they shall be treated as set forth in Section 9.09); (y) all Loan Party Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Agent and the Arrangers shall be entitled to treat any Loan Party Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information". Notwithstanding the foregoing, the Loan Parties shall be under no obligation to mark any Loan Party Materials "PUBLIC".

(i) Covenant to Guarantee Obligations and Give Security. Upon the formation or acquisition after the Closing Date of (1) any Subsidiaries other than Excluded Subsidiaries, or (2) the acquisition of any property by any Loan Party, and such property, in the judgment of the Agent (as to which judgment the Agent has given notice to the Company (such notice, a "Request")), shall not already be subject (other than in respect of the Specified Collateral) to a perfected first priority, as to the ABL Priority Collateral, security interest in favor of the Agent for the benefit of the Secured Parties, then in each case at the Company's expense:

(i) in connection with the formation or acquisition of a Subsidiary other than an Excluded Subsidiary within thirty (30) days after such formation or acquisition, cause each such Subsidiary, to duly execute and deliver to the Agent a guaranty supplement, in the form of Exhibit E hereto, guaranteeing the Guaranteed Obligations,

(ii) within forty-five (45) days or, in the case of any item that would constitute Term Priority Collateral, within the time periods set forth in the Term Loan Documents or otherwise agreed by the Term Loan Agent (but in no event more than sixty (60) days), after (A) such Request or acquisition of property by any Loan Party, duly execute and deliver, and cause each Loan Party to duly execute and deliver, to the Agent such additional pledges, assignments (it being understood that, to the extent the applicable Collateral constitutes Term Loan Priority Collateral (as defined in the Term Loan Intercreditor Agreement), physical delivery of control thereof by the Agent shall not be required so long as such Collateral is delivered to, or under the control of, the Term Loan Agent in accordance with the Term Loan Intercreditor Agreement), security agreement supplements, intellectual property security agreement supplements and other security agreements as specified by, and in form and substance reasonably satisfactory to, the Agent, securing payment of all of the Guaranteed Obligations of such Loan Party and constituting Liens on all such properties and (B) such formation or acquisition of any such Subsidiary other than (x) an Immaterial Subsidiary or (y) a Foreign Subsidiary that is not a Material First-Tier Foreign Subsidiary of the Company, duly execute and deliver and cause each Loan Party acquiring equity interests in such Subsidiary to duly execute and deliver to the Agent pledges, assignments and security agreement supplements related to such equity interests as specified by, and in form and substance satisfactory to, the Agent, securing payment of all of the Guaranteed Obligations of such Loan Party, provided, that, if such new property is equity interests in a CFC, no more than sixty-five percent (65%) of the voting equity interests in any such CFC shall be required to be so pledged; provided, further, that no Foreign Subsidiary will be subject to local pledge perfection if in the applicable foreign jurisdiction such Foreign Subsidiary would have to consult a works council in order to perfect the pledge),

(iii) within sixty (60) days after such Request, formation or acquisition, take, and cause each Loan Party to take, whatever action (including, without limitation, the filing of UCC financing statements (or similar registrations or filings), the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the reasonable opinion of the Agent to vest in the Agent (or in any representative of the Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements delivered pursuant to this Section 5.01(i), enforceable against all third parties in accordance with their terms (other than in respect of the Specified Collateral as set forth in Section 6(m) of the Security Agreement),

(iv) within sixty (60) days after such Request, formation or acquisition, deliver to the Agent, upon the request of the Agent in its sole discretion, a signed copy of one or more favorable opinions, addressed to the Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Agent as to (1) such guaranties, guaranty supplements, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements described in clauses (i), (ii) and (iii) above being legal, valid and binding obligations of each Loan Party

thereto enforceable in accordance with their terms and as to the matters contained in clause (iii) above, subject to customary exceptions, (2) such recordings, filings, notices, endorsements and other actions being sufficient to create valid perfected Liens on such assets, and (3) such other matters as the Agent may reasonably request, consistent with the opinions delivered on the Closing Date (to the extent applicable).

(v) at any time and from time to time, promptly execute and deliver, and cause each Loan Party and each Restricted Subsidiary other than an Excluded Subsidiary to execute and deliver, any and all further instruments and documents and take, and cause such Subsidiary to take, all such other action as the Agent may deem reasonably necessary or desirable in obtaining the full benefits of, or in perfecting and preserving the Liens of, such guaranties, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements to the extent required by this Section 5.01(i) and the applicable Collateral Documents.

Notwithstanding the foregoing, (i) the Borrower shall have no obligation to provide in favor of the Secured Parties perfected security interests in any real property held by the Borrower or its Subsidiaries and (ii) the Agent may waive, modify or extend any of the periods or other requirements set out herein.

(j) Further Assurances.

(i) Promptly upon the reasonable request by the Agent, or any Lender through the Agent, correct, and cause each of the other Loan Parties promptly to correct, any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and

(ii) Promptly upon the reasonable request by the Agent, or any Lender through the Agent, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and reregister any and all such further acts, pledge agreements, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as the Agent, or any Lender through the Agent, may reasonably require from time to time in order to (A) carry out more effectively the purposes of the Loan Documents, (B) to the fullest extent permitted by applicable law and the terms of this Agreement and the Collateral Documents, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (C) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (D) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries formed or acquired after the Closing Date is or is to be a party, and cause each of its Subsidiaries to do so. Notwithstanding anything to the contrary contained herein, Agent shall not accept delivery of any joinder to any Loan Document with respect to any Subsidiary of any Loan Party that is not a Loan Party, if such Subsidiary qualifies as a "legal entity customer" under the Beneficial Ownership Regulation unless such Subsidiary has delivered a Beneficial Ownership Certification in relation to such Subsidiary and Agent has completed its Patriot Act searches, OFAC/PEP searches and customary individual background checks for such Subsidiary, the results of which shall be satisfactory to Agent.

(k) Transactions with Affiliates. Conduct, and cause each of its Restricted Subsidiaries to conduct, all transactions in which the fair market value of the transaction is in excess of $5,000,000 that are otherwise permitted under this Agreement with any of their Affiliates on terms that are fair and

reasonable and no less favorable to the Company or such Restricted Subsidiary than it would obtain in a comparable arm's-length transaction (determined in the reasonable judgment of the Company) with a Person not an Affiliate (it being agreed that such condition may be satisfied by the Company's or such Restricted Subsidiary's obtaining a "fairness" opinion from a nationally recognized investment bank or accounting firm or other person reasonably acceptable to the Agent but the Company or such Restricted Subsidiary is not obligated to so obtain a "fairness" opinion), other than, (i) transactions between or among the Company and its Restricted Subsidiaries and not involving any other Affiliate, (ii) transactions, arrangements, fee reimbursements and indemnities specifically and expressly permitted or required under this Agreement, (iii) the consummation of the Initial Closing Date Transactions and the Closing Date Transactions, (iv) Restricted Payments and payments permitted under Section 5.02(h), (v) employment and severance arrangements between the Company and its 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 arrangements in the ordinary course of business, (vi) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, managers, officers, employees and consultants of the Company and its Restricted Subsidiaries (or any direct or indirect parent of the Company) in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries, (vii) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 5.01(k) or any amendment thereto to the extent such an amendment is not materially adverse to the Lenders, (viii) transactions with a Person who was not an Affiliate immediately before the consummation of such transaction that becomes an Affiliate as a result of such transaction and (ix) transactions entered into in the ordinary course of business, including, but not limited to, transactions with licensors, suppliers or other purchasers or sales of goods or services (including any intellectual property).

(l) Maintenance of Cash Management System. (i) Establish and maintain a cash management system on the terms set forth in Section 2.18 and (ii) continue to maintain one or more Concentration Accounts to be used by Borrower as its principal concentration account for day-to-day operations conducted by Borrower.

(m) Foreign Security Interests. (i) Prior to the Amendment No. 2 Effective Date, within the time periods set forth on Schedule 5.01(m) (or such longer time as may be reasonably agreed by the Agent), the Loan Parties shall have executed and delivered to the Agent all documents and instruments required to create and perfect the Agent's third priority (to the extent applicable) security interest in the Collateral consisting of the capital stock of those Subsidiaries listed on Schedule 5.01(m) in the applicable foreign jurisdictions, free and clear of all other liens, subject to exceptions permitted hereunder and subject as to priority to the security interests securing the obligations in respect of the Term Loan Debt or any Debt constituting a Permitted Refinancing thereof and (ii) on and after the Amendment No. 2 Effective Date, within thirty (30) days after the Amendment No. 2 Effective Date (or such longer time as may be reasonably agreed by the Agent), the Loan Parties shall have executed and delivered to the Agent all documents and instruments required to create and perfect the Agent's first priority (to the extent applicable) security interest in the Collateral consisting of the capital stock of those Subsidiaries listed on Schedule 5.01(m) in the applicable foreign jurisdictions, free and clear of all other liens, subject to exceptions permitted hereunder; provided, that, in each case of clauses (i) and (ii) above, if the burden of obtaining any such pledge outweighs the benefit afforded thereby, the Agent may agree not to require the pledge of such stock by any Loan Party.

(n) Administration of Accounts and Inventory. (i) Each Loan Party shall keep accurate and complete records of its Accounts, including all payments and collections thereon and, subject to any other provision of this Section 5.01 with respect to the obligations of any Loan Party to provide information or reports to the Agent or the Lenders (A) each Loan Party shall submit to the Agent sales, collection, reconciliation and other reports in form reasonably satisfactory to the Agent, on such

periodic basis (not more than quarterly) as the Agent may reasonably request and (B) the Company shall provide to the Agent, upon the Agent's request, a detailed aged trial balance of all Accounts as of the end of the preceding month, specifying each Account's Account Debtor name and address, amount, invoice date and due date, showing any discount, allowance, credit, authorized return or dispute, and including such proof of delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as the Agent may reasonably request. If Accounts in an aggregate face amount of $10,000,000 or more cease to be Eligible Receivables, the Company shall notify the Agent of such occurrence promptly (and in any event within three (3) Business Days) after any Loan Party has knowledge thereof).

(ii) If an Account of any Loan Party includes a charge for any taxes, the Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Loan Party if such Loan Party does not do so and to charge the Borrower therefor; provided, however, that neither the Agent nor the Lenders shall be liable for any taxes that may be due from the Loan Parties or with respect to any Collateral.

(iii) Whether or not an Event of Default or a Cash Control Trigger Event exists, the Agent shall have the right at any time, in the name of the Agent, any designee of the Agent or any Loan Party, to verify the validity, amount or any other matter relating to any Accounts of the Loan Party by mail, telephone or otherwise. The Loan Parties shall cooperate fully with the Agent in an effort to facilitate and promptly conclude any such verification process.

(iv) Each Loan Party shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and, subject to any other provision of this Section 5.01 with respect to the obligations of any Loan Party to provide information and reports to the Agent or any Lender (A) shall submit to the Agent inventory and reconciliation reports in form reasonably satisfactory to the Agent, on such periodic basis as the Agent may request and (B) conduct a physical inventory at least once per calendar year (and on a more frequent basis if requested by the Agent when an Event of Default exists and is continuing) or periodic cycle counts consistent with historical practices, and shall provide to the Agent a report based on each such inventory and count promptly upon completion thereof, together with such supporting information as the Agent may reasonably request. Upon request by the Agent, the Agent may participate in and observe any such physical count.

(v) No Loan Party shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (A) such return is in the ordinary course of business; (B) no Default exists or would result therefrom; and (C) the Agent is promptly notified if the aggregate value of all Inventory returned in any month exceeds $10,000,000.

(o) Benefit Plans Payments. The Borrower, the Restricted Subsidiaries and all ERISA Affiliates shall make all required contributions to any Plans, Single Employer Plans or Multiemployer Plans which, if not made, would reasonably be expected to result in a Material Adverse Effect, unless such payment is being contested pursuant to Section 5.01(b).

(p) Lender Meetings. The Borrower will, upon the request of the Agent or the Required Lenders, participate in one teleconference with the Agent and the Lenders during each fiscal quarter (or, for so long as an Event of Default is continuing, more frequent teleconferences as the Agent may reasonably request) during normal business hours at such time as may be mutually agreed to by the Borrower and the Agent.

(q) Environmental Matters. Without limitation of any other covenants, rights or other obligations expressed elsewhere in this Agreement:

(i) Each Loan Party will, and will cause each of its Restricted Subsidiaries, to take all reasonable actions required under Environmental Laws to (A) the extent it has knowledge thereof, cure any violation of applicable Environmental Laws by any Loan Party or its Restricted Subsidiaries that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (B) make an appropriate response to any claim, suit or proceeding against any Loan Party or any of its Restricted Subsidiaries asserting any Environmental Liability (in each case to the extent such Loan Party has knowledge of such claim, suit or proceeding) and discharge any obligations it may have to any Person thereunder, where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (C) implement any and all Remedial Actions required to comply with Environmental Laws or that are legally required by any Governmental Authority acting within its jurisdiction (following final resolution of the Loan Party's or its Restricted Subsidiaries' challenges or appeals, if any, of the relevant Governmental Authority's order or decision) or that are otherwise necessary to maintain the value and marketability of its owned or leased Real Estate for industrial usage, except where failure to perform any such Remedial Action would not reasonably be expected to result in a Material Adverse Effect.

(ii) Promptly upon obtaining knowledge of the occurrence thereof, the Borrower shall deliver to the Agent written notice describing in reasonable detail (A) any Release that would reasonably be expected to require a Remedial Action or give rise to Environmental Liability, in each case that would reasonably be expected to result in a Material Adverse Effect, (B) any Remedial Action by any Loan Party, its Restricted Subsidiaries or any other Person in response to the presence or Release of Hazardous Materials that would reasonably be expected to result in Environmental Liability of any Loan Party or its Restricted Subsidiaries that would be reasonably expected to result in a Material Adverse Effect, (C) any claim, demand, suit or proceeding (including any request for information by a Governmental Authority) that would reasonably be expected to result in Environmental Liability of any Loan Party or its Restricted Subsidiaries that would reasonably be expected to result in a Material Adverse Effect, (D) any Loan Party or its Restricted Subsidiaries' discovery of any occurrence or condition at any of its owned or leased Real Estate, or on any adjoining Real Estate, that would reasonably be expected to cause such owned or leased Real Estate or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof or any lien in favor of any Governmental Authority to secure the satisfaction of any liability under any Environmental Laws that, in each case, would reasonably be expected to result in a Material Adverse Effect, (E) any proposed acquisition of equity interests, assets or property by any Loan Party or any of its Restricted Subsidiaries that would reasonably be expected to expose any Loan Party or any of its Restricted Subsidiaries to, or result in, Environmental Liability that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (F) any proposed action to be taken by any Loan Party or any of its Restricted Subsidiaries to modify current operations in a manner that would reasonably be expected to subject any Loan Party or any of its Restricted Subsidiaries to additional obligations or requirements under Environmental Laws that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(r) Post Closing Covenants.

(i) Issue at least $100,000,000 in aggregate original face amount of Series C Preferred Stock on or prior to April 12, 2021; provided, that, (A) such date shall be automatically extended until such time as the Borrower and the investors in such Series C Preferred Stock shall have made all filings required to be made pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and all waiting periods (and all extensions thereof) applicable to the issuance of such Series C Preferred Stock shall have been terminated or shall have expired and any required approvals or consents under the HSR Act have been obtained, and (B) Borrower shall promptly make all filings required to be made pursuant to the HSR Act and diligently and in good faith take all actions required to terminate any waiting periods and obtain any required approvals or consents under the HSR Act in connection with the Series C Preferred Stock Issuance, and

(ii) Comply, and cause its Subsidiaries to comply, with the obligations set forth in Schedule 5.01(r).

SECTION 5.02. Negative Covenants. So long as any Revolving Loan or any other payment Obligation (other than contingent indemnification obligations not yet due and payable of any Loan Party under any Loan Document) shall remain unpaid, any Letter of Credit is outstanding or any Lender shall have any Commitment hereunder, the Company shall not and shall cause each of its Restricted Subsidiaries not to:

(a) Liens. Create or suffer to exist, or permit any of its respective Restricted Subsidiaries to create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, other than the following, provided, that, any Lien permitted by any clause below shall be permitted under this Section 5.02(a), notwithstanding that such Lien would not be permitted by any other clause:

(i) Permitted Liens,

(ii) Liens created under the Loan Documents,

(iii) Liens on assets (other than Accounts and Inventory) to secure Debt permitted to be incurred under Section 5.02(d)(iii), (iv) and (xv) hereof,

(iv) the Liens existing on the Closing Date and described on Schedule 5.02(a); provided, that, (A) such Liens shall not apply to any other property or asset of the Company or any Restricted Subsidiary (other than proceeds thereof and extensions or improvements to any such property) unless otherwise permitted herein and (B) such Lien shall secure only those obligations which it secures on the Closing Date and extensions, refinancings, restructurings, renewals and replacements thereof that do not increase the outstanding principal amount thereof (other than by an amount equal to accrued interest and any fees, costs and expenses incurred in connection therewith), the obligations thereunder or the property or assets securing such obligations, in the case of each of subclauses (A) and (B) above other than to the extent such Lien constitutes a Permitted Lien;

(v) Liens on property of a Person existing at the time such Person is acquired by, amalgamated, merged into or consolidated with any Loan Party or any Restricted Subsidiary of a Loan Party or becomes a Restricted Subsidiary of any Loan Party; provided, that, such Liens were not created in contemplation of such amalgamation, merger, consolidation or acquisition and do not extend to any assets other than those of the Person so merged or amalgamated into or consolidated with the Company or such Subsidiary or acquired by any Loan Party or such Restricted Subsidiary (or in the case of Permitted Refinancing Debt, any extensions or amounts then outstanding),

(vi) Liens on property other than ABL Priority Collateral arising under leases that have been or should be, in accordance with GAAP, recorded as capital leases; provided, that, the aggregate principal amount of the Debt secured by the Liens referred to in this clause (vi) are permitted under the terms of this Agreement,

(vii) Liens on assets of Foreign Subsidiaries which secure Debt permitted under Section 5.02(d)(xvii), in an aggregate amount not to exceed $100,000,000 at any time outstanding,

(viii) Liens on property other than ABL Priority Collateral that secure Debt permitted by Section 5.02(d)(xi),

(ix) [Reserved],

(x) Liens upon real property of the Company and its Restricted Subsidiaries and related assets customary for non-recourse mortgage financings (provided, that, in no event shall any such Lien extend to or cover any Collateral included in the Borrowing Base) securing Debt incurred solely through the financing of such real property, and the replacement, extension or renewal of any such Lien upon or in the same real property or assets in connection with a Permitted Refinancing of the Debt secured thereby,

(xi) Liens in respect of judgments that do not constitute an Event of Default under Section 6.01(f),

(xii) Liens on the property of the Loan Parties securing Term Loan Debt permitted under Section 5.02(d)(xxvii), subject to the terms of the Term Loan Intercreditor Agreement,

(xiii) Liens on assets of the Company and its Subsidiaries not constituting Collateral which secure Debt in an aggregate amount not to exceed $150,000,000,

(xiv) Liens in favor of collecting or payor banks having a right of setoff, revocation, refund or chargeback with respect to money or instruments of the Company or any Restricted Subsidiary thereof on cash on deposit with or in possession of such bank,

(xv) (i) cash deposits in the ordinary course of business to secure liability to insurance carriers and (ii) Liens in insurance policies and proceeds thereof securing the financing of the premiums with respect thereto,

(xvi) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in respect of any Permitted Acquisition,

(xvii) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business and securing obligations (i) that are not overdue by more than thirty (30) days, or (ii) (A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation,

(xviii) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code (or equivalent statutes) on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage amounts incurred in the ordinary course of business; provided, that, such Liens (A) attach only to such investments and the proceeds therefrom and (B) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or Disposition of such investments and not any obligation in connection with margin financing; and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of setoff) and which are within the general parameters customary in the banking industry,

(xix) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted hereunder, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted hereunder, 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,

(xx) with respect to the equity interests of any non-wholly owned Restricted Subsidiary, non-wholly owned Unrestricted Subsidiary or joint venture, any put and call arrangements or restrictions on disposition related to such equity interests set forth in the applicable organizational documents or any related joint venture or similar agreement,

(xxi) rights of setoff in favor of counterparties to contractual obligations with the Loan Parties in the ordinary course of business,

(xxii) Liens arising out of conditional sale, title retention, consignment or other similar arrangements for the sale of goods entered into by any Loan Party or any of its Restricted Subsidiaries in the ordinary course of business;

(xxiii) Liens upon specified items of inventory or other goods and proceeds of the Company or any of its Restricted Subsidiaries securing such Persons' obligations in respect of related documentary letters of credit or bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods in the ordinary course of business;

(xxiv) Liens over any assets of any Subsidiary that is not a Loan Party or a Restricted Subsidiary to the extent required to provide collateral in respect of any appeal of any tax litigation in an aggregate amount not to exceed the amount required to be paid under local law to permit such appeal,

(xxv) Liens on assets other than ABL Priority Collateral to secure obligations under treasury services agreements or to implement cash pooling arrangements in the ordinary course of business,

(xxvi) Liens on cash and Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Debt, to the extent such defeasance, discharge or redemption is otherwise permitted hereunder,

(xxvii) Liens on assets of the Company or any Restricted Subsidiary in favor of a Loan Party, subject to the terms of the Security Agreement,

(xxviii) Liens on the property of the Loan Parties securing Supplemental Letter of Credit Facility Debt permitted under Section 5.02(d)(xxviii), subject to the terms of the Supplemental Letter of Credit Facility Intercreditor Agreement,

(xxix) Reservation of title by sellers of goods to any Loan Party arising under the provisions of applicable law similar to Article 2 of the UCC in the ordinary course of business, covering only those goods,

(xxx) Liens on Accounts, agreements governing receivables, rights under any such agreements and the proceeds thereof, in each case, of Foreign Subsidiaries to secure Debt in respect of Permitted Receivables Financings of Foreign Subsidiaries but only to the extent such Accounts are the subject of those financings; and

(xxxi) other Liens on assets of the Company or any Restricted Subsidiary (other than ABL Priority Collateral) securing obligations of the Company or any Restricted Subsidiary in an aggregate amount not to exceed $35,000,000.

(b) Mergers. Merge, amalgamate or consolidate with or into any Person, or permit any of its Restricted Subsidiaries (other than Immaterial Subsidiaries) to do so, provided, that, notwithstanding the foregoing (i) any Restricted Subsidiary of the Company that is a Loan Party may merge, amalgamate or consolidate with or into the Company (subject to clause (iv) below) or any other Loan Party, (ii) any Restricted Subsidiary of the Company that is not a Loan Party may merge, amalgamate or consolidate with or into the Company or any other Subsidiary of the Company, (iii) any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person so long as such Restricted Subsidiary is the surviving or continuing corporation or a Person which shall become a Restricted Subsidiary substantially contemporaneously with such merger, amalgamation or consolidation is the surviving person (provided, that, if any such Person is a Loan Party, the surviving or continuing entity shall be a Loan Party or a Person which shall become a Loan Party substantially contemporaneously with such merger, amalgamation or consolidation), (iv) the Company may merge, amalgamate or consolidate with any other Person so long as the Company is the surviving corporation; provided, in each case, that no Event of Default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom.

(c) Accounting Changes. Make or permit, or permit any of its Restricted Subsidiaries to make or permit, any change in accounting policies or reporting practices, except as required or permitted by GAAP.

(d) Debt. Create or suffer to exist, or permit any of its Restricted Subsidiaries to create or suffer to exist, any Debt other than the following, provided, that, any Debt permitted by any clause below shall be permitted under this Section 5.02(d), notwithstanding that such Debt would not be permitted by any other clause:

(i) Debt of the Borrower to any Restricted Subsidiary and of any Restricted Subsidiary to the Borrower or any other Restricted Subsidiary; provided, that, (A) Debt of any Loan Party owing to any Subsidiary that is not a Loan Party shall be subordinated in right of payment to the Obligations on subordination terms reasonably satisfactory to the Agent and (B) Debt of any Subsidiary that is not a Loan Party owing to any Loan Party shall be subject to Section 5.02(i)(ix),

(ii) Debt existing on the Closing Date and described on Schedule 5.02(d) hereto (the "Existing Debt"), and any Permitted Refinancing thereof,

(iii) Debt of the Company or any Restricted Subsidiary incurred to finance the acquisition by the Company or any Restricted Subsidiary after the Closing Date of real property and improvements thereto (but not inventory or other personal property located therein) and Permitted Refinancings thereof and any Permitted Refinancings of such refinanced Debt; provided, that, (A) before and after giving effect to the incurrence of such Debt, no Default (to the knowledge of any Loan Party) or Event of Default shall have occurred and be continuing, (B) the secured recourse to the Company or any Restricted Subsidiary of such Debt shall be limited to the value of the real property and improvements financed by such Debt, and (C) the aggregate principal amount of Debt incurred on or after the Closing Date and permitted by clauses (iii), (iv) and (xv) of this Section 5.02(d) at any time outstanding shall not exceed the greater of (1) $45,000,000 or (2) one and ninety-five hundredths percent (1.95%) of Total Assets,

(iv) Debt of the Borrower or any Restricted Subsidiary relating to purchase money security interests (as defined in the New York Uniform Commercial Code, as amended) and Permitted Refinancings thereof and any Permitted Refinancings of such refinanced Debt; provided, that, (A) before and after giving effect to the incurrence of such Debt no Default or Event of Default shall have occurred and be continuing, (B) such Debt (other than any Permitted Refinancings thereof or Permitted Refinancings of any such refinanced Debt) is incurred prior to or within two hundred seventy (270) days after such acquisition or the completion of such construction or improvement and (C) the aggregate principal amount of Debt incurred on or after the Closing Date and permitted by clauses (iii), (iv) and (xv) of this 5.02(d) at any time outstanding shall not exceed the greater of (1) $45,000,000 or (2) one and ninety-five hundredths percent (1.95%) of Total Assets,

(v) without duplication of any other Debt permitted hereunder, liabilities for leases of real property characterized as Debt for purposes of GAAP,

(vi) Debt of the Company or any of its Restricted Subsidiaries consisting of take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business,

(vii) Debt arising pursuant to agreements in connection with any Dispositions of any business, assets or equity interests of any Restricted Subsidiary permitted under Section 5.02(e), any Permitted Acquisition or any other permitted Investment hereof consisting of indemnification, earn-out obligations, adjustment of purchase price or similar obligations, or guarantees or letters of credit, bankers' acceptances, accommodation guarantees, surety bonds or performance bonds securing any obligations of the Company or any of its Restricted Subsidiaries pursuant to such agreements, in any case incurred in connection with such permitted Disposition, Permitted Acquisition or other permitted Investment (other than guarantees of Debt incurred by any Person acquiring all or any portion of such business, assets or capital stock of such Restricted Subsidiary for the purpose of financing such acquisition) and any Permitted Refinancing thereof and any Permitted Refinancings of any such refinanced Debt,

(viii) Debt consisting of the financing of insurance premiums in the ordinary course of business,

(ix) Debt in respect of Hedging Agreements designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes,

(x) Debt arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business (provided, however, that such Debt is extinguished within ten (10) Business Days of the Company or the applicable Restricted Subsidiary becoming aware of such Debt) or other cash management obligations and other Debt in respect of netting services, automatic clearinghouse arrangements, credit card processing, overdraft protections and similar arrangements in the ordinary course of business,

(xi) other Debt so long as, immediately after giving effect to the issuance, incurrence or assumption of such Debt, (a) the Total Leverage Ratio on a pro forma basis is no greater than 4.50 to 1.00 and (b) the Secured Leverage Ratio on a pro forma basis is no greater than 2.50 to 1.00, and any Permitted Refinancing thereof; provided, that, for the purposes of calculating the Secured Leverage Ratio for this Section 5.02(d)(xi), any Debt incurred pursuant to this Section 5.02(d)(xi) shall be deemed Secured Debt,

(xii) Investments permitted under Section 5.02(i)(iv) and (vii) that constitute Debt,

(xiii) Debt of a Person existing at the time such Person is merged into or consolidated with the Company or any Subsidiary of the Company or becomes a Subsidiary of the Company and any Permitted Refinancing thereof; provided, that, such Debt was not created in contemplation of such merger, consolidation or acquisition,

(xiv) Obligations arising under the Loan Documents,

(xv) Debt of the Company or any Restricted Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Debt assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof and any Permitted Refinancings of such refinanced Debt; provided, that, (A) before and after giving effect to the incurrence of such Debt, no Default (to the knowledge of any Loan Party) or Event of Default shall have occurred and be continuing, (B) such Debt (other than any Permitted Refinancings thereof or Permitted Refinancings of any such refinanced Debt) is incurred prior to or within two hundred seventy (270) days after such acquisition or the completion of such construction or improvement and (C) the aggregate principal amount of Debt incurred on or after the Closing Date and permitted by clauses (iii), (iv) and (xv) of this Section 5.02(d) at any time outstanding shall not exceed the greater of (1) $45,000,000 or (2) one and ninety-five hundredths percent (1.95%) of Total Assets,

(xvi) Debt incurred by Kodak International Finance Limited, a company organized and existing under the laws of England, in connection with short term working capital needs in an aggregate amount not to exceed $25,000,000 at any time outstanding,

(xvii) Debt incurred by Restricted Subsidiaries organized under the laws of any jurisdiction outside of the United States in an aggregate amount not to exceed $150,000,000 at any time outstanding,

(xviii) [Reserved],

(xix) Debt arising from the endorsement of negotiable instruments for deposit or collection or similar transactions in the ordinary course of business,

(xx) Debt consisting of Bank Product Obligations existing from time to time,

(xxi) Debt that is subordinated to the obligations of the Company under the Loan Documents on terms that are reasonably satisfactory to the Agent and the Required Lenders and any Permitted Refinancing thereof, provided, that, (i) the aggregate principal amount of such Debt shall not exceed $50,000,000 at any time outstanding, (ii) after giving effect thereto, the Company shall be in pro forma compliance with a Fixed Charge Coverage Ratio of 1.10 to 1.00, and (iii) Excess Availability shall equal or exceed seventeen and one-half percent (17.5%) of the Revolving Credit Facility on a pro forma basis after giving effect to the issuance of such Debt,

(xxii) Debt incurred by the Company or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, supporting obligations, bankers' acceptances, performance bonds, surety bonds, statutory bonds, export or import indemnities, customs and appeal bonds, warehouse receipts or similar instruments issued or created in the ordinary course of business, 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 with respect to reimbursement-type obligations regarding workers compensation claims; provided, that, no such Debt is Debt for Borrowed Money,

(xxiii) obligations in respect of performance, bid, appeal and surety bonds and performance and completion guarantees and similar obligations provided by the Company 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,

(xxiv) unsecured Convertible Note Debt in an aggregate principal amount not to exceed $25,000,000 (plus any interest paid in kind) and any Permitted Refinancing thereof,

(xxv) unsecured Debt consisting of guarantees of amounts owing by customers of the Company under equipment and vendor financing programs in an aggregate amount, when combined with Investments pursuant to Section 5.02(e)(xv), not to exceed at any time outstanding the greater of (A) $40,000,000 and (B) one and ninety-five hundredths percent (1.95%) of Total Assets,

(xxvi) Guarantees by the Company of Debt of any Restricted Subsidiary and by any Restricted Subsidiary of Debt of the Company or any other Restricted Subsidiary; provided, that, guarantees by any Loan Party of Debt of any Subsidiary that is not a Loan Party shall be subject to Section 5.02(i),

(xxvii) Term Loan Debt in an aggregate principal amount not to exceed $275,000,000 at any time outstanding, plus any interest paid in kind, and any Permitted Refinancing thereof,

(xxviii) Supplemental Letter of Credit Facility Debt in an aggregate principal and not to exceed $50,000,000 and any Permitted Refinancing thereof,

(xxix) to the extent constituting Debt, (A) unsecured Debt of Borrower arising under the Series B Preferred Stock in an aggregate face amount of up to $100,000,000 plus any dividends or interest paid in kind and any Permitted Refinancing thereof and (B) unsecured Debt of Borrower arising under the Series C Stock in an aggregate face amount of up to $100,000,000 plus any dividends or interest paid in kind and any Permitted Refinancing thereof,

(xxx) unsecured Debt (including preferred stock to the extent constituting Debt) of Borrower incurred after the Amendment No. 4 Effective Date in an aggregate principal or face amount of up to $100,000,000 plus any interest paid in kind, provided, that, such Debt (A) does not have any scheduled amortization payments, mandatory redemptions or sinking fund obligations or mandatory prepayments (including cash flow sweeps) on or prior to the date that is ninety-one (91) days after the Maturity Date (other than, in the case of Debt, customary offers to purchase upon a change of control, asset sale or event of loss, customary acceleration rights after an event of default and payments required to prevent any such Debt from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i) of the Code, or any successor provision thereto or, in the case of preferred stock, redemption rights in connection with a fundamental change and similar provisions), (B) does not mature prior to the date that is ninety-one (91) days after the Maturity Date, (C) does not have financial maintenance covenants (unless such covenants apply only after the maturity of the Loans or are added for the benefit of the Lenders pursuant to a conforming amendment (which amendment shall not require the consent of the Lenders)), (D) does not have a definition of "Change in Control" (or any other defined term having a similar purpose) that is more restrictive than the definition of Change in Control set forth herein (unless such definition applies only after the maturity of the Loans or this Agreement is amended to conform the provisions of this Agreement with such more restrictive definition (which amendment shall not require the consent of the Lenders)) and (E) does not otherwise have covenants or events of default that are, taken as a whole, materially more favorable to the holders of such Debt than those set forth in this Agreement, as reasonably determined by the Borrower (unless such covenants or events of default apply only after the maturity of the Loans or this Agreement is amended to conform the provisions of this Agreement with such more restrictive covenants or events of default (which amendment shall not require the consent of the Lenders)),

(xxxi) Debt representing deferred compensation or similar obligations to employees or directors of the Company or any of its Restricted Subsidiaries incurred in the ordinary course of business,

(xxxii) Debt consisting of promissory notes issued by the Company 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 the Company or any direct or indirect parent of the Company permitted hereunder; provided, that, the aggregate principal amount of such Debt shall not exceed $10,000,000 at any time outstanding,

(xxxiii) Debt of Foreign Subsidiaries in connection with Permitted Receivables Financing in an aggregate amount not to exceed $25,000,000 outstanding at any one time,

(xxxiv) additional Debt of Loan Parties and any Restricted Subsidiaries not to exceed $60,000,000 at any time outstanding and

(xxxv) issuance of Disqualified Stock.

(e) Sales and Other Transactions. Dispose of, or permit any of its Restricted Subsidiaries to Dispose of any assets (including by an allocation of assets among newly divided limited liability companies pursuant to a "plan of division"), other than the following, provided, that, such action permitted by any clause below shall be permitted under this Section 5.02(e), notwithstanding that such action would not be permitted by any other clause:

(i) Dispositions of Inventory in the ordinary course of its business and the granting of any option or other right to purchase, lease or otherwise acquire the Inventory in the ordinary course of business,

(ii) Dispositions of cash and Cash Equivalents in the ordinary course of business,

(iii) Dispositions in a transaction authorized by Section 5.02(b),

(iv) Dispositions of obsolete or worn out property or property no longer used or useful other than Eligible Equipment,

(v) Dispositions set forth on Schedule 5.02(e),

(vi) Dispositions of assets among the Company and its Subsidiaries, provided, that, any such sales, transfers or Dispositions of assets shall be made in compliance with Section 5.01(k), and

(vii) other Dispositions of assets, provided, that, (A) if such assets (other than machinery or equipment) constitute Collateral that is included in the Borrowing Base, the Company shall provide a Borrowing Base Certificate to the Agent reflecting the revised Borrowing Base giving effect to such sale, conveyance, transfer, lease or other Disposition or (B) if any such property or assets are comprised of machinery and equipment which is Eligible Equipment, then the Company shall deliver to the Agent a pro forma Borrowing Base Certificate giving effect to any such Dispositions prior to such occurrence, and evidencing that no Overadvance shall exist after giving effect to any such Disposition, and a certificate to the Agent indicating which assets constituting Eligible Equipment and other Collateral are being Disposed.

(f) Payment Restrictions Affecting Subsidiaries. Directly or indirectly enter or permit a Restricted Subsidiary to enter into any agreement or arrangement limiting the ability of any of its Restricted Subsidiaries to declare or pay dividends or other distributions in respect of its equity interests or repay or prepay any Debt owed to, make loans or advances to, or otherwise transfer assets to or make Investments in, the Company or any Restricted Subsidiary of the Company (whether through a covenant restricting dividends, loans, asset transfers or investments, a financial covenant or otherwise), except (i) as provided in this Agreement, (ii) any agreement or instrument evidencing Debt existing on the Closing Date (as amended, modified, supplemented or replaced, or subject to a Permitted Refinancing, in each case to the extent such restrictions are not expanded in scope in any material respect), (iii) any agreement in effect at the time a Person first became a Restricted Subsidiary of the Company, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Company; (iv) specific property encumbered to secure payment of particular Debt to be sold pursuant to an executed agreement with respect to a Disposition or intellectual property license permitted hereunder; (v) restrictions set forth in the documents governing the Term Loan Debt, the Supplemental Letter of Credit Facility Debt, the Convertible Note Debt and in the documents governing other existing Debt as set forth on Schedule 5.02(d); (vi) by reason of customary provisions restricting assignments, licenses, subletting or other transfers contained in leases, licenses, joint venture agreements, purchase and sale or merger agreements and other similar agreements entered into in the ordinary course of business so long as such restrictions do not extend to assets other than those that are the subject of such lease, license or other agreement, as the case may be; or (vii) customary restrictions in connection with financings by Foreign Subsidiaries.

(g) Change in Nature of Business. Make, or permit any of its Restricted Subsidiaries to make, any material change in the nature of the business as carried on or as contemplated to be carried on by the Company and its Restricted Subsidiaries taken as a whole at the Closing Date or as reflected in the Chapter 11 Plan.

(h) Dividends and Other Payments. Declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of capital stock of the Company, or purchase, redeem or otherwise acquire for value (or permit any of its Restricted Subsidiaries to do so) any shares of any class of capital stock of the Company or any warrants, rights or options to acquire any such shares, now or hereafter outstanding (a "Restricted Payment"), except that the Company may

(i) declare and make any dividend payment or other distribution payable in common stock of the Company, or in the case of dividends with respect to preferred stock, shares of such preferred stock,

(ii) purchase, redeem or otherwise acquire shares of its common stock or warrants, rights or options to acquire any such shares with the proceeds received from the substantially concurrent issue of new shares of its common stock,

(iii) repurchases of equity interests (A) constituting fractional shares or (B) deemed to occur upon exercise of stock options or warrants or other securities convertible or exchangeable into equity interests if such equity interests represent all or a portion of the exercise price of such options or warrants,

(iv) declare or pay cash dividends to its stockholders and purchase, redeem or otherwise acquire shares of its capital stock (including Disqualified Stock) or warrants, rights or options to acquire any such shares for cash so long as: (A) as of the date of any such transaction or payment, and after giving effect thereto, no Default shall have occurred and be continuing or would result therefrom,

(B) as of the date of any such transaction or payment, the Excess Availability as of such date and at any time during the immediately preceding thirty (30) consecutive day period shall have been not less than twenty-five percent (25%) of the Revolving Credit Facility, and after giving effect to the transaction or payment, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment, the Excess Availability as of such date and at any time during the immediately preceding thirty (30) consecutive day period shall be not less than twenty-five percent (25%) of the Revolving Credit Facility, (C) as of the date of any such transaction or payment, and after giving effect thereto, on a pro forma basis, the Fixed Charge Coverage Ratio for the immediately preceding twelve (12) consecutive month period ending on the last day of the fiscal month prior to the date of such payment for which Agent has received financial statements shall be at least 1.00 to 1.00, and (D) Agent shall have received a certificate of an authorized officer of Company certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby,

(v) (A) declare or pay cash dividends to (1) the holders of the Series B Preferred Stock issued in the Series B Preferred Stock Issuance in amounts and at the times provided for in the Series B Preferred Stock as in effect on the Amendment No. 4 Effective Date subject to amendment to the extent permitted under Section 5.02(j)(ii) or (2) the holders of any preferred stock issued for the Permitted Refinancing thereof, (B) declare or pay cash dividends to (1) the holders of the Series C Preferred Stock issued in the Series C Preferred Stock Issuance in amounts and at the times provided for in the Series C Preferred Stock as in effect on the Amendment No. 4 Effective Date subject to amendment to the extent permitted under Section 5.02(j)(ii) or (2) the holders of any preferred stock issued for the Permitted Refinancing thereof and (C) declare or pay cash dividends to (1) the holders of any series of preferred stock issued after the Amendment No. 4 Effective Date permitted to be issued under Section 5.02(d)(xxx)(to the extent deemed to constitute Debt) in amounts and at the times provided for in the terms thereof as in effect on the date of the issuance thereof subject to amendment to the extent permitted under Section 5.02(j)(ii) and (2) to the holders of any preferred stock issued for the Permitted Refinancing thereof,

(vi) other Restricted Payments in an amount not to exceed in the aggregate $5,000,000; provided, that, as of the date of any such payment, and after giving effect thereto, no Default shall have occurred and be continuing or would result therefrom.

For the avoidance of doubt, the Company shall be permitted to issues shares of its common stock in connection with any conversion of its convertible Debt, upon the exercise of options or warrants or otherwise.

(i) Investments in Other Persons. Make, or permit any of its Restricted Subsidiaries to make, any Investment in any Person, except the following (provided, that, any Investment permitted by any clause below shall be permitted under this Section 5.02(i), notwithstanding that such Investment would not be permitted by any other clause):

(i) (A) Investments by the Company and its Restricted Subsidiaries in their Subsidiaries outstanding on the Closing Date, (B) additional Investments by the Company and its Restricted Subsidiaries in the Company or the Loan Parties, (C) Investments by any Loan Party in another Loan Party and (E) additional Investments by Restricted Subsidiaries of the Company that are not Loan Parties in other Restricted Subsidiaries that are not Loan Parties;

(ii) loans and advances to employees in the ordinary course of the business of the Company and its Subsidiaries in an aggregate principal amount not to exceed $10,000,000;

(iii) [Reserved],

(iv) Investments in Hedging Agreements designed to hedge against fluctuations in interest rates, foreign exchange rates or in commodity prices incurred in the ordinary course of business;

(v) Investments received in settlement of claims against another Person in connection with (A) a bankruptcy proceeding against such Person, (B) accounts receivable arising from or trade credit granted to, in the ordinary course of business, a financially troubled Account Debtor and (C) disputes regarding intellectual property rights;

(vi) [Reserved],

(vii) Permitted Acquisitions,

(viii) Investments by the Company and its Subsidiaries in cash and Cash Equivalents.

(ix) Investments by the Company or any Restricted Subsidiary (other than with Intellectual Property that is material to the business of the Company and its Restricted Subsidiaries taken as a whole) in (i) joint ventures not constituting any Unrestricted Subsidiary and (ii) Unrestricted Subsidiaries to fund operating or capital expenses in the ordinary course of business; provided, that, (A) any Investment constituting such equity interests held by a Loan Party shall be pledged pursuant to, and to the extent required by, the Security Agreement, (B) immediately before and after giving effect to such Investment, no Default or Event of Default shall have occurred and be continuing and (C) the aggregate amount of Investments by Loan Parties in Restricted Subsidiaries that are not Loan Parties pursuant to clause (i) of this Section 5.02(i) and in joint ventures or Unrestricted Subsidiaries pursuant to this clause (ix) shall not exceed in the aggregate $75,000,000 at any time outstanding, when taken together with the guarantees by Loan Parties of Subsidiaries that are not Loan Parties permitted pursuant to clause (x) below; provided, that, (1) the aggregate amounts set forth in clause (C) shall be calculated net of any returns, profits, distributions and similar amounts received by any Loan Party from any Investments made by such Loan Party in Restricted Subsidiaries that are not Loan Parties pursuant to clause (i) of this Section 5.02(i) and in joint ventures or Unrestricted Subsidiaries pursuant to this clause (ix) (which, in each case, shall not exceed the amount of such Investment (valued at cost) at the time such Investment was made)); (2) to the extent funds are returned (in full or in part) to any Loan Party which is making such Investment either from the party in which the Investment was made or any other entity in connection with or related to the transaction in which the Investment was made (even if not classified as return on investment), only the initial Investment net of the amount so returned shall be included for purposes of determining the amount of any limit on Investments by the Company or any Restricted Subsidiary in the Company or any other Restricted Subsidiary and on Investments in joint ventures and Unrestricted Subsidiaries permitted under this Section 5.02(i)(ix) and the remainder of such Investment shall be permitted, and (3) in no event shall the aggregate amount of the Investments permitted under this clause (ix), together with investments under clause (xvi) below, in each case to the extent made with ABL Priority Collateral (other than cash and Cash Equivalents) exceed $10,000,000 at any time outstanding and after giving effect to any such Investment, there shall be no Borrowing Base Deficiency,

(x) Guarantees constituting Debt permitted by Section 5.02(d); provided, that, the aggregate principal amount of Debt of Restricted Subsidiaries that are not Loan Parties that is guaranteed by any Loan Party shall be subject to the limitation set forth in clause (ix) above,

(xi) non-cash consideration received in connection with the Disposition of any asset in compliance with Section 5.02(e),

(xii) earn-outs and other customary post-Disposition obligations arising out of permitted Dispositions,

(xiii) Investments in deposit accounts and securities account (A) opened in the ordinary course of business, (B) holding only cash and Cash Equivalents and (C) subject to Control Agreements to the extent required by the Loan Documents,

(xiv) (i) loans and advances made to distributors in the ordinary course and (ii) deposits, prepayments and other credits to suppliers or service providers made in the ordinary course of business,

(xv) Investments resulting from the funding of amounts owing by customers of the Company or any Restricted Subsidiary under equipment and vendor financing programs in an aggregate amount, when combined with Debt incurred pursuant to Section 5.02(d)(xxv), not to exceed at any time outstanding the greater of (A) $40,000,000 and (2) one and ninety-five hundredths percent (1.95%) of Total Assets,

(xvi) other Investments made after the Closing Date (other than with Intellectual Property that is material to the business of the Company and its Restricted Subsidiaries taken as a whole) in an aggregate amount not to exceed (i) $30,000,000, during each consecutive twelve (12) month period, plus up to the amount available in the following fiscal year, plus any unused amounts from prior fiscal years, minus any portion of the amount available in such fiscal year used in the preceding fiscal year and (ii) $90,000,000 in the aggregate; provided, that, (1) immediately before and after giving effect to the making of any such Investment, no Default or Event of Default shall have occurred and be continuing, (2) once the aggregate amount of Investments made pursuant to this subclause (xvi) exceeds $35,000,000, the Company shall provide evidence to Agent that the sum of US Cash and all other cash and Cash Equivalents of the Company and its Restricted Subsidiaries (other than cash held as cash collateral by the Supplemental Letter of Credit Facility Agent in connection with the Supplemental Letter of Credit Facility) is equal to or greater than $450,000,000 both immediately prior to and after giving effect to such Investment, and (3) in no event shall the aggregate amount of the Investments permitted under this clause (xvi), together with investments under clause (ix) above, in each case to the extent made with ABL Priority Collateral (other than cash and Cash Equivalents) exceed $10,000,000 at any time outstanding and after giving effect to any such Investment, there shall be no Borrowing Base Deficiency,

(xvii) other Investments made after the Closing Date (other than with Intellectual Property that is material to the business of the Company and its Restricted Subsidiaries taken as a whole) so long as the following conditions are satisfied with respect to each such Investment: (A) as of the date of any such Investment, and after giving effect thereto, no Default shall exist or have occurred and be continuing, (B) as of the date of any such payment and after giving effect thereto, the Excess Availability as of such date and at any time during the immediately preceding thirty (30) consecutive day period and after giving effect to the Investment, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment, shall, in each case, have been not less than twenty-two and one-half percent (22.5%) of the Revolving Credit Facility, and (C) as of the date of any such Investment, and after giving effect thereto, on a pro forma basis, the Fixed Charge Coverage Ratio for the immediately preceding twelve (12) consecutive month period ending on the last day of the fiscal month prior to the date of such payment for which Agent has received financial statements shall be at least 1.00 to 1.00 (notwithstanding the foregoing, if, as of the date of such Investments, as applicable, the Excess Availability at any time during the immediately preceding thirty (30) consecutive day period and on the date of such Investment shall have been not less than thirty percent (30%) of the Revolving Credit Facility, and after giving effect to such Investment on a pro forma basis using the most recent calculation of the Borrowing Base, as of the date of such Investment and at any time during the thirty (30) consecutive day period immediately preceding such Investment, the Excess Availability shall have been not less than thirty percent (30%) of the Revolving Credit Facility, satisfaction of the Fixed Charge Coverage Ratio test described in this subclause (xvii) shall not be required with respect to such Investment), and

(xviii) accounts payable and other similar extension of credit to customers or suppliers in the ordinary course of business.

(j) Prepayments, Payments, Amendments, Etc. of Debt.

(i) Prepay, redeem, purchase, defease, convert into cash or otherwise satisfy prior to the scheduled maturity thereof in any manner, any public or secured or unsecured debt securities, any Term Loan Debt, any Supplemental Letter of Credit Facility Debt, or Convertible Note Debt or prepay, redeem, purchase, defease, or convert into cash, or otherwise satisfy prior to the scheduled maturity thereof in any manner or make any payment in violation of any subordination terms of, any Debt for Borrowed Money except:

(A) regularly scheduled (including repayments of revolving facilities) or required repayments, prepayments or redemptions of Debt (including, in the case of Disqualified Stock, dividends payable in respect thereof or other payments owing in respect thereof as a result of any conversion to common stock permitted by the terms of such Disqualified Stock) permitted to be incurred hereunder (including payments of principal and interest as and when due), and

(B) any prepayments or redemptions of Debt in connection with a Permitted Refinancing of such Debt permitted by Section 5.02(d); provided, that, (1) before and after giving effect to such prepayment, redemption, purchase, defeasance or other satisfaction, no Default under Section 6.01(a) or (e) or Event of Default shall have occurred and be continuing and (2) the Agent shall have received a certificate from a Responsible Officer of the Company certifying compliance with the foregoing clause (1), or

(C) any voluntary prepayments of the Term Loan Debt, Convertible Note Debt, Series B Preferred Stock, Series C Preferred Stock or unsecured Debt permitted pursuant to Section 5.02(d)(xxx), in each case so long as the following conditions are satisfied with respect to each such payment: (1) as of the date of any such payment, and after giving effect thereto, no Default shall exist or have occurred and be continuing, (2) as of the date of any such payment and after giving effect thereto, the Excess Availability as of such date and at any time during the immediately preceding thirty (30) consecutive day period and after giving effect to the payment, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment, shall, in each case, have been not less than twenty-two and one-half percent (22.5%) of the Revolving Credit Facility, and (3) as of the date of any such payment, and after giving effect thereto, on a pro forma basis, the Fixed Charge Coverage Ratio for the immediately preceding twelve (12) consecutive month period ending on the last day of the fiscal month prior to the date of such payment for which Agent has received financial statements shall be at least 1.00 to 1.00 (notwithstanding the foregoing, if, as of the date of such voluntary prepayments of the Term Loan Debt or Convertible Note Debt, as applicable, the Excess Availability at any time during the immediately preceding thirty (30) consecutive day period and on the date of such voluntary payment shall have been not less than thirty percent (30%) of the Revolving Credit Facility, and after giving effect to such voluntary prepayment on a pro forma basis using the most recent calculation of the Borrowing Base, as of the date of such voluntary payment and at any time during the thirty (30) consecutive day period immediately

preceding such voluntary prepayment, the Excess Availability shall have been not less than thirty percent (30%) of the Revolving Credit Facility, satisfaction of the Fixed Charge Coverage Ratio test described in this subclause (C) shall not be required with respect to such voluntary prepayment), or (D) conversion of convertible debt into common stock of the Company and payments of cash in lieu of fractional shares upon any such conversion or

(ii) (A) directly or indirectly, amend, modify, or change any of the terms or provisions of the Term Loan Documents except as permitted by the Term Loan Intercreditor Agreement, (B) directly or indirectly, amend, modify or change in any manner adverse to the rights or interests of Agent or the Lenders any term or condition of any subordinated Debt, or (C) directly or indirectly, amend, modify or change the Convertible Note Documents, the Series B Preferred Stock, the Series C Preferred Stock, or after the issuance thereof any Debt permitted to be issued under Section 5.02(d)(xxx) in a manner that would (1) increase the cash interest rate margin (or percentage used for cash dividend payments in the case of the Series B Preferred Stock, the Series C Preferred Stock or any other preferred stock) by more than 300 basis points in excess of the cash interest rate margin (or percentage used for cash dividend payments, as the case may be) applicable to such Debt as of the Amendment No. 4 Effective Date in the case of the Convertible Note Documents and Series B Preferred Stock, and as of the date of issuance in the case of Series C Preferred Stock or Debt issued under Section 5.02(d)(xxx), (2) require Borrowers to make any cash payments of principal or liquidation value thereunder, or the redemption or repurchase thereof, earlier or more frequently than the dates required as in effect on the Amendment No. 4 Effective Date in the case of the Convertible Note Documents and Series B Preferred Stock, or as of the date of issuance in the case of Series C Preferred Stock or Debt issued under Section 5.02(d)(xxx), or (3) require payments that are permitted to be made in the form of payment in kind or capitalized interest to be made in cash or other property; except that such Convertible Note Documents, Series B Preferred Stock, Series C Preferred Stock or other preferred stock may be amended as to any of such terms with regard to the payment of amounts equal to any increase in the cash interest rate margin (or percentage used for cash dividend payments, as the case may be) after the Amendment No. 4 Effective Date as permitted above, including increasing the frequency of payments for such amounts or changing the amounts of cash payments relative to payments in kind in each case up to the amount of any such increases in cash interest rate margin (or percentage used for cash dividend payments, as applicable).

SECTION 5.03. Financial Covenants.

(a) Fixed Charge Coverage Ratio. So long as any Fixed Charge Coverage Ratio Trigger Event shall have occurred and be continuing, the Company and its Restricted Subsidiaries on a Consolidated basis will maintain a Fixed Charge Coverage Ratio, for the four fiscal quarters most recently ended as of the fiscal quarter for which financial statements have been delivered pursuant to Section 5.01, of not less than 1.00 to 1.00.

(b) [Reserved].

(c) Minimum Liquidity. Borrower shall on the last day of each Fiscal Quarter have Minimum Liquidity of not less than $80,000,000, tested on the receipt by Agent of the financial statements required pursuant to Section 5.01(h)(i) and (ii), as applicable, with respect to such Fiscal Quarter.

ARTICLE VI

EVENTS OF DEFAULT

SECTION 6.01. Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) (i) Borrower shall fail to pay any principal of any Revolving Loan when the same becomes due and payable; (ii) Borrower shall fail to pay any interest on any Revolving Loan or fees within three (3) Business Days after the same becomes due and payable; or (iii) any Loan Party shall fail to make any other payment under any Loan Document, within three (3) Business Days after notice of such failure is given by the Agent or any Lender to the Company; or

(b) Any representation or warranty made by Borrower herein or by any Loan Party in any Loan Document to which it is a party or by Borrower (or any of its officers) in a certificate delivered under or in connection with any Loan Document shall prove to have been incorrect in any material respect when made; or

(c) (i) The Company or Restricted Subsidiary shall fail to perform or observe any term, covenant or agreement contained in Sections 5.01(d), 5.01(e), clauses (i) through (vii) and (ix) of 5.01(h), 5.02 or 5.03 hereof, or (ii) any Loan Party or any Subsidiary of any Loan Party shall fail to perform or observe any other term, covenant or agreement contained in any Loan Document on its part to be performed or observed if such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Company by the Agent; or

(d) The Company or any of its Restricted Subsidiaries shall fail to pay any principal of or premium or interest on the Term Loan Debt, the Supplemental Letter of Credit Facility Debt or any other Debt (excluding Debt outstanding hereunder of the Company or such Restricted Subsidiary (as the case may be)) that is outstanding in a principal, or in the case of Swap Obligations, net amount of, at least (i) $25,000,000 in the aggregate in the case of Debt of the Borrower or any of its Restricted Subsidiaries that are domestic Subsidiaries and (ii) $50,000,000 in the aggregate in the case of Restricted Subsidiaries that are Foreign Subsidiaries, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to cause, or to permit the holders or beneficiaries of such Debt (or a trustee or agent on behalf of such holders or beneficiaries) to cause, with the giving of notice if required, such Debt to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Debt to be made, in each case prior to the stated maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof; or

(e) Borrower or any of its Restricted Subsidiaries (other than Immaterial Subsidiaries) shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against Borrower, any Loan Party or any Material Subsidiary seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a

receiver, interim receiver, monitor, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of sixty (60) days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or Borrower, any Loan Party or any Material Subsidiary shall take any corporate action to authorize any of the actions set forth above in this subsection (e); provided, that, in the case of any Foreign Subsidiary, such event, individually, or when aggregated with all such events occurring after the Closing Date, would reasonably be expected to have a Material Adverse Effect; or

(f) Other than with respect to the matters set forth on Schedule 6.01(f) (but solely to the extent that neither the Borrower nor any of its Material Subsidiaries (excluding Subsidiaries which would be permitted, at all times while the applicable judgment remains outstanding, to be designated as Immaterial Subsidiaries, without regard for if such designation has been made) has any obligation with respect to judgments relating to items listed on Schedule 6.01(f), judgments or orders for the payment of money in excess of $25,000,000 (or its US Dollar equivalent) in the aggregate shall be rendered against the Company or any of its Subsidiaries and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(g) A Change of Control shall occur; or

(h) Any ERISA Event shall have occurred with respect to a Plan and such ERISA Event could reasonably be expected to result in a Material Adverse Effect; or any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan in an amount that, when aggregated with all other amounts required to be paid to Multiemployer Plans by the Loan Parties and the ERISA Affiliates as Withdrawal Liability (determined as of the date of such notification), exceeds $25,000,000; or

(i) Any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan in an amount that, when aggregated with all other amounts required to be paid to Multiemployer Plans by the Loan Parties and the ERISA Affiliates as Withdrawal Liability (determined as of the date of such notification), exceeds $25,000,000; or

(j) Any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or is being terminated, within the meaning of Title IV of ERISA, or has been determined to be in “endangered” or “critical” status within the meaning of Section 432 of the Code or Section 305 of ERISA, and as a result of such insolvency or termination or determination, the aggregate annual contributions of the Loan Parties and the ERISA Affiliates to all Multiemployer Plans that are then insolvent, being terminated or in endangered or critical status have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such insolvency or termination or determination, occurs by an amount exceeding $25,000,000; or

(k) Any provision of any Collateral Document material to the substantial realization of the rights of the Lenders under the Collateral Documents taken as a whole, or any provision of any other Loan Document after delivery thereof on the Initial Closing Date or the Closing Date or pursuant to Section 5.01(i) or (j) shall for any reason cease to be valid and binding on or enforceable against any Loan Party party to it, or any such Loan Party shall so state in writing; or

(l) Any Collateral Document or financing statement after delivery thereof on the Initial Closing Date or the Closing Date or pursuant to Section 5.01(i) or (j) shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority lien on and security interest in any of the ABL Priority Collateral having a Value of $5,000,000 or more or any Collateral other than ABL Priority Collateral having a Value of $10,000,000 or more (other than the Specified Collateral as set forth in Section 6(m) of the Security Agreement), in each case purported to be covered thereby, and with respect to any Collateral other than ABL Priority Collateral, such failure shall remain unremedied for thirty (30) days after the earlier of (A) an officer of the Borrower becoming aware of such failure and (B) written notice thereof being given to the Company by the Agent.

then, and in any such event, the Agent (i) shall at the request, or may with the consent, of the Required Lenders, by notice to the Company, declare the obligation of each Lender to make Revolving Loans (other than Revolving Loans to be made by an Issuing Bank or a Lender pursuant to Section 2.03(c)) and of the Issuing Banks to issue Letters of Credit to be terminated, whereupon the same shall forthwith terminate, and (ii) shall at the request, or may with the consent, of the Required Lenders, by notice to the Company, declare the Revolving Loans, all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Revolving Loans, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Borrower and each other Loan Party; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to Borrower under the Federal Bankruptcy Code, (A) the obligation of each Lender to make Revolving Loans (other than Revolving Loans to be made by an Issuing Bank or a Lender pursuant to Section 2.03(c)) and of the Issuing Banks to issue Letters of Credit shall automatically be terminated and (B) the Revolving Loans, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by Borrower and each other Loan Party.

SECTION 6.02. Actions in Respect of the Letters of Credit upon Default. If any Event of Default shall have occurred and be continuing, the Agent may, or shall at the request, of the Required Lenders, irrespective of whether it is taking any of the actions described in Section 6.01, make demand upon the Borrower to, and forthwith upon such demand the Borrower will, (a) pay to the Agent on behalf of the Lenders in same day funds at the Agent's office designated in such demand, for deposit in the L/C Cash Deposit Account, an amount equal to the aggregate Available Amount of all Letters of Credit then outstanding or (b) make such other arrangements in respect of the outstanding Letters of Credit as shall be acceptable to the Agent and not more disadvantageous to the Borrower than clause (a); provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Company under the Federal Bankruptcy Code, an amount equal to the aggregate Available Amount of all outstanding Letters of Credit shall be immediately due and payable to the Agent for the account of the Lenders without notice to or demand upon the Borrower, which are expressly waived by the Borrower, to be held in the L/C Cash Deposit Account. If at any time an Event of Default is continuing the Agent determines that any funds held in the L/C Cash Deposit Account are subject to any right or claim of any Person other than the Agent and the Lenders or that the total amount of such funds is less than the aggregate Available Amount of all Letters of Credit, then the Borrower will, forthwith upon demand by the Agent, pay to the Agent, as additional funds to be deposited and held in the L/C Cash Deposit Account, an amount equal to the excess of (i) such aggregate Available Amount over (ii) the total amount of funds, if any, then held in the L/C Cash Deposit Account that the Agent determines to be free and clear of any such right and claim. Upon the drawing of any Letter of Credit, to the extent funds are on deposit in the L/C Cash Deposit

Account, such funds shall be applied to reimburse the Issuing Banks to the extent permitted by applicable law. After all such Letters of Credit shall have expired or been fully drawn upon, if at such time (x) no Event of Default is continuing or (y) all other obligations of the Company hereunder and under the Notes shall have been paid in full, the balance, if any, in such L/C Cash Deposit Account shall be returned to the Borrower. For purposes of this Section 6.02, the term "Available Amount" shall mean one hundred five percent (105%) of the maximum available amount to be drawn under such Letter of Credit.

SECTION 6.03. [Reserved].

SECTION 6.04. Application of Funds.

(a) Payments made by Borrower and other Loan Parties hereunder shall be applied (a) first, as specifically required hereby; (b) second, to Obligations then due and owing; (b) third, to other Obligations specified by Borrower; and (c) fourth, as determined by Agent in its discretion.

(b) Notwithstanding anything to the contrary set forth in any Loan Document, during the occurrence and continuance of an Event of Default, any amounts received by the Agent on account of the Obligations, whether received from or on account of any Loan Party, or in respect of any Collateral, setoff or otherwise, shall be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article II) payable to the Agent in its capacity as such;

Second, to payment of all amounts owing to Agent in respect of Swingline Loans, Overadvance Loans, Protective Revolving Loans, and Revolving Loans and participations that a Defaulting Lender has failed to settle or fund;

Third, to payment of that portion of the Obligations constituting fees, indemnities and other amounts payable to the Issuing Banks (including fees, charges and disbursements of counsel to the respective Issuing Banks payable under the Loan Documents and amounts payable under Article II), ratably among them in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, Letter of Credit fees and commitment fees) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders payable under the Loan Documents and amounts payable under Article II (in each case, other than fees, indemnities and other amounts, and amounts then payable under Article II, arising in respect of Bank Product Obligations)), ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit fees, commitment fees and interest on the Revolving Loans, unreimbursed amounts under Letters of Credit and other Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause Fifth payable to them;

Sixth, to the Agent for the account of the Issuing Banks, to Cash Collateralize that portion of Letter of Credit Obligations comprising the aggregate undrawn amount of Letters of Credit, ratably among the Issuing Banks in proportion to the respective amounts described in this clause Sixth held by them;

Seventh, to the Agent for the payment of that portion of the Obligations constituting unpaid principal of the Revolving Loans, unreimbursed amounts under Letters of Credit and Bank Product Obligations arising under Hedging Agreements but only up to the amount of the Bank Product Reserve, ratably among the Lenders, the Issuing Banks, and the Bank Product Providers in proportion to the respective amounts described in this clause Seventh held by them;

Eighth, to payment of the Bank Product Obligations other than as provided for in clause Seventh above, ratably among the Bank Product Providers in proportion to the respective amounts described in this clause Eighth held by them,

Ninth, to payment of all other Obligations ratably among the Lenders and the Issuing Banks in proportion to the respective amounts described in this clause Ninth held by them; and

Last, the balance, if any, after all of the Obligations have been paid in full in cash, to the Borrower or as otherwise required by law.

Subject to Section 6.02, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to Section 6.04(a) or clause Sixth above, shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as cash collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Amounts shall be applied to payment of each category of Obligations only after full payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. Monies and proceeds obtained from a Loan Party shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Loan Parties to preserve the allocations in any applicable category. The Agent shall have no obligation to calculate the amount of any Bank Product Obligation and may request a reasonably detailed calculation thereof from a Bank Product Provider. If the provider fails to deliver the calculation within five (5) days following request, the Agent may assume the amount is zero. Each holder of Obligations under a Bank Product Agreement not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Agent pursuant to the terms of Article VIII hereof for itself and its Affiliates as if a "Lender" party hereto. The allocations set forth in this Section are solely to determine the rights and priorities among Secured Parties, and may be changed by agreement of the affected Secured Parties, without the consent of any Loan Party. This Section is not for the benefit of or enforceable by any Loan Party, and each Loan Party irrevocably waives the right to direct the application of any payments or Collateral proceeds subject to this Section.

ARTICLE VII

GUARANTY

SECTION 7.01. Guaranty; Limitation of Liability.

(a) Borrower and each Subsidiary Guarantor, jointly and severally, hereby absolutely, unconditionally and irrevocably guarantees the punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Loan Party and each other Subsidiary of the Company now or hereafter existing

under or in respect of the Loan Documents or any Bank Product Agreement (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise, exclusive of Excluded Swap Obligations (such obligations being the "Guaranteed Obligations"), and agrees to pay any and all expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by the Agent or any other Lender in enforcing any rights under this Guaranty or any other Loan Document. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Loan Party or Subsidiary of the Company, as applicable, to the Agent or any Lender under or in respect of the Loan Documents or any Bank Product Agreement but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party or Subsidiary, as the case may be.

(b) Each Guarantor, and by its acceptance of this Guaranty, the Agent and each other Lender, hereby confirms that it is the intention of all such Persons that this Guaranty and the obligations of each Subsidiary Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Guaranty and the obligations of such Guarantor hereunder. To effectuate the foregoing intention, the Agent, the Lenders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor under this Guaranty at any time shall be limited to the maximum amount as will result in the obligations of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance.

(c) Each Subsidiary Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to the Agent or any Lender under this Guaranty or any guaranty supplement of the Guaranteed Obligations, such Subsidiary Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Subsidiary Guarantor and each other guarantor so as to maximize the aggregate amount paid to the Agent and the Lenders under or in respect of the Loan Documents.

SECTION 7.02. Guaranty Absolute. Each Guarantor guarantees that the applicable Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Agent or any Lender with respect thereto. The obligations of each Guarantor under or in respect of this Guaranty are independent of the applicable Guaranteed Obligations or any other obligations of any other Loan Party under or in respect of the Loan Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Guaranty, irrespective of whether any action is brought against Borrower or any other Loan Party or whether Borrower or any other Loan Party is joined in any such action or actions. The liability of each Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the applicable Guaranteed Obligations or any other obligations of any other Loan Party under or in respect of the Loan Documents, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in the applicable Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or any of its Subsidiaries or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral or any other collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of the applicable Guaranteed Obligations;

(d) any manner of application of Collateral or any other collateral, or proceeds thereof, to all or any of the applicable Guaranteed Obligations or any manner of sale or other Disposition of any Collateral or any other collateral for all or any of the applicable Guaranteed Obligations or any other obligations of any Loan Party under the Loan Documents or any other assets of any Loan Party or any of its Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any Loan Party or any of its Subsidiaries;

(f) any failure of the Agent or any Lender to disclose to any Loan Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party now or hereafter known to the Agent or such Lender (each Guarantor waiving any duty on the part of the Agent and the Lenders to disclose such information);

(g) the failure of any other Person to execute or deliver this Agreement, any Guaranty Supplement or any other guaranty or agreement or the release or reduction of liability of any Guarantor or other guarantor or surety with respect to the applicable Guaranteed Obligations; or

(h) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Agent or any Lender that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the applicable Guaranteed Obligations is rescinded or must otherwise be returned by the Agent or any Lender or any other Person upon the insolvency, bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise, all as though such payment had not been made.

SECTION 7.03. Waivers and Acknowledgments.

(a) Each Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of nonperformance, default, acceleration, protest or dishonor and any other notice with respect to any of the applicable Guaranteed Obligations and this Guaranty and any requirement that the Agent or any Lender protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against any Loan Party or any other Person or any Collateral.

(b) Each Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all applicable Guaranteed Obligations whether existing now or in the future.

(c) Each Guarantor hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by the Agent or any Lender that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Loan Parties, any other guarantor or any other Person or any Collateral and (ii) any defense based on any right of set-off or counterclaim against or in respect of the obligations of such Guarantor hereunder.

(d) Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of the Agent or any Lender to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party or any of its Subsidiaries now or hereafter known by the Agent or such Lender.

(e) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Loan Documents and that the waivers set forth in Section 7.02 and this Section 7.03 are knowingly made in contemplation of such benefits.

SECTION 7.04. Subrogation. Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against Borrower, any other Loan Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under or in respect of this Guaranty or any other Loan Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Agent or any Lender against Borrower, any other Loan Party or any other guarantor of some or all of the Guaranteed Obligations or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from Borrower, any other Loan Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash, all Letters of Credit shall have expired or been terminated and the Commitments shall have expired or been terminated. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the latest of (a) the payment in full in cash of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty, (b) the Termination Date and (c) the latest date of expiration or termination of all Letters of Credit, such amount shall be received and held in trust for the benefit of the Agent and the Lenders, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Agent in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the applicable Guaranteed Obligations and all other amounts payable under this Guaranty by such Guarantor, whether matured or unmatured, in accordance with the terms of the Loan Documents, or to be held as Collateral for any applicable Guaranteed Obligations or other amounts payable under this Guaranty by such Guarantor thereafter arising. If (i) any Guarantor shall make payment to the Agent or any Lender of all or any part of the applicable Guaranteed Obligations, (ii) all of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty by such Guarantor shall have been paid in full in cash, (iii) the Termination Date shall have occurred and (iv), all Letters of Credit shall have expired or been terminated, the Agent and the Lenders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the applicable Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Guaranty.

SECTION 7.05. Guaranty Supplements. Upon the execution and delivery by any Person of a guaranty supplement in substantially the form of Exhibit E hereto (each, a "Guaranty Supplement"), (a) such Person shall be referred to as an "Additional Guarantor" and shall become and be a Guarantor hereunder, and each reference in this Guaranty to a "Guarantor" shall also mean and be a reference to such Additional Guarantor, and (b) each reference herein to "this Guaranty," "hereunder," "hereof" or words of like import referring to this Guaranty, and each reference in any other Loan Document to the "Guaranty," "thereunder," "thereof" or words of like import referring to this Guaranty, shall mean and be a reference to this Guaranty as supplemented by such Guaranty Supplement.

SECTION 7.06. Subordination.

Each Guarantor hereby subordinates any and all debts, liabilities and other obligations owed to such Guarantor by each other Loan Party (the "Subordinated Obligations") to the applicable Guaranteed Obligations to the extent and in the manner hereinafter set forth in this Section 7.06:

(a) Prohibited Payments, Etc. Except during the continuance of an Event of Default, each Guarantor may receive regularly scheduled payments from any other Loan Party on account of the Subordinated Obligations. After the occurrence and during the continuance of any Event of Default, however, unless the Required Lenders otherwise agree, no Guarantor shall demand, accept or take any action to collect any payment on account of the Subordinated Obligations.

(b) Prior Payment of Guaranteed Obligations. In any proceeding under any Bankruptcy Law relating to any other Loan Party, each Guarantor agrees that the Lenders shall be entitled to receive payment in full in cash of all applicable Guaranteed Obligations (including all interest and expenses accruing after the commencement of a proceeding under any Bankruptcy Law, whether or not constituting an allowed claim in such proceeding ("Post-Petition Interest")) before such Guarantor receives payment of any Subordinated Obligations.

(c) Turn-Over. After the occurrence and during the continuance of any Event of Default, each Guarantor shall, if the Agent (with the consent or at the direction of the Required Lenders) so requests, collect, enforce and receive payments on account of the Subordinated Obligations as trustee for the Agent and the Lenders and deliver such payments to the Agent on account of the applicable Guaranteed Obligations (including all Post-Petition Interest), together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Guaranty.

(d) Agent Authorization. After the occurrence and during the continuance of any Event of Default, the Agent is authorized and empowered (but without any obligation to so do), in its discretion, (i) in the name of each Guarantor, to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and to apply any amounts received thereon to the applicable Guaranteed Obligations (including any and all Post-Petition Interest), and (ii) to require each Guarantor (A) to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and (B) to pay any amounts received on such obligations to the Agent for application to the applicable Guaranteed Obligations (including any and all Post-Petition Interest).

SECTION 7.07. Continuing Guaranty; Assignments. This Guaranty is a continuing guaranty and shall (a) except as provided in the next succeeding sentence, remain in full force and effect until the latest of (i) the payment in full in cash of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty, (ii) the Termination Date and (iii) the latest date of expiration or termination of all Letters of Credit, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Agent and the Lenders and their successors, permitted transferees and permitted assigns. Upon the sale of a Guarantor or any or all of the assets of any Guarantor to the extent permitted in accordance with the terms of the Loan Documents or upon such Guarantor otherwise ceasing to be a Subsidiary of the Company organized under the laws of a state of the United States of America without violation of the terms of this Agreement, such Guarantor (and its Subsidiaries) or such assets shall be automatically released from this Guaranty or any Guaranty Supplement, and all pledges and security interests of the equity of such Guarantor or any Subsidiary of such Guarantor and all other pledges and security interests in the assets of such Guarantor and any of its Subsidiaries shall be released as provided in Section 9.16. Without limiting the generality of clause (c) above, the Agent or any Lender may assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments, the Revolving Loans owing to it and any Note or Notes held by it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise, in each case as and to the extent provided in Section 9.08. No Guarantor shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders.

SECTION 7.08. Qualified ECPs. Each Loan Party that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this Section 7.08 voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until full payment of all Guaranteed Obligations. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Loan Party for all purposes of the Commodity Exchange Act.

ARTICLE VIII
THE AGENT

SECTION 8.01. Authorization and Action.

(a) Pursuant to Section 8.07, each Lender hereby irrevocably appoints Bank of America to act on its behalf as the Agent hereunder and under the other Loan Documents, including the Term Loan Intercreditor Agreement, and authorizes the Agent to enter into this Agreement and the other Loan Documents to which it is a party, including the Term Loan Intercreditor Agreement, to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) Each of the Lenders hereby agrees that the Agent in its various capacities under the Term Loan Intercreditor Agreement may take such actions on its behalf as is contemplated by the terms of the Term Loan Intercreditor Agreement. Each Lender hereunder (i) consents to any subordination of Liens provided for in the Term Loan Intercreditor Agreement, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Term Loan Intercreditor Agreement, (iii) authorizes and instructs the Agent to enter into the Term Loan Intercreditor Agreement as Agent and on behalf of such Lender and (iv) agrees that the Agent may take such actions on behalf of such Lender as is contemplated by the terms of the Term Loan Intercreditor Agreement.

(c) Each of the Lenders hereby agrees that the Agent in its various capacities under the Supplemental Letter of Credit Facility Intercreditor Agreement may take such actions on its behalf as is contemplated by the terms of the Supplemental Letter of Credit Facility Intercreditor Agreement. Each Lender hereunder (i) consents to any subordination of Liens provided for in the Supplemental Letter of Credit Facility Intercreditor Agreement, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Supplemental Letter of Credit Facility Intercreditor Agreement, (iii) authorizes and instructs the Agent to enter into the Supplemental Letter of Credit Facility Intercreditor Agreement as Agent and on behalf of such Lender and (iv) agrees that the Agent may take such actions on behalf of such Lender as is contemplated by the terms of the Supplemental Letter of Credit Facility Intercreditor Agreement.

(d) The provisions of this Article are solely for the benefit of the Agent, the Issuing Banks, and the Lenders, and neither Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

SECTION 8.02. Agent Individually.

(a) The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any of their Subsidiaries or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

(b) Each Lender understands that the Person serving as Agent, acting in its individual capacity, and its Affiliates (collectively, the "Agent's Group") are engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively referred to in this Section 8.02 as "Activities") and may engage in the Activities with or on behalf of one or more of the Loan Parties or their respective Affiliates. Furthermore, the Agent's Group may, in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for its own account or on behalf of others (including the Loan Parties and their Affiliates and including holding, for its own account or on behalf of others, equity, debt and similar positions in the Borrower, another Loan Party or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans or other financial products of one or more of the Loan Parties or their Affiliates. Each Lender understands and agrees that in engaging in the Activities, the Agent's Group may receive or otherwise obtain information concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) which information may not be available to any of the Lenders that are not members of the Agent's Group. None of the Agent nor any member of the Agent's Group shall have any duty to disclose to any Lender or use on behalf of the Lenders, and shall not be liable for the failure to so disclose or use, any information whatsoever about or derived from the Activities or otherwise (including any information

concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party) or to account for any revenue or profits obtained in connection with the Activities, except that the Agent shall deliver or otherwise make available to each Lender such documents as are expressly required by any Loan Document to be transmitted by the Agent to the Lenders.

(c) Each Lender further understands that there may be situations where members of the Agent's Group or their respective customers (including the Loan Parties and their Affiliates) either now have or may in the future have interests or take actions that may conflict with the interests of any one or more of the Lenders (including the interests of the Lenders hereunder and under the other Loan Documents). Each Lender agrees that no member of the Agent's Group is or shall be required to restrict its activities as a result of the Person serving as Agent being a member of the Agent's Group, and that each member of the Agent's Group may undertake any Activities without further consultation with or notification to any Lender. None of (i) this Agreement nor any other Loan Document, (ii) the receipt by the Agent's Group of information (including Borrower Information) concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) nor (iii) any other matter shall give rise to any fiduciary, equitable or contractual duties (including, without limitation, any duty of trust or confidence) owing by the Agent or any member of the Agent's Group to any Lender including any such duty that would prevent or restrict the Agent's Group from acting on behalf of customers (including the Loan Parties or their Affiliates) or for its own account.

SECTION 8.03. Duties of Agent; Exculpatory Provisions.

(a) The Agent's duties hereunder and under the other Loan Documents are solely ministerial and administrative in nature and the Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (i) the Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (ii) the Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided, that, the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent or any of its Affiliates to liability or that is contrary to any Loan Document or applicable law and (iii) the Agent 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 Company or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.01 or 9.03) or (ii) in the absence of its own gross negligence or willful misconduct. The Agent shall be deemed not to have knowledge of any Default or the event or events that give or may give rise to any Default unless and until the Company or any Lender shall have given notice to the Agent describing such Default and such event or events.

(c) Neither the Agent nor any member of the Agent's Group shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty, representation or other information made or supplied in or in connection with this Agreement, any other Loan Document or the information

presented to the other Lenders by the Company, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith or the adequacy, accuracy and/or completeness of the information contained therein, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the perfection or priority of any Lien or security interest created or purported to be created by the Collateral Documents or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than (but subject to the foregoing clause (ii)) to confirm receipt of items expressly required to be delivered to the Agent.

(d) Nothing in this Agreement or any other Loan Document shall require the Agent or any of its Related Parties to carry out any "know your customer" or other checks in relation to any Person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or any of its Related Parties.

SECTION 8.04. Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Revolving Loan, or the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless an officer of the Agent responsible for the transactions contemplated hereby shall have received notice to the contrary from such Lender prior to the making of such Revolving Loan or the issuance of such Letter of Credit, and in the case of a Borrowing, such Lender shall not have made available to the Agent such Lender's ratable portion of such Borrowing. The Agent may consult with legal counsel (who may be counsel for the Company or any other Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05. Indemnification.

(a) Each Lender severally agrees to indemnify the Agent (to the extent not promptly reimbursed by the Company) from and against such Lender's Ratable Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of this Agreement or any action taken or omitted by the Agent under this Agreement (collectively, the "Indemnified Costs"), provided, that, no Lender shall be liable for any portion of the Indemnified Costs resulting from the Agent's gross negligence or willful misconduct as found in a non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its ratable share of any reasonable out-of-pocket expenses (including reasonable counsel fees) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, to the extent that the Agent is not promptly reimbursed for such expenses by the Company. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 8.05 applies whether any such investigation, litigation or proceeding is brought by the Agent, any Lender or a third party.

(b) Each Lender severally agrees to indemnify the Issuing Banks (to the extent not promptly reimbursed by the Company) from and against such Lender's Ratable Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against any such Issuing Bank in any way relating to or arising out of the L/C Related Documents or any action taken or omitted by such Issuing Bank hereunder or in connection herewith; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Issuing Bank's gross negligence or willful misconduct as found in a non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse any such Issuing Bank promptly upon demand for its Ratable Share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Company under Section 9.04, to the extent that such Issuing Bank is not promptly reimbursed for such costs and expenses by the Company.

(c) The failure of any Lender to reimburse the Agent or any Issuing Bank promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Agent or any Issuing Bank for its ratable share of such amount, but no Lender shall be responsible for the failure of any other Lender to reimburse the Agent or any Issuing Bank for such other Lender's ratable share of such amount. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this Section 8.05 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes. Each of the Agent and each Issuing Bank agrees to return to the Lenders their respective ratable shares of any amounts paid under this Section 8.05 that are subsequently reimbursed by the Company.

SECTION 8.06. Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more co-agents or sub-agents appointed by the Agent. The Agent and any such co-agent or sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. Each such co-agent and sub-agent and the Related Parties of the Agent and each such co-agent and sub-agent (including their respective Affiliates in connection with the syndication of the Revolving Credit Facility) shall be entitled to the benefits of all provisions of this Article VIII and Article IX (as though such co-agents and sub-agents were the "Agent" under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 8.07. Resignation of Agent.

(a) The Agent may at any time give notice of its resignation to the Lenders and the Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Company, to appoint a successor, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank with an office in New York, New York. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation (such thirty (30)-day period, the "Lender Appointment Period"), then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above. In addition and without any obligation on the part of the

retiring Agent to appoint, on behalf of the Lenders, a successor Agent, the retiring Agent may at any time upon or after the end of the Lender Appointment Period notify the Company and the Lenders that no qualifying Person has accepted appointment as successor Agent and the effective date of such retiring Agent's resignation. Upon the resignation effective date established in such notice and regardless of whether a successor Agent has been appointed and accepted such appointment, the retiring Agent's resignation shall nonetheless become effective and (i) the retiring Agent shall be discharged from its duties and obligations as Agent hereunder and under the other Loan Documents and (ii) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties as Agent of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations as Agent hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Company to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

(b) Any resignation pursuant to this Section by a Person acting as Agent shall, unless such Person shall notify the Company and the Lenders otherwise, also act to relieve such Person and its Affiliates of any obligation to issue new, or extend existing, Letters of Credit where such issuance or extension is to occur on or after the effective date of such resignation. Upon the acceptance of a successor's appointment as Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank, (ii) the retiring Issuing Bank shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents arising on or after the effective date of such successor's appointment, and (iii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

SECTION 8.08. Non-Reliance on Agent and Other Lenders.

(a) Each Lender confirms to the Agent, each other Lender and each of their respective Related Parties that it (i) possesses (individually or through its Related Parties) such knowledge and experience in financial and business matters that it is capable, without reliance on the Agent, any other Lender or any of their respective Related Parties, of evaluating the merits and risks (including tax, legal, regulatory, credit, accounting and other financial matters) of (x) entering into this Agreement, (y) making Revolving Loans and other extensions of credit hereunder and under the other Loan Documents and (z) in taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risks and (iii) has determined that entering into this Agreement and making Revolving Loans and other extensions of credit hereunder and under the other Loan Documents is suitable and appropriate for it.

(b) Each Lender acknowledges that (i) it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents, (ii) that it has, independently and without reliance upon the Agent, any other Lender or any of their respective Related Parties, made its own appraisal and investigation of all risks associated with, and its own credit analysis and decision to enter into, this Agreement based on such documents and information, as it has deemed appropriate and (iii) it will, independently and without reliance upon the Agent, any other Lender or any of their respective Related Parties, continue to be solely

responsible for making its own appraisal and investigation of all risks arising under or in connection with, and its own credit analysis and decision to take or not take action under, this Agreement and the other Loan Documents based on such documents and information as it shall from time to time deem appropriate, which may include, in each case:

(A) the financial condition, status and capitalization of the Company and each other Loan Party;

(B) the legality, validity, effectiveness, adequacy or enforceability of this Agreement and each other Loan Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document;

(C) determining compliance or non-compliance with any condition hereunder to the making of a Revolving Loan, or the issuance of a Letter of Credit and the form and substance of all evidence delivered in connection with establishing the satisfaction of each such condition;

(D) the adequacy, accuracy and/or completeness of any information delivered by the Agent, any other Lender or by any of their respective Related Parties under or in connection with this Agreement or any other Loan Document, the transactions contemplated hereby and thereby or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document.

SECTION 8.09. No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Persons acting as, Arranger or bookrunner or syndication agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as a Lender hereunder.

SECTION 8.10. Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Bankruptcy Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the principal of any Revolving Loan or Letter of Credit Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Revolving Loans, Letter of Credit Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Agent hereunder) 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, interim receiver, monitor, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders and Issuing Bank, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent hereunder.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition or proposal affecting the Obligations or the rights of any Lender or Issuing Bank to authorize the Agent to vote in respect of the claim of any Lender or Issuing Bank or in any such proceeding.

SECTION 8.11. Intercreditor Arrangements. Each of the Lenders hereby authorizes and directs the Agent to enter into one or more Intercreditor Agreements (subject to Section 8.01, other than the Term Loan Intercreditor Agreement and the Supplemental Letter of Credit Facility Intercreditor Agreement) on behalf of such Lender, with the consent of Required Lenders. Each of the Lenders hereby agrees that the Agent in its various capacities thereunder may take such actions on its behalf as is contemplated by the terms of any such Intercreditor Agreements. With respect to any such Intercreditor Agreement executed and delivered by the Agent in accordance with this Agreement, each Lender hereunder (a) consents to any subordination of Liens provided for in such Intercreditor Agreement, (b) agrees that it will be bound by and will take no actions contrary to the provisions of such Intercreditor Agreement, (c) authorizes and instructs the Agent to enter into such Intercreditor Agreement as Agent and on behalf of such Lender and (d) agrees that the Agent may take such actions on behalf of such Lender as is contemplated by the terms of such Intercreditor Agreement.

SECTION 8.12. [Reserved].

SECTION 8.13. Bank Product Obligations.

(a) Each Bank Product Provider shall be deemed a third party beneficiary of the provisions of the Loan Documents for purposes of any reference in a Loan Document to the parties for whom the Agent is acting. The Agent hereby agrees to act as agent for such Bank Product Providers and, as a result of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed the Agent as its agent and to have accepted the benefits of the Loan Documents; provided, that, the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and guarantees granted to the Agent and the right to share in proceeds of the Collateral as more fully set forth in the Loan Documents. In addition, each Bank Product Provider, as a result of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that the Agent shall have the right, but shall have no obligation, to establish, maintain, reduce, or release Reserves in respect of the Bank Product Obligations and that if Reserves are established there is no obligation on the part of the Agent to determine or insure whether the amount of any such Reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, the Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to the Agent as to the amounts that are due and owing to it and such written certification is received by the Agent a reasonable period of time prior to the making of such distribution. The Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the relevant Bank Product Provider. In the absence of an updated certification, the Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to the Agent by such Bank Product Provider as being due and payable

(less any distributions made to such Bank Product Provider on account thereof). Any Loan Party or any of its Subsidiaries may obtain Bank Products from any Bank Product Provider, although no Loan Party or any of its Subsidiaries is required to do so. Each Loan Party acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no Bank Product Provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the Bank Product Provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such Bank Product Provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

(b) [Reserved].

(c) Each Bank Product Provider, by delivery of a notice to Agent of a Bank Product, agrees to be bound by the Loan Documents, including Sections 6.04, 8.13 and 9.02(d). Each Bank Product Provider, shall severally, shall indemnify and hold harmless Agent or any of its Related Parties, to the extent not reimbursed by Loan Parties, against all claims that may be incurred by or asserted against Agent or any of its Related Parties in connection with such provider's Bank Product Obligations.

(d) No Bank Product Provider that obtains the benefits of Section 6.04, any Guaranty or any Collateral by virtue of the provisions hereof or of any Guaranty or any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article VIII to the contrary, the Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Bank Product Obligations.

SECTION 8.14. Parallel Debt and Dutch Security Rights. For the purpose of ensuring and preserving the validity and continuity of the security rights to be granted pursuant to Security Documents that are governed by the laws of The Netherlands (including, but not limited to, a Dutch notarial deed of pledge relating to shares in the share capital of Eastman Kodak Holdings B.V.), the parties hereto agree as follows:

(a) The Borrower hereby irrevocably and unconditionally undertakes to pay to Agent, as creditor in its own right and acting on its own behalf, and not as agent or representative of any other person, amounts equal to and in the currency of the amounts payable by the Borrower to the Lenders in respect of the Obligations of the Borrower (other than under the Parallel Debt (as defined hereafter)) from time to time as and when such amounts fall due for payment (the "Parallel Debt").

(b) Each of the parties hereto acknowledges that:

(i) the Parallel Debt represents Agent's own separate and independent claim to receive payment of the Parallel Debt from the Borrower; and

(ii) the Parallel Debt constitutes an undertaking, obligation and liability of the Borrower to Agent which is transferable, separate and independent from, and without prejudice to, the Obligations of the Borrower,

(iii) it being understood that the amounts owed by the Borrower to the Agent under this Agreement shall at any time never exceed the aggregate of the amounts owed by the Borrower to the Lenders under the Obligations of the Borrower at any such time.

(c) The Parallel Debt will become due and payable as and to the extent one or more of the Obligations of the Borrower becomes due and payable, without any further notice being required.

(d) To the extent Agent irrevocably received any amount in payment of the Parallel Debt (the "Received Amount"), the Obligations of the Borrower shall be reduced by an aggregate amount equal to the Received Amount as if the Received Amount was received as a payment of such Obligations."

SECTION 8.15. Certain Matters Relating to German Law. In relation to the German Security Agreements, the following additional provisions shall apply:

(a) The Agent, with respect to the part of the Collateral secured pursuant to the German Security Agreements or any other Collateral created under German law ("German Collateral"), shall:

(i) hold, administer and realize such German Collateral that is transferred or assigned by way of security (*Sicherungseigentum/Sicherungsabtretung*) or otherwise granted to it and is creating or evidencing a non-accessory security right (*nicht akzessorische Sicherheit*) in its own name as trustee (*Treuhänder*) for the benefit of the Secured Parties; and

(ii) hold, administer, and realize any such German Collateral that is pledged (*verpfändet*) or otherwise transferred to the Agent and is creating or evidencing an accessory security right (*akzessorische Sicherheit*) as agent.

(b) With respect to the German Collateral, each Secured Party hereby authorizes and grants a power of attorney (*Vollmacht*) to the Agent (whether or not by or through employees or agents) to:

(i) accept as its representative (*Stellvertreter*) any pledge or other creation of any accessory security right granted in favor of such Secured Party in connection with the German Security Agreements and to agree to and execute on its behalf as its representative (*Stellvertreter*) any amendments and/or alterations to any German Security Agreements or any other agreement related to such German Collateral which creates a pledge or any other accessory security right (*akzessorische Sicherheit*) including the release or confirmation of release of such security;

(ii) execute on behalf of itself and the Secured Parties where relevant and without the need for any further referral to, or authority from, the Secured Parties or any other person all necessary releases of any such German Collateral secured under the German Security Agreements or any other agreement related to such German Collateral;

(iii) realize such Collateral in accordance with the German Security Agreements or any other agreement securing such German Collateral;

(iv) make, receive all declarations and statements and undertake all other necessary actions and measures which are necessary or desirable in connection with such German Collateral or the German Security Agreements or any other agreement securing the German Collateral;

(v) take such action on its behalf as may from time to time be authorized under or in accordance with the German Security Agreements; and

(vi) to exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Secured Parties under the German Security Agreements together with such powers and discretions as are reasonably incidental thereto.

(c) Each of the Secured Parties agrees that, if the courts of Germany do not recognize or give effect to the trust expressed to be created by this Agreement or any Collateral Document, the relationship of the Secured Parties to the Agent shall be construed as one of principal and agent but, to the extent permissible under the laws of Germany, all the other provisions of this Agreement shall have full force and effect between the parties hereto.

(d) Each Secured Party hereby ratifies and approves all acts and declarations previously done by the Agent on such person's behalf (including for the avoidance of doubt the declarations made by the Agent as representative without power of attorney (*Vertreter ohne Vertretungsmacht*) in relation to the creation of any pledge (*Pfandrecht*) on behalf and for the benefit of each Secured Party as future pledgee[2] or otherwise).

(e) For the purpose of performing its rights and obligations as Agent and to make use of any authorization granted under the German Security Agreements, each Secured Party hereby authorizes the Agent to act as its agent (*Stellvertreter*), and releases the Agent from any restrictions on representing several persons and self-dealing under any applicable law, and in particular from the restrictions of Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*). The Agent has the power to grant sub-power of attorney, including the release from the restrictions of section 181 of the German Civil Code.

SECTION 8.16. German Parallel Debt.

(a) The Borrower hereby irrevocably and unconditionally undertakes (and to the extent necessary undertakes in advance) to pay to the Agent amounts equal to any amounts owing from time to time by the Borrower to any Secured Party under this Agreement and any other Loan Document pursuant to any Obligations as and when those amounts are due under any Loan Document (such payment undertakings under this Section 8.16 and the obligations and liabilities resulting therefrom being the "Parallel Debt").

(b) The Agent shall have its own independent right to demand payment of the Parallel Debt by the Borrower. The Borrower and the Agent acknowledge that the obligations of the Borrower under this Section 8.16 are several, separate and independent (*selbständiges Schuldanerkenntnis*) from, and shall not in any way limit or affect, the corresponding obligations of the Borrower to any Secured Party under this Agreement or any other Loan Document (the "Corresponding Debt") nor shall the amounts for which the Borrower is liable under this Section 8.16 be limited or affected in any way by its Corresponding Debt provided that:

(i) the Parallel Debt shall be decreased to the extent that the Corresponding Debt has been irrevocably paid or discharged (other than, in each case, contingent obligations);

(ii) the Corresponding Debt shall be decreased to the extent that the Parallel Debt has been irrevocably paid or discharged;

---

2 S. gesonderten Abschnitt V. dazu

(iii) the amount of the Parallel Debt shall at all times be equal to the amount of the Corresponding Debt; and

(iv) for the avoidance of doubt, the Parallel Debt will become due and payable at the same time when the Corresponding Debt becomes due and payable.

(c) The security granted under any German Security Agreement with respect to the Parallel Debt is granted to the Agent in its capacity as sole creditor of the Parallel Debt.

(d) Without limiting or affecting the Agent's rights against the Borrower (whether under this Agreement or any other Loan Document), the Borrower acknowledges that:

(i) Nothing in this Agreement shall impose any obligation on the Agent to advance any sum to the Borrower or otherwise under any Loan Document; and

(ii) for the purpose of any vote taken under any Loan Document, the Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Lender.

(e) The parties to this Agreement acknowledge and confirm that the provisions contained in this Agreement shall not be interpreted so as to increase the maximum total amount of the Obligations.

(f) The Parallel Debt shall remain effective in case a third person should assume or be entitled, partially or in whole, to any rights of any of the Lenders under any of the other Loan Documents, be it by virtue of assignment, novation or otherwise.

(g) All monies received or recovered by the Agent pursuant to this Agreement and all amounts received or recovered by the Agent from or by the enforcement of any security granted to secure the Parallel Debt shall be applied in accordance with this Agreement.

ARTICLE IX
MISCELLANEOUS

SECTION 9.01. Amendments, Waivers. No amendment or waiver of any provision of this Agreement or any of the other Loan Documents, nor consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that

(a) no amendment, waiver or consent shall, unless in writing and signed by all the Lenders, do any of the following:

(i) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Revolving Loans, or the number of Lenders, that shall be required for the Lenders or any of them to take any action hereunder,

(ii) release all or substantially all of the Collateral in any transaction or series of related transactions,

(iii) release one or more Guarantors (or otherwise limit such Guarantors' liability with respect to the Obligations owing to the Agent, and the Lenders under the Guaranties) if such release or limitation is in respect of all or substantially all of the value of the Guaranties, taken as a whole, to the Lenders,

(iv) amend this Section 9.01 or the definition of "Required Lenders", "Supermajority Lenders", or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder,

(v) change Section 2.05(a) in a manner that would alter the pro rata reduction or termination of Commitments required thereby,

(vi) increase the advance rates set forth in the definition of "Loan Value";

(vii) amend, modify or change the provisions of Section 6.04 (including to change the order of application of any reduction in the Commitments or any prepayment of Revolving Loans among the Facilities from the application thereof) without the written consent of each Lender; or

(viii) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Debt or Lien, as the case may be,

(b) no amendment, waiver or consent shall, unless in writing and signed by each Lender affected thereby, do any of the following:

(i) increase the Commitment of such Lender,

(ii) reduce or forgive the principal of, or interest on, the Revolving Loans or any fees or other amounts payable hereunder,

(iii) postpone any date fixed for any payment of principal of, or interest on, the Revolving Loans or any fees or other amounts payable hereunder, or

(iv) [reserved], or

(c) no amendment, waiver or consent shall, unless in writing and signed by the Supermajority Lenders, add new asset categories to the Borrowing Base or otherwise cause the Borrowing Base or availability under the Revolving Credit Facility provided for herein to be increased (other than changes in Reserves implemented by the Agent in its Permitted Discretion, and the changes to the advance rates set forth in the definition of Loan Value); provided, further, that (x) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Agent under this Agreement or any Note and (y) no amendment, waiver or consent shall, unless in writing and signed by the Issuing Banks in addition to the Lenders required above to take such action, adversely affect the rights or obligations of the Issuing Banks in their capacities as such under this Agreement, provided, however, notwithstanding clauses (ii) and (iii) of clause (a) above, no consent or waiver or other approval of any Lender shall be required for any release of a Guaranty or Guaranty Supplement as provided in Section 7.07 or any release of Collateral as provided in Section 9.16 or in any Collateral Document.

Notwithstanding the foregoing, if the Agent and the Borrower shall have jointly identified any ambiguity, inconsistency, defect, typographical error or manifest error in this Agreement or any other Loan Document, then the Agent and the Borrower shall be permitted to amend such provision without any further action or consent of any other party.

SECTION 9.02. Notices, Etc.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Borrower, the Agent, or any Issuing Bank, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 9.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Notices and other communications to the Lenders and the Issuing Banks hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided, that, the foregoing shall not apply to notices to any Lender or Issuing Bank pursuant to Article II if such Lender or Issuing Bank, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided, that, approval of such procedures may be limited to particular notices or communications.

(c) Electronic Communications. Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided, that, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(d) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE LOAN PARTY MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE LOAN PARTY MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE LOAN PARTY MATERIALS OR THE PLATFORM. In no event shall the Agent, any Arranger or any of their respective Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, any Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Agent's or the Arrangers' transmission of Loan Party Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, any Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(e) Change of Address, Etc. Each of the Borrower, the Agent and each Issuing Bank may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower and the Agent. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to Loan Party Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or their securities for purposes of United States Federal or state securities laws.

(f) Reliance by Agent, Issuing Banks and Lenders. The Agent, the Issuing Banks and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Borrowing) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Agent, each Issuing Bank, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Borrower. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

SECTION 9.03. No Waiver; Remedies. No failure on the part of any Lender or the Agent to exercise, and no delay in exercising, any right hereunder or under any Note shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 6.01 for the benefit of all the Lenders and the Issuing Banks; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) each Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 9.06 (subject to the terms of Section 2.15), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Bankruptcy Law; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Article VI and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.15, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 9.04. Costs and Expenses.

(a) The Company agrees to pay on demand all reasonable out of pocket costs and expenses of the Agent, and each Issuing Bank in connection with the preparation, execution, delivery, administration, modification and amendment of this Agreement, the Notes and the other documents to be delivered hereunder, including, without limitation, (A) all due diligence, syndication (including printing, distribution and bank meetings), transportation, computer, duplication, appraisal, consultant, and audit expenses, (B) the reasonable fees and expenses of counsel for the Agent, and each Issuing Bank with respect thereto, (C) fees and expenses incurred in connection with the creation, perfection or protection of the liens under the Loan Documents (including all reasonable search, filing and recording fees) and (D) costs associated with insurance reviews, Collateral audits, field exams, collateral valuations and collateral reviews to the extent provided herein, provided, however, the Company shall not be required to pay fees or expenses of more than one counsel in any jurisdiction where the Collateral is located, with respect to advising such Agent, and each Issuing Bank as to its rights and responsibilities, or the perfection, protection or preservation of rights or interests, under the Loan Documents, with respect to negotiations with any Loan Party or with other creditors of any Loan Party or any of its Subsidiaries arising out of any Default or any events or circumstances that may give rise to a Default and with respect to presenting claims in or otherwise participating in or monitoring any bankruptcy, insolvency or other similar proceeding involving creditors' rights generally and any proceeding ancillary thereto. The Company further agrees to pay on demand all costs and expenses of the Agent, each Issuing Bank and each Lender, if any (including, without limitation, reasonable counsel fees and expenses), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of the Loan Documents, whether in any action, suit or litigation, or any bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally, including, without limitation, reasonable fees and expenses of counsel for the Agent, each Issuing Bank and each Lender in connection with the enforcement of rights under this Agreement and the other Loan Documents.

(b) The Company agrees to indemnify and hold harmless the Agent, each Arranger, each Issuing Bank and each Lender and each of their Related Parties (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of outside counsel) incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (i) the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Revolving Loans or Letters of Credit (which, for the avoidance of doubt, does not include any Taxes or Other Taxes which shall be governed by Section 2.14) or (ii) the actual or alleged presence of Hazardous Materials on any property of the Company or any of its Subsidiaries or any Environmental Action relating in any way to the Company or any of its Subsidiaries, except to the extent such claim, damage, loss, liability or expense resulted from such Indemnified Party's gross negligence or willful misconduct as found in a non-appealable judgment by a court of competent jurisdiction. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 9.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Company and each Indemnified Party agrees not to assert any claim for special, indirect, consequential or punitive damages against the Company, the Agent, any Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability, arising out of or otherwise relating to the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Revolving Loans.

(c) If any payment of principal of, or Conversion of, any Eurodollar Rate Revolving Loan is made by Borrower to or for the account of a Lender other than on the last day of the Interest Period for such Revolving Loan, as a result of a payment or Conversion pursuant to Section 2.08(d) or (e), 2.10 or 2.12, acceleration of the maturity of the Notes pursuant to Section 6.01 or for any other reason, or by an Eligible Assignee to a Lender other than on the last day of the Interest Period for such Revolving Loan upon an assignment of rights and obligations under this Agreement pursuant to Section 9.08 as a result of a demand by the Company pursuant to Section 9.08(a), Borrower shall, upon demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender any amounts required to compensate such Lender for any additional losses, costs or expenses that it may reasonably incur as a result of such payment or Conversion, including, without limitation, any loss (excluding loss of anticipated profits), cost or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by any Lender to fund or maintain such Revolving Loan.

(d) Without prejudice to the survival of any other agreement of any Loan Party hereunder or under any other Loan Document, the agreements and obligations of the Borrower contained in Sections 2.11, 2.14 and 9.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes.

(e) No Indemnified Party referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnified Party through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnified Party as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(f) All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(g) The agreements in this Section shall survive the resignation of the Agent, and any Issuing Bank, the replacement of any Lender, the termination of the aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

SECTION 9.05. Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to the Agent, any Issuing Bank or any Lender, or the Agent, any Issuing Bank or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, such Issuing Bank or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Bankruptcy Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and each Issuing Bank severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the Issuing Banks under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 9.06. Right of Set-off. Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Agent to declare the Revolving Loans due and payable pursuant to the provisions of Section 6.01, the Agent, each Issuing Bank, and each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Agent, such Issuing Bank, or such Lender or such Affiliate to or for the credit or the account of Borrower against any and all of the obligations of Borrower now or hereafter existing under this Agreement and any Note held by the Agent, such Issuing Bank, or such Lender, whether or not such Lender shall have made any demand under this Agreement or such Note and although such obligations may be unmatured, provided, however, that no such right shall exist against any deposit designated as being for the benefit of any Governmental Authority, provided, further, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.19 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower after any such set-off and application, provided, that, the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender, the Agent, each Issuing Bank, and each such Affiliate under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that the Agent, the Issuing Banks, the Lenders or such Affiliates may have.

SECTION 9.07. Binding Effect. This Agreement shall become effective in accordance with Section 3.01 and thereafter shall be binding upon and inure to the benefit of the Borrower, the Agent, and each Lender and their respective successors and assigns, except that Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of all of the Lenders.

SECTION 9.08. Assignments and Participations.

(a) Each Lender may, with the consent of the Agent (not to be unreasonably withheld or delayed) in the case of an assignment to a Person who is not an Affiliate of such Lender and, if demanded by the Company so long as no Event of Default shall have occurred and be continuing and only with respect to any Affected Lender, upon at least five (5) Business Days' notice to such Lender and the Agent, shall, assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment or Commitments, the Revolving Loans owing to it, its participations in Letters of Credit, if any, and the Note or Notes held by it); provided, however, that (i) each such assignment shall be of a constant, and not a varying, percentage of all rights and obligations under this Agreement with respect to one or more Facilities, (ii) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender, or an assignment of all of a Lender's rights and obligations under this Agreement, the amount of (x) the Revolving Credit Commitment of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than $10,000,000 or an integral multiple of $1,000,000 in excess thereof and (y) the Unissued Letter of Credit Commitment of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than $1,000,000 or an integral multiple of $1,000,000 in excess thereof, in each case, unless the Company and the Agent otherwise agree, (iii) each such assignment shall be to an Eligible Assignee, (iv) each such assignment made as a result of a demand by the Company pursuant to this Section 9.08(a) shall be arranged by the Company after consultation with the Agent and shall be either an assignment of all of the rights and obligations of the assigning Lender under this Agreement or an assignment of a portion of such rights and obligations made concurrently with another such assignment or other such assignments that together cover all of the rights and obligations of the assigning Lender under this Agreement, (v) no Lender shall be obligated to make any such assignment as a result of a demand by the Company pursuant to this Section 9.08(a) unless and until such Lender shall have received one or more payments from either the Borrower or one or more Eligible Assignees in an aggregate amount at least equal to the aggregate outstanding principal amount of the Revolving Loans owing to such Lender, together with accrued interest thereon to the date of payment of such principal amount and all other amounts payable to such Lender under this Agreement, and (vi) the parties to each such assignment shall execute and deliver to the Agent, for its acceptance and recording in the Register, an Assignment and Acceptance (and the assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire), together with any Note subject to such assignment and a processing and recordation fee of $3,500 payable by the parties to each such assignment; provided, however, that (x) only one such fee shall be payable in connection with simultaneous assignments to or by two or more Approved Funds with respect to a Lender and (y) in the case of each assignment made as a result of a demand by the Company, such recordation fee shall be payable by the Company except that no such recordation fee shall be payable in the case of an assignment made at the request of the Company to an Eligible Assignee that is an existing Lender. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, (x) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and (y) the Lender assignor thereunder shall, to the extent that rights and obligations hereunder

have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than its rights under Sections 2.11, 2.14 and 9.04 to the extent any claim thereunder relates to an event arising prior to such assignment) and be released from its obligations (other than its obligations under Section 9.06 to the extent any claim thereunder relates to an event arising prior to such assignment) 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).

(b) By executing and delivering an Assignment and Acceptance, the Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other instrument or document furnished pursuant hereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under any Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements referred to in Section 5.01(h) 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; (iv) such assignee will, independently and without reliance upon the Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee confirms that it is an Eligible Assignee; (vi) such assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement and the other Loan Documents as are delegated to the Agent by the terms hereof, together with such powers and discretion as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Lender.

(c) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee representing that it is an Eligible Assignee, together with any Note or Notes subject to such assignment, the Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit C hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Company

(d) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Agent, the applicable pro rata share of Revolving Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Revolving Loans and participations in Letters of Credit in accordance with its Ratable Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(e) The Agent shall maintain at its address referred to in Section 9.02 a copy of each Assumption Agreement and each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Revolving Loans owing to, each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(f) Each Lender may sell participations to one or more banks or other entities (other than the Company or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment, the Revolving Loans owing to it and any Note or Notes held by it); provided, however, that (i) such Lender's obligations under this Agreement (including, without limitation, its Commitment to the Borrower hereunder) shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such Lender shall remain the holder of any such Note for all purposes of this Agreement, (iv) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (v) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Loan Party therefrom, provided, however, that any agreement between a Lender and such participant may provide that the Lender will not, without the consent of participant, agree to any such amendment, waiver or consent which would reduce the principal of, or interest on, the Revolving Loans or any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of principal of, or interest on, the Revolving Loans or any fees or other amounts payable hereunder, in each case to the extent subject to such participation.

(g) Any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.08, 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, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree to preserve the confidentiality of Borrower Information relating to the Borrower received by it from such Lender.

(h) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank; provided, that, no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledge or assignee for such Lender as a party hereto.

(i) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register in the United States on which it enters the name and address of each participant and the principal amounts and stated interest of each participant's interest in the Loans, Commitments 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 to any Person (including the identity of any participant or any information relating to a participant's interest in any Commitments, Loans, or its other obligations under this Agreement) except to the extent that such disclosure is necessary to establish that the Loans are in registered form under Treas. Reg. § 5f.103-1(c). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as owner of such participation for all purposes of this Agreement.

(j) The Agent may conclusively rely on the list of Disqualified Institutions provided by the Borrower (or any supplement thereto) for all purposes of this Agreement and the other Loan Documents, including in approving or declining to approve a Person as an Eligible Assignee, executing and delivering any Assignment and Acceptance, making any recording in the Register in respect of such Assignment and Acceptance or otherwise, and shall have no liability of any kind to any Loan Party or any Affiliate thereof, any Lender or any other Person if such list of Disqualified Institutions (or any supplement thereto) is incorrect or if any Person is incorrectly identified in such list of Disqualified Institutions (or any supplement thereto) as a Person to whom no assignment is to be made.

SECTION 9.09. Confidentiality. Neither the Agent nor any Lender may disclose to any Person any confidential, proprietary or non-public information of any Loan Party furnished to the Agent or the Lenders by any Loan Party, including, without limitation (1) earnings and other financial information and forecasts, budgets, projections, plans, (including, without limitation, any confirmations of publicly disclosed advice regarding any material matter); (2) mergers, acquisitions, tender offers, joint ventures or changes in assets; (3) new products or discoveries or developments regarding any Loan Party's customers or suppliers; (4) changes in control or in management; (5) changes in auditors or auditor notifications to the Loan Party; (6) securities redemptions, splits, repurchase plans, changes in dividends, changes in rights of holders or sales of additional securities; and (7) negative news relating to such matters as physical damage to properties from significant events, loss of significant contractual relationship, material litigation, defaults under contracts or securities, bankruptcy or receivership (such information being referred to collectively herein as the "Borrower Information"), except that each of the Agent, and each of the Lenders may disclose Borrower Information (i) to its Affiliates and to its and its Affiliates' managers, administrators, partners, employees, trustees, officers, directors, agents, advisors and other representatives solely for purposes of this Agreement, any Notes and the transactions contemplated hereby (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of Borrower Information and instructed to keep such Borrower Information confidential on terms substantially no less restrictive than those provided herein), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulating authority, such as the National Association of Insurance Commissioners), provided, to the extent permitted by law and practicable under the circumstances, the Agent or such Lender shall provide the Company with prompt notice of such requested disclosure so that the Company may seek a protective order prior to the time when the Agent or such Lender is required to make such disclosure, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, provided, to the extent permitted by law and practicable under the circumstances, the Agent or such Lender shall provide the Company with prompt notice of such requested disclosure so that the Company may seek a protective order prior to the time when the Agent or such Lender is required to make such disclosure, (iv) subject to this Section 9.09, to any other Lender to this Agreement which has requested such information, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions no less restrictive than those of this Section 9.09, to any assignee or participant or prospective assignee or participant or any pledge referred to in Section 9.08(h), (vii) to the extent such Borrower Information (A) is or becomes generally

available to the public on a non-confidential basis other than as a result of a breach of this Section 9.09 by the Agent or such Lender, or (B) is or becomes legally available to the Agent or such Lender on a nonconfidential basis from a source other than a Loan Party, provided, that, the source of such information was not known by the Agent or such Lender to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligations of confidentiality to a Loan Party or any other party with respect to such information, (viii) with the consent of the Company, (ix) to any party hereto and (x) subject to the Agent's or the applicable Lender's receipt of an agreement containing provisions no less restrictive than those of this Section, to any actual or prospective party (or its managers, administrators, trustees, partners, directors, officers, employees, agents, advisors and other representatives) to any swap, derivative or other transaction under which payments are to be made by reference to the Company and its Obligations, this Agreement or payments hereunder. Any Person required to maintain the confidentiality of Borrower Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Borrower Information as such Person would accord to its own confidential information.

SECTION 9.10. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or in .pdf (or similar electronic format) shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.11. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agent, and each Lender, regardless of any investigation made by the Agent or any Lender or on their behalf and notwithstanding that the Agent, or any Lender may have had notice or knowledge of any Default at the time of any Revolving Loan, and shall continue in full force and effect as long as any Revolving Loan or any other Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

SECTION 9.12. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 9.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Bankruptcy Laws, as determined in good faith by the Agent or the Issuing Banks, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

SECTION 9.13. Jurisdiction.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK 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 THE 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 THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE AGENT, ANY LENDER OR ANY ISSUING BANK MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTIES OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.14. No Liability of the Issuing Banks. Each Lender and each Loan Party agree that, in paying any drawing under a Letter of Credit, no Issuing Bank shall have any responsibility to obtain any document, other than any sight draft, certificates and documents expressly required by the Letter of Credit, or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. Each Loan Party assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit. Neither an Issuing Bank nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by such Issuing Bank against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the Borrower shall have a claim against such Issuing Bank, and such Issuing Bank shall be liable to the Borrower, to the extent of any direct, but not consequential, damages suffered by the Company that the Company proves were caused by such Issuing Bank's willful misconduct or gross negligence as found in a final non-appealable judgment by a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, each Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary and no Issuing Bank shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; provided, that, nothing herein shall be deemed to excuse such Issuing Bank if it acts with gross negligence or willful misconduct in accepting such documents as found in a final non-appealable judgment by a court of competent jurisdiction.

SECTION 9.15. PATRIOT Act Notice. Each Lender, and the Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify such Loan Party in accordance with the PATRIOT Act. Each Loan Party shall provide such information and take such actions as are reasonably requested by the Agent or any Lenders in order to assist the Agent and the Lenders in maintaining compliance with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

SECTION 9.16. Release of Collateral; Termination of Loan Documents.

(a) (i) Upon the sale, lease, transfer or other Disposition of any item of Collateral of any Loan Party in accordance with the terms of the Loan Documents, including, without limitation, as a result of the sale, in accordance with the terms of the Loan Documents, of the Loan Party that owns such

Collateral, (ii) upon a Subsidiary being designated an Immaterial Subsidiary or an Excluded Subsidiary, in accordance with the Loan Documents, (iii) at any time a Loan Party's guarantee of the obligations under the Loan Documents ceases as provided in Section 7.07, the security interests granted by the Loan Documents with respect to such items of Collateral and/or Loan Party shall immediately terminate and automatically be released (so long as in the case of Dispositions by any Loan Party pursuant to the terms of the Loan Documents (other than Dispositions of Collateral not comprising TMM Assets) and in respect of clauses (ii) and (iii) above, Agent has received a written certification by Borrower that such Disposition or other transaction, as applicable is permitted under the terms of the Loan Documents (and Agent shall be entitled to rely conclusively upon such certification without further inquiry)), and the Agent will, at the Company's expense, execute and deliver to such Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents.

(b) Upon the latest of (i) the payment in full in cash of all Obligations under the Loan Documents, (ii) the termination in full of the Commitments and (iii) the latest date of expiration or termination of all Letters of Credit (or receipt by the Agent of an irrevocable notice from each Issuing Bank with a Letter of Credit outstanding that it will not seek to enforce any rights that it has or may have in accordance with Section 2.03 against the Agent or the Lenders), (x) except as otherwise specifically stated in this Agreement or the other Loan Documents, this Agreement and the other Loan Documents shall terminate and be of no further force or effect, (y) the Agent shall release or cause the release of all Collateral from the Liens of the Loan Documents and the Guarantors of all Obligations under each Guaranty, and will, at the Company's expense, execute and deliver such documents as the Company may reasonably request to evidence the release of Collateral from the assignment and security interest granted under the Collateral Documents and the obligations of the Guarantors and (z) each Lender that has requested and received a Note shall return such Note to the Company marked "cancelled" or "paid in full"; provided, however, that the Lenders' obligations under Section 9.09 shall continue until the earlier of (x) the date that is three (3) years after the termination of this Agreement and (y) the date that is three (3) months after the latest date that is the subject of the Projections delivered in accordance with Section 5.01(h)(viii), and the Lender's obligations under this Section 9.16 shall survive until satisfied.

SECTION 9.17. Judgment Currency.

(a) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Agent could purchase Dollars with such other currency at the exchange rate on the Business Day preceding that on which final judgment is given.

(b) The obligation of each Loan Party in respect of any sum due from it in any currency (the "Primary Currency") to any Lender or the Agent hereunder shall, notwithstanding any judgment in any other currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Agent (as the case may be), of any sum adjudged to be so due in such other currency, such Lender or the Agent (as the case may be) may in accordance with normal banking procedures purchase the applicable Primary Currency with such other currency; if the amount of the applicable Primary Currency so purchased is less than such sum due to such Lender or the Agent (as the case may be) in the applicable Primary Currency, each Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Agent (as the case may be) against such loss, and if the amount of the applicable Primary Currency so purchased exceeds such sum due to any Lender or the Agent (as the case may be) in the applicable Primary Currency, such Lender or the Agent (as the case may be) agrees to remit to such Loan Party such excess.

SECTION 9.18. No Fiduciary Duty. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agent, the Arrangers and the Lenders are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Agent, the Arrangers and the Lenders, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Loan Parties are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agent, the Arrangers and the Lender each are and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, have not been, are not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Agent, the Arrangers nor the Lenders have any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent, the Arrangers and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Agent, the Arrangers nor the Lenders have any obligation to disclose any of such interests to the Loan Parties or their respective Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Agent, the Arrangers and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.19. Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any Assumption Agreement or in any amendment or other modification hereof (including waivers and consents) 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 or similar foreign laws.

SECTION 9.20. Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties, each party hereto (including each Secured Party) acknowledges that any liability arising under a Loan Document of any Secured Party that is an Affected Financial Institution, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority, and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising under any Loan Documents which may be payable to it by any Secured Party that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under any Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

SECTION 9.21. No Novation. The terms and conditions of the Existing Credit Agreement are amended as set forth in, and restated in their entirety and superseded by, this Agreement. Nothing in this Agreement shall be deemed to be a novation of any of the Obligations as defined in the Existing Credit Agreement or in any way impair or otherwise affect the rights or obligations of the parties thereunder (including with respect to Revolving Loans and representations and warranties made thereunder) except as such rights or obligations are amended or modified hereby. Notwithstanding any provision of this Agreement or any other Loan Document or instrument executed in connection herewith, the execution and delivery of this Agreement and the incurrence of Obligations hereunder shall be in substitution for, but not in payment of, the Obligations owed by the Loan Parties under the Existing Credit Agreement. The Existing Credit Agreement as amended and restated hereby shall be deemed to be a continuing agreement among the parties, and all documents, instruments and agreements delivered pursuant to or in connection with the Existing Credit Agreement not amended and restated in connection with the entry of the parties into this Agreement shall remain in full force and effect, each in accordance with its terms, as of the date of delivery or such other date as contemplated by such document, instrument or agreement to the same extent as if the modifications to the Existing Credit Agreement contained herein were set forth in an amendment to the Existing Credit Agreement in a customary form, unless such document, instrument or agreement has otherwise been terminated or has expired in accordance with or pursuant to the terms of this Agreement, the Existing Credit Agreement or such document, instrument or agreement or as otherwise agreed by the required parties hereto or thereto. From and after the Closing Date, each reference to the "Agreement", "Credit Agreement" or other reference originally applicable to the Existing Credit Agreement contained in any Loan Document shall be a reference to this Agreement, as amended, supplemented, restated or otherwise modified from time to time.

SECTION 9.22. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties 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): 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.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

EASTMAN KODAK COMPANY

By: _____
Name:
Title:

EASTMAN KODAK INTERNATIONAL
CAPITAL COMPANY INC.
FAR EAST DEVELOPMENT LTD.
KODAK (NEAR EAST), INC.
KODAK AMERICAS, LTD.

By: _____
Name:
Title:

KODAK PHILIPPINES, LTD.

By: _____
Name:
Title:

BANK OF AMERICA, N.A., as Agent, Issuing Bank and Lender

By: _____
Name:
Title:

[*Signature Page to Amended and Restated ABL Credit Agreement*]

_____, as Lender

By: _____
Name:
Title:

[*Signature Page to Amended and Restated ABL Credit Agreement*]

_____, as a Non-Consenting Lender

By: _____
Name:
Title:

[*Signature Page to Amended and Restated ABL Credit Agreement*]

Exhibit 10.5

[Execution]

LETTER OF CREDIT FACILITY AGREEMENT

Dated as of February 26, 2021

among

EASTMAN KODAK COMPANY
as Borrower

and

THE GUARANTORS NAMED HEREIN
as Guarantors

and

THE LENDERS NAMED HEREIN
as Lenders

and

BANK OF AMERICA, N.A.
as Issuing Bank, Administrative and Collateral Agent

TABLE OF CONTENTS

Schedules

Exhibits

LETTER OF CREDIT FACILITY AGREEMENT

THIS LETTER OF CREDIT FACILITY AGREEMENT (the "Agreement") dated as of February 26, 2021, is by and among EASTMAN KODAK COMPANY, a New Jersey corporation (the "Borrower" or "Company"), the Guarantors (as hereinafter defined), the banks, financial institutions and other institutional lenders (the "Lenders") from time to time party hereto, BANK OF AMERICA, N.A., as issuing bank (in such capacity, "Issuing Bank") and BANK OF AMERICA, N.A., as administrative agent and collateral agent for Issuing Bank and the Lenders (in such capacity, "Agent").

WHEREAS, the Borrower and Guarantors have requested that Bank of America, N.A., in its capacity as an Issuing Bank, issue standby letters of credit from time to time and Bank of America., N.A. is willing to issue such letters of credit subject to the terms and conditions set forth herein for the account of Borrower and Guarantors as the account parties and guarantors;

WHEREAS, Lenders will purchase participations in such letters of credit and otherwise have the obligations in respect thereof as provided for herein; and

WHEREAS, Borrower and Guarantors have agreed to guaranty all of the obligations of each other as applicants and account parties in respect of any letter of credit issued by the Issuing Bank hereunder;

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS AND ACCOUNTING TERMS

SECTION 1.01. Certain Defined Terms. As used in this Agreement, the following terms shall have the following meanings (such meanings to be equally applicable to both the singular and plural forms of the terms defined):

"ABL Priority Collateral" has the meaning set forth in the Term Loan Intercreditor Agreement and after the termination of the Term Loan Intercreditor Agreement, shall mean all Collateral, other than Letter of Credit Priority Collateral.

"ABL Credit Facility Agent" means Bank of America, National Association in its capacity as administrative agent pursuant to the ABL Credit Facility Documents, and its successors, assigns or any replacement agent appointed pursuant to the terms of the ABL Credit Facility Agreement.

"ABL Credit Facility Agreement" means (a) the Credit Agreement, dated as of September 3, 2013, among the Borrower, the Guarantors, the banks, financial institutions and other institutional lenders and issuers of letters of credit from time to time party thereto, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Bank PLC and J.P. Morgan Securities LLC, as joint lead arrangers and joint bookrunners, Barclays Bank PLC, as syndication agent, and ABL Credit Facility Agent, as it may be amended, restated, refinanced, replaced or otherwise modified from time to time and (b) any other replacement, refinancing, restructuring, extension, renewal or refinancing thereof (in each case whether through one or more credit facilities or other debt issuances pursuant to the agreement set forth in subclause (a) or any other agreement, contract or indenture, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof) to the extent permitted by this Agreement and the Letter of Credit Facility Intercreditor Agreement.

"ABL Credit Facility Debt" means the Debt of the Company and its Subsidiaries under the ABL Credit Facility Agreement.

"ABL Credit Facility Documents" means the ABL Credit Facility Agreement, each letter of credit issued in connection therewith and each other agreement, certificate, document, or instrument executed or delivered by the Company or its Subsidiaries to the ABL Credit Facility Agent or any lender thereunder in connection therewith, whether prior to, on, or after the closing of the ABL Credit Facility Agreement, and any and all renewals, extensions, amendments, modifications, refinancings or restatements of any of the foregoing.

"Acceptable Foreign Currency" means Pounds Sterling, Euros, the currencies listed on Schedule 1.01(a), any other currency used in the ordinary course of business of the Company and its Restricted Subsidiaries for cash management purposes outside the United States and any other currency as may be approved by the Agent from time to time in its sole discretion.

"Activities" has the meaning specified in Section 8.02(b).

"Additional Guarantor" has the meaning specified in Section 7.05.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Agent.

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

"Affected Lender" has the meaning specified in Section 2.20.

"Affiliate" means, as to any Person, any other Person that, directly or indirectly, controls, is controlled by or is under common control with such Person or is a director or executive officer of such Person. For purposes of this definition, the term "control" (including the terms "controlling", "controlled by" and "under common control with") of a Person means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by contract or otherwise.

"Agent" means, Bank of America, in its capacity as administrative and collateral agent under the Loan Documents, or any successor administrative agent appointed in accordance with Section 8.07.

"Agent Parties" has the meaning specified in Section 9.02(d).

"Agent's Account" means the account of the Agent maintained by the Agent at its office as set forth on Schedule 9.02.

"Agent's Group" has the meaning specified in Section 8.02(b).

"Agreement" means this Amended and Restated Credit Agreement, as amended, restated, supplemented or otherwise modified from time to time.

"Anti-Corruption Laws" means all laws, rules and regulations applicable to the Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption.

"Applicable Lending Office" means, as to any Lender, the office or offices of such Lender described as such in such Lender's Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify Borrower and the Agent.

"Applicable Margin" means 2.75% per annum.

"Applicable Percentage" means, (a) three-eighths percent (0.375%) per annum when the aggregate amount of the Unused Commitments is less than or equal to fifty percent (50.0%) of the Letter of Credit Facility or (b) one-half percent (0.50%) per annum when the aggregate amount of the Unused Commitments is greater than fifty percent (50.0%) of the Letter of Credit Facility.

"Approved Fund" means any Fund that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender; provided, that, an Approved Fund shall not include any Disqualified Institution.

"Arranger" means Bank of America, N.A. in its capacity as sole lead arranger and bookrunners.

"Assignment and Acceptance" means an assignment and acceptance entered into by a Lender and an Eligible Assignee, and accepted by the Agent, in substantially the form of Exhibit C hereto.

"Auto-Extension Letter of Credit" has the meaning specified in Section 2.03(a).

"Available Amount" of any Letter of Credit means, at any time, the maximum amount available to be drawn under such Letter of Credit at such time (assuming compliance at such time with all conditions to drawing). For purposes of computing the amounts available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.05. For all purposes of this Agreement, if on any date of determination a Letter of Credit has expired by its terms but any amount may still be drawn thereunder by reason of the operation of any rule under the ISP or any article of the UCP, such Letter of Credit shall be deemed to be "outstanding" in the amount so remaining available to be drawn.

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

"Bail-In Legislation" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation, rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part 1 of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bank of America" means Bank of America, N.A. and its successors.

"Bankruptcy Code" shall mean title 11 of the United States Code, as in effect from time to time.

"Bankruptcy Court" shall mean the United States Bankruptcy Court for the Southern District of New York.

"Bankruptcy Law" means any proceeding of the type referred to in Section 6.01(e) of this Agreement or the Bankruptcy Code or any similar foreign, federal, provincial or state law for the relief of debtors.

"Base Rate" means for any day a fluctuating rate per annum equal to the higher of (a) the Federal Funds Rate plus one-half of one percent (1/2 of 1%), or (b) the rate of interest in effect for such day as publicly announced from time to time by the Agent as its "prime rate". The "prime rate" and the "base rate" is a rate set by the Agent based upon various factors including the Agent's costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above, or below such announced rate. Any change in such prime rate or base rate announced by the Agent shall take effect at the opening of business on the day specified in the announcement of such change.

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 C.F.R. § 1010.230.

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

"Board of Governors" means the Board of Governors of the Federal Reserve System.

"Bona Fide Debt Fund" means a debt fund or other investment vehicle engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds or similar extensions of credit in the ordinary course of business and whose managers have fiduciary duties to third party investors in such fund or investment vehicle.

"Borrower" has the meaning in the introductory paragraph hereto.

"Borrower Information" has the meaning specified in Section 9.09.

"Borrowing Base Certificate" means a certificate in substantially the form of Exhibit F hereto (with such changes therein as may be required by the Agent in its Permitted Discretion to reflect the LC Facility Cash Collateral as provided for hereunder from time to time), executed and certified as accurate and complete by a Responsible Officer of the Company.

"Business Day" means a day of the year on which banks are not required or authorized by law to close in the states of North Carolina and New York.

"Capital Expenditures" means, without duplication, any expenditure of money for any purchase or other acquisition of any asset which, in conformity with GAAP, would be required to be classified as a capital expenditure on the Consolidated statement of cash flows of the Company and its Restricted Subsidiaries; provided, that, the term "Capital Expenditures" shall not include (a) any additions to property, plant and equipment and other expenditures made in connection with the replacement,

substitution, restoration, repair or improvement of assets to the extent made with (i) the proceeds of equity issuances of, or capital contributions to the Company, provided those expenditures are made substantially contemporaneously with the equity issuances or capital contributions as the case may be, (ii) Debt borrowed (excluding borrowings under this Agreement, the Term Loan Agreement , the ABL Credit Facility Agreement and the Convertible Note Documents) by the Company or any Restricted Subsidiary in connection with such capital expenditures, (iii) the proceeds from any casualty insurance or condemnation or eminent domain paid on account of the loss of or damage to the assets being replaced, substituted, restored, repaired or improved, to the extent that the proceeds therefrom are utilized or committed to be utilized for capital expenditures within twelve (12) months of the receipt of such proceeds and (if so committed) are so utilized within twelve (12) months of the receipt of such proceeds, or (iv) the proceeds from any sale or other Disposition of the Company's or any Restricted Subsidiary's assets (other than assets constituting Collateral consisting of Accounts and the proceeds thereof), to the extent that the proceeds therefrom are utilized or committed to be utilized for capital expenditures within twelve (12) months of the receipt of such proceeds and (if so committed) are so utilized within twelve (12) months of the receipt of such proceeds, (b) the purchase price of equipment that is purchased substantially contemporaneously with the trade-in of existing equipment solely to the extent of the amount of such purchase price reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (c) expenditures that constitute operating lease expenses in accordance with GAAP, (d) expenditures that constitute Permitted Acquisitions or other investments that consist of the purchase of a business unit, line of business or a division of a Person or all or substantially all of the assets of a Person, (e) any expenditures which are paid by a third party or which are contractually required to be, and are, reimbursed to the Loan Parties in cash by a third party (including landlords) during such period of calculation or (f) any non-cash capitalized interest expense reflected as additions to property, plant or equipment in the consolidated balance sheet of the Company and the Restricted Subsidiaries.

"Capital Lease Obligations" means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP (as of the date hereof) and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP. For the avoidance of doubt, operating leases shall also be accounted for in accordance with GAAP in effect as of the date hereof.

"Captive Insurance Subsidiary" means any Subsidiary that is subject to regulation as an insurance company.

"Cases" means the cases under Chapter 11 of the Bankruptcy Code of Borrower and certain of the Guarantors, each as debtor-in-possession, which have been jointly administered as Chapter 11 Case No. 12-10201(ALG) and which are pending in the Bankruptcy Court.

"Cash Collateralize" means, in respect of an Obligation, provide and pledge (as a first priority perfected security interest) cash collateral in Dollars in an amount equal to one hundred three percent (103%) of such Obligation, at a location and pursuant to documentation in form and substance reasonably satisfactory to the Agent (and "Cash Collateralization" has a corresponding meaning).

"Cash Equivalents" means any of the following:

(a) Acceptable Foreign Currencies;

(b) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality of the United States of America (provided that the full faith and credit of the United States of America is pledged in support of those securities) having maturities of not more than twenty-four (24) months from the date of acquisition;

(c) obligations issued or fully guaranteed by any state of the United States of America or any political subdivision of any such state or province or any instrumentality thereof maturing within one (1) year from the date of acquisition and having a rating of either "A" or better from S&P or A2 or better from Moody's;

(d) certificates of deposit and eurodollar time deposits with maturities of one (1) year or less from the date of acquisition, banker's acceptances with maturities not exceeding one (1) year and overnight bank deposits, in each case, with any Lender or with any United States commercial bank having capital and surplus in excess of $250,000,000;

(e) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clauses (b), (c), and (d) above entered into with any financial institution meeting the qualifications specified in clause (d) above;

(f) commercial paper rated at least "P-2" by Moody's or at least "A-2" by S&P, in each case, maturing within one (1) year after the date of acquisition;

(g) money market funds that either are (i) SEC.270.2a-7 compliant, (ii) enhanced cash funds having a weighted average maturity of not greater than one hundred twenty (120) days or (iii) investing at least ninety-five percent (95)% of their assets in securities of the types described in clauses (a) through (f) above;

(h) offshore overnight interest bearing deposits in foreign branches of the Agent, any Lender or an Affiliate of a Lender; or

(i) instruments equivalent to those referred to in clauses (a) through (h) above of comparable tenor to those referred to above, denominated in any Acceptable Foreign Currency and used in the ordinary course of business of the Borrower and its Subsidiaries for cash management purposes in any jurisdiction outside the United States of America to the extent reasonably required or advisable in connection with any business conducted by the Borrower or any Subsidiary.

"CFC" means an entity that is a "controlled foreign corporation" of the Company under Section 957 of the Code or an entity all or substantially all of the assets of which consist of equity interests in one or more CFCs, and any entity which would be a "controlled foreign corporation" except for any alternate classification under Treasury Regulation 301.7701-3, or any successor provisions to the foregoing.

"Change of Control" means, at any time, (a) any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities and Exchange Act of 1934 (the "Exchange Act"), other than a Permitted Holder (or group consisting of Permitted Holders), is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of Voting Stock of the Company representing more than thirty-five percent (35%) of the voting power of all Voting Stock of the Company, and (b) during any period of two (2) consecutive years (commencing immediately following the Closing Date), individuals who at the beginning of such period

constituted the board of directors of the Company (together with any new directors whose election by such board of directors or whose nomination for election by the Company's shareholders was approved by a vote of a majority of the Company's directors then still in office who either were directors at the beginning of such period or whose election or nomination for election was previously so approved) cease for any reason to constitute a majority of the Company's directors then in office (excluding any directors from the numerator and denominator of such calculation to the extent such director is or was designated by a Permitted Holder (or group consisting of Permitted Holders) or pursuant to a contractual agreement with the Company existing on the Closing Date).

"Chapter 11 Plan" means the First Amended Joint Chapter 11 Plan of Reorganization of Eastman Kodak Company and its Debtor Affiliates, dated August 21, 2013, as amended, supplemented or otherwise modified from time to time, and together with all exhibits, schedules, annexes, supplements and other attachments thereto.

"Closing Date" means the first date on which all of the conditions precedent in Article III are satisfied or waived in accordance with Article III.

"Closing Date Transactions" shall mean, collectively, (a) the execution, delivery and performance of, this Agreement and the other Loan Documents and (b) all other related transactions including the payment of fees and expenses in connection therewith.

"Code" means the United States Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

"Collateral" means all "Collateral" as defined in the Security Agreement and the other Collateral Documents.

"Collateral Documents" means the Security Agreement, the Control Agreements, each of the other collateral documents, instruments and agreements delivered pursuant to Section 5.01(i) or (j), and each other security agreement or other instrument or document executed and delivered by any Loan Party to secure any of the Obligations or, with respect to Collateral Documents governed by the laws of the Netherlands, the Obligations of Borrower under the Parallel Debt.

"Commitment" means as to any Lender (a) the amount set forth opposite such Lender's name on Schedule I hereto as such Lender's "Commitment", which shall be designated as a Commitment under the Letter of Credit Facility, (b) if such Lender has entered into an Assignment and Acceptance, the amount set forth for such Lender in the Register maintained by the Agent pursuant to Section 9.08(e), as such amount may be reduced pursuant to Section 2.06.

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

"Company" has the meaning in the introductory paragraph hereto.

"Competitor" means those Persons who are directly or indirectly engaged in the same or similar line of business as the Company or its Subsidiaries.

"Compliance Certificate" means a certificate substantially in the form attached as Exhibit D or in such other form as reasonably agreed by the Agent and the Company, by which Company certifies compliance of the Borrower in accordance with Section 5.03.

"Concentration Account" means each Deposit Account, other than an Excluded Account, maintained by a Loan Party in which funds of such Loan Party from one or more Deposit Accounts are concentrated.

"Confirmation Order" means the Order Confirming the Chapter 11 Plan entered by the Bankruptcy Court in the Cases on August 23, 2013.

"Consolidated" refers to the consolidation of accounts in accordance with GAAP.

"Consolidated EBITDA" means, at any date of determination, an amount equal to Consolidated Net Income for the most recently completed Measurement Period, plus the following to the extent reducing Consolidated Net Income (without duplication):

(a) (i) Consolidated Interest Charges,

(ii) provision for taxes based on income, profits or capital gains, including foreign, federal, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations) of such Person paid or accrued during such period,

(iii) accretion, depreciation and amortization expense (excluding amortization of a prepaid cash item that was paid and not expensed in a prior period, other than in respect of licenses provided to the Company or a Restricted Subsidiary in connection with the settlement of litigation),

(iv) any non-cash charges (other than (1) amortization of a prepaid cash item that was paid and not expensed in a prior period and (2) write down of current assets) including: (a) write-downs of property, plant and equipment and other assets, (b) impairment of intangible assets, (c) losses resulting from cumulative effect of changes in accounting principles, (d) net foreign currency reevaluation of intercompany indebtedness and remeasurement losses or gains related to the balance sheet of the Company and its Restricted Subsidiaries, (e) losses on sales of accounts receivable, (f) provisions for asset retirement obligations, (g) provisions for environmental restoration and remedial action, (h) net non-cash mark-to-market charges relating to hedging arrangements, (i) unrealized losses from Hedging Agreements and unrealized losses from foreign currency transactions and (j) commercial capital expenses not included in depreciation expenses for such period; provided, that, if such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent,

(v) fees, costs, charges, commissions, operating losses, write-downs and expenses (including (A) fees, costs and expenses related to legal, financial, restructuring and other advisors, auditors and accountants, (B) printer costs and expenses, (C) U.S. Securities and Exchange Commission and other filing fees and (D) underwriting, arrangement, syndication, issuance backstop and placement premiums, discounts, fees, costs and expenses) paid, reimbursed or incurred during such period in connection with the negotiation, execution and ongoing performance of the Loan Documents, the Term Loan Documents, the ABL Credit Facility Documents, the Series B Preferred Stock, the Series C Preferred Stock and the Convertible Note Documents (and any Permitted Refinancing of any of the foregoing), and, in each case, any transaction (including any financing, acquisition or disposition, whether or not consummated) or litigation related thereto or contemplated by any of the foregoing, in each case, regardless of whether initially incurred by the Company or paid by the Company to reimburse others for such fees, costs and expenses,

(vi) any extraordinary expenses, charges or losses,

(vii) any non-recurring or unusual expenses, charges or losses in an amount not to exceed for any four fiscal quarter period, the greater of (A) five percent (5%) of Consolidated EBITDA for such period (calculated after giving effect to any amounts added to Consolidated EBITDA pursuant to this clause (vii) and clauses (xi) and (xii) and Section 1.07) and (B) $10,000,000,

(viii) fees, costs and expenses (including fees, costs and expenses related to (A) legal, financial and other advisors, auditors and accountants, (B) printer costs and expenses, (C) SEC and other filing fees and (D) underwriting, arrangement, syndication, backstop and placement premiums, discounts, fees, charges and expenses) of the Company and its Restricted Subsidiaries, incurred as a result of Permitted Acquisitions, Investments, Dispositions, issuance of equity interests or issuance, waiver, refinancing or amendment of Debt, in each case to the extent permitted hereunder, whether or not consummated, other than any fees paid, or costs or expenses reimbursed to any Restricted Subsidiary of the Company other than from a Person that is the Company or any of its Restricted Subsidiaries,

(ix) deferred or amortized financing fees (and any write-offs thereof) for such period,

(x) any cash expenses or losses funded during such period with payments from assets of the Kodak Retirement Income Plan as in effect on January 19, 2012,

(xi) business optimization expenses and restructuring charges and reserves for such period; provided, that, with respect to each such business optimization expense or restructuring charge or reserve pursuant to this subclause (xi), the Company shall have delivered to the Agent an officer's certificate specifying and quantifying such expense, charge or reserve and stating that such expense, charge or reserve is a business optimization expense or restructuring charge or reserve,

(xii) the amount of cost savings and synergies projected by the Company in good faith to be realized as a result of specified actions taken or expected to be taken prior to or during such period (which cost savings or synergies shall be subject only to certification by a Responsible Officer of the Company and shall be calculated on a pro forma basis as though such cost savings or synergies had been realized on the first day of the relevant period), net of the amount of actual benefits realized during such period from such actions; provided, that, (A) such cost savings or synergies are reasonably identifiable and factually supportable, and (B) such actions have been taken or are to be taken within twelve (12) months after the date of determination to take such action; provided, further, that aggregate amounts added pursuant to this subclause for any period shall not in the aggregate exceed the greater of (1) $10,000,000 or (2) five percent (5%) of the Consolidated EBITDA (calculated without giving effect to this clause or to Section 1.07(c)),

(xiii) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions or insurance in any agreement, to the extent such indemnification or insurance coverage has not been disclaimed or denied and is reasonably expected to be paid within one hundred eighty (180) days of any claim made therefor (provided, that, if such expenses are not reimbursed within such one hundred eighty (180) day period, for purposes of calculating Consolidated EBITDA for any fiscal period in which an addback pursuant to this clause (xiii) has been taken, Consolidated EBITDA shall be re-calculated going forward excluding the addback pursuant to this clause (xiii) for such period),

(xiv) any proceeds from business interruption, casualty or liability insurance received by such Person during such period, to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income,

(xv) expenses, charges and accruals for and reserves in respect of any charges, costs or expenses related to Pension Agreements, minus,

(b) without duplication and to the extent included in Consolidated Net Income for such period, the sum of (i) interest income (except to the extent deducted in determining Consolidated Interest Charges), (ii) income, profits or capital gains tax credits, (iii) other non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent it represents a reversal of an accrual or reserve for potential cash loss that was deducted and not added back to Consolidated EBITDA in any prior period) (provided, that, any cash received with respect to any non-cash items of income (other than extraordinary gains) for any prior period shall be added to the computation of Consolidated EBITDA), (iv) (A) any unusual or non-recurring income or gains not to exceed amounts that can be added back to Consolidated EBITDA pursuant to subclause (a)(vii) or (B) extraordinary income or gains, in each case including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, gains on the sale of assets outside of the ordinary course of business, (v) any other non-cash income arising from the cumulative effect of changes in accounting principles, (vi) provision for environmental restoration and remedial actions for continuing operations added back pursuant to clause (a)(iv) of this definition to the extent actually paid in cash, (vii) income and gains in respect of Pension Agreements and (viii) cash payments in respect of Pension Agreements, made in the period for which Consolidated EBITDA is being calculated.

Notwithstanding anything herein to the contrary, the add-backs permitted under clauses (vii), (xi) and (xii) above shall not exceed seven and one-half percent (7.5%) of Consolidated EBITDA.

"Consolidated Interest Charges" means, for any Measurement Period, all interest, premium payments, debt discount, fees, charges and related expenses in connection with Debt for Borrowed Money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including all commissions, discounts and other fees and charges owed with respect to Permitted Receivables Financings, letters of credit and bankers' acceptance financing and net costs under Hedging Agreements, but excluding (a) any interest paid, directly or indirectly, to any Loan Party by the Company and its Restricted Subsidiaries, (b) any non-cash or deferred interest and financing costs (including any legal and accounting costs, fees on account of bridge, commitment and other financings, any non-cash accretion or accrual of discounted liabilities not constituting Debt, all as determined on a consolidated basis in accordance with GAAP) and (c) amortization or write-off of deferred financing fees, debt issuance costs, commissions, fees and expenses, including expenses resulting from the discounting of any outstanding Debt in connection with the application of purchase accounting and/or fresh start accounting in connection with any acquisition.

"Consolidated Net Income" means, as of any date of determination, the net income of the Company and its Restricted Subsidiaries for the most recently completed Measurement Period, all as determined on a consolidated basis in accordance with GAAP; provided, however, that there shall be excluded:

(a) the net income (or loss) of any Person that is not a Restricted Subsidiary, except to the extent of the amount of dividends, distributions or other payments actually paid in cash (or to the extent converted into cash) to the Company or any of its wholly owned Restricted Subsidiaries during such period,

(b) the income (or loss) of any Person (other than a Subsidiary of the Company) in which the Company or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Company or any Restricted Subsidiary in the form of dividends or similar distributions,

(c) the income (or loss) of any Person during such Measurement Period and accrued prior to the date it becomes a Restricted Subsidiary of the Company or any of the Company's Restricted Subsidiaries or is merged into or consolidated with the Company or any of its Restricted Subsidiaries or such Person's assets are acquired by the Company or any of its Restricted Subsidiaries (but only the portion attributable to such Person or assets prior to the dates it became or is merged or consolidated with the Company or any Restricted Subsidiary or the assets were so acquired),

(d) any after-tax effect of gains or losses attributable to Dispositions or other dispositions or transfers of assets, in each case other than in the ordinary course of business and discontinued operations or disposal of discontinued operations, as determined in good faith by the Company,

(e) effects of adjustments (including the effects of such adjustments pushed down to the Company and its Restricted Subsidiaries) in such Person's consolidated financial statements (including to property, equipment, inventory and other assets) pursuant to GAAP resulting from the application of purchase accounting in relation to the Loan Documents and the transactions contemplated thereby or any consummated acquisition or the amortization or write-off of any amounts thereof (including the impact on net income (or loss) arising from mark-to-market adjustments with respect to earn-outs), net of taxes,

(f) (i) any non-cash compensation expense recorded from grants or periodic remeasurement of stock appreciation or similar rights, stock options, restricted stock or other rights and any cash charges associated with the rollover, acceleration, or payout of capital stock by management of the Company in connection with the Initial ABL Closing Date Transactions, the Closing Date Transactions and (ii) any costs or expenses incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement or any stock subscription agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the common equity capital of the Company,

(g) any after-tax effect of income (or loss) from the early extinguishment of obligations under Hedging Agreements or other derivative instruments, or Debt,

(h) the undistributed earnings of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation or law applicable to such Subsidiary, and

(i) accruals and reserves and gains, losses or charges with respect to, or relating to, the KPP Settlement Agreement and the completion and implementation of the transactions contemplated thereby and in relation thereto.

"Consolidated Subsidiary" means any Person whose accounts are consolidated with the accounts of the Company in accordance with GAAP.

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

"Control Agreement" means a control agreement with (a) the financial institution, at which any Loan Party maintains a deposit account (other than an Excluded Account) pursuant to which such financial institution shall agree with such Loan Party and the Agent to comply with instructions originated by the Agent directing the disposition of funds in such deposit account without the further

consent of such Loan Party, such agreement to be in form and substance reasonably satisfactory to the Agent, and (b) the applicable securities intermediary, at which any Loan Party maintains a securities account pursuant to which such securities intermediary shall agree with such Loan Party and the Agent to comply with the instructions of the Agent with respect to such securities and securities account without the further consent of such Loan Party.

"Convertible Note Debt" means the Debt of the Company and its Subsidiaries under the Convertible Note Documents.

"Convertible Note Documents" means the Convertible Notes and each other agreement, certificate, document, or instrument executed or delivered by the Company or its Subsidiaries with or in favor of the Convertible Noteholders.

"Convertible Noteholder" means any holder of a Convertible Note.

"Convertible Notes" means 5.0% convertible promissory notes, in an aggregate original principal amount of $25,000,000, issued by the Borrower.

"Covered Entity" means any of the following:

(a) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(b) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(c) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" has the meaning specified therefor in Section 9.22 of this Agreement.

"Debt" of any Person means (excluding the current portion of accrued liabilities in the ordinary course of business), without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (i) current accounts payable incurred in the ordinary course of business and accrued expenses and (ii) any earn-out obligations, except to the extent not paid after becoming due and payable or such obligations appear as a liability on the balance sheet of such Person in accordance with GAAP), (e) all Debt of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Debt secured thereby has been assumed, but only to the extent of such Lien, and only to the extent of the lesser of the fair market value of the property secured by the Lien and the amount of Debt, (f) all guarantees by such Person of Debt set forth in subclauses (a)-(e) and (g)-(k), (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (j) the obligations of such Person in respect of any Hedging Agreement and (k) all Disqualified Stock of such Person. The Debt of any Person shall include the Debt of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Debt provide that such Person is not

liable therefor (but only for the portion so liable). For purposes of determining Debt, (x) the "principal amount" of the obligations of any Person in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if such Hedging Agreement were terminated at such time and (y) in no event shall obligations under any Hedging Agreement be deemed "Debt" for calculating any financial ratio (or component thereof).

"Debt for Borrowed Money" of any Person means all items that, in accordance with GAAP, would be classified as short term borrowings and long term debt on a Consolidated statement of financial position of such Person.

"Default" means any Event of Default or any event that would constitute an Event of Default but for the requirement that notice be given or time elapse or both.

"Default Interest" has the meaning specified in Section 2.08(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.

"Defaulted Amount" means, with respect to any Lender at any time, any amount required to be paid by such Lender to the Agent, Issuing Bank or any other Lender hereunder or under any other Loan Document at or prior to such time which has not been so paid as of such time, including, without limitation, any amount required to be paid by such Lender to (a) Issuing Bank pursuant to Section 2.04 to purchase a participation in a Letter of Credit, (b) any other Lender pursuant to Section 2.15 to purchase any participation owing to such other Lender and (d) the Agent or any Issuing Bank pursuant to Section 8.05 to reimburse the Agent or such Issuing Bank for such Lender's ratable share of any amount required to be paid by the Lenders to the Agent or such Issuing Bank as provided therein. In the event that a portion of a Defaulted Amount shall be deemed paid pursuant to Section 2.19(b), the remaining portion of such Defaulted Amount shall be considered a Defaulted Amount originally required to be paid hereunder or under any other Loan Document on the same date as the Defaulted Amount so deemed paid in part.

"Defaulting Lender" means, at any time, a Lender as to which the Agent has notified the Company that (i) such Lender has failed for three (3) or more Business Days to comply with its obligations under this Agreement to make a payment to an Issuing Bank in respect of an Issuance (each a "funding obligation"), (ii) such Lender has notified the Agent, or has stated publicly, that it will not comply with any such funding obligation hereunder, (iii) such Lender has, for three (3) or more Business Days, failed to confirm in writing to the Agent, in response to a written request of the Agent, that it will comply with its funding obligations hereunder, (iv) a Lender Insolvency Event has occurred and is continuing with respect to such Lender or (v) such Lender has, or has a direct or indirect Parent Company that has, become the subject of a Bail-In Action. Any determination that a Lender is a Defaulting Lender under clauses (i) through (v) above will be made by the Agent in its sole discretion acting in good faith. The Agent will promptly send to all parties hereto a copy of any notice to the Company provided for in this definition.

"Deposit Accounts" means any checking or other demand deposit account maintained by a Loan Party.

"Designated Jurisdiction" means a country or territory that is the subject of any Sanction (at the time of this Agreement, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

"Disclosure Statement" means that certain First Amended Disclosure Statement for Debtors' First Amended Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code dated June 27, 2013.

"Disposition" or "Dispose" means the sale, transfer, exclusive license, lease or other disposition (including any sale and leaseback transaction), whether in one transaction or in a series of related transactions, of any property (including any equity interests) by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable; provided, that, for the avoidance of doubt, an issuance of equity interests is not a Disposition; provided, further, for the avoidance of doubt, that a non-exclusive license of intellectual property in the ordinary course of business shall be deemed not to be a Disposition.

"Disqualified Institution" means (i) those Persons identified to the Agent and the Lenders in writing on the Closing Date, and (ii) Competitors and their Affiliates that are not a Bona Fide Debt Fund identified to the Agent and the Lenders in writing (it being understood that the Company shall be permitted to supplement the list of Competitors and Affiliates in writing after the date hereof to the extent such supplemented Person becomes a Competitor (or an Affiliate of a Competitor) so long as such supplemented Person is not a Bona Fide Debt Fund). Any supplement shall be made available to the Lenders and shall become effective three (3) Business Days after delivery to the Agent. Notwithstanding anything herein to the contrary, in no event shall a supplement apply retroactively to disqualify any parties that have previously acquired an assignment or participation interest in the Letter of Credit Obligations that is otherwise permitted hereunder, but upon the effectiveness of such designation, any such party may not acquire any additional Letter of Credit Obligations or participations or other interest in the Letter of Credit Obligations.

"Disqualified Stock" means any equity interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) except as set forth in the proviso hereto, matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to the 90th day after the Maturity Date, or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any equity interest referred to in clause (a) above, in each case at any time prior to the 90th day after the Maturity Date; provided, that, (i) only the portion of the equity interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; (ii) if such equity interests are issued to any plan for the benefit of employees of any company or by any such plan to such employees, such equity interests shall not constitute Disqualified Stock solely because they may be required to be repurchased by any company in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; and (iii) such equity interest may by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) become mandatorily redeemable or redeemable at the option of the holder thereof upon the occurrence of a change of control or Disposition subject to payment in full in cash of all Obligations (other than contingent indemnification obligations not then due and owing).

"Document" means a document of title, as defined in the UCC.

"Dollar" or "$" means the lawful currency of the United States.

"EEA Financial Institution" means (a) any credit institution or investment firm established in an EEA Member Country that is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country that is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country that 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 an EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Eligible Assignee" means with respect to the Letter of Credit Facility (a) a Lender; (b) an Affiliate or branch of a Lender; and (c) any other Person approved by (i) the Agent, (ii) the Issuing Bank and (iii) unless an Event of Default has occurred and is continuing at the time any assignment is effected in accordance with Section 9.08, the Company, in each case, such approval not to be unreasonably withheld or delayed (it being understood that a proposed assignee's status as other than a financial institution shall be a reasonable basis for the Company to withhold its consent), provided, that, the (A) Company shall be deemed to have consented to such Person if the Company has not responded within five (5) Business Days of a request for such approval and (B) no Loan Party, Affiliate of a Loan Party or any Disqualified Institution shall qualify as an Eligible Assignee.

"Environmental Action" means any action, suit, demand, demand letter, claim, notice of non-compliance or violation, notice of liability or potential liability, investigation, proceeding, consent order or consent agreement relating to any Environmental Law, Environmental Permit or arising from alleged injury or threat of injury to health or safety as it relates to any Hazardous Materials or the environment, including, without limitation, (a) by any governmental or regulatory authority for enforcement, cleanup, removal, response, remedial or other actions or damages and (b) by any governmental or regulatory authority or any third party for damages, contribution, indemnification, cost recovery, compensation or injunctive relief.

"Environmental Law" means any federal, state, provincial, municipal, local or foreign statute, law, ordinance, rule, regulation, code, order, judgment, decree or judicial or agency interpretation, policy or guidance relating to pollution or protection of the environment, health, and safety as it relates to any Hazardous Materials or natural resources, including, without limitation, those relating to the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

"Environmental Liability" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense or cost, contingent or otherwise (including any liability for costs of Remedial Actions, or natural resource damages, administrative oversight costs, and indemnities), of or related to the Borrower or any Subsidiary (including any predecessor for whom the Borrower or any Subsidiary bears liability contractually or by operation of law) arising under or relating to any Environmental Law, including those resulting from or based upon (a) any compliance or noncompliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment (including as related to indoor air quality) or (e) any of the foregoing for which liability is assumed or imposed by any contract or agreement.

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

"ERISA" means the United States Employee Retirement Income Security Act of 1974, as amended from time to time, and the regulations promulgated and rulings issued thereunder.

"ERISA Affiliate" means any Person that for purposes of Title IV of ERISA is a member of the controlled group of any Loan Party, or under common control with any Loan Party, within the meaning of Section 414 of the Code or Section 4001(b)(1) of ERISA.

"ERISA Event" means (a)(i) the occurrence of a Reportable Event, within the meaning of Section 4043 of ERISA (except as may occur as a result of the transactions contemplated by the KPP Settlement Agreement solely to the extent that they relate to the transactions contemplated by the KPP Settlement Agreement that shall have been consummated within fifteen (15) days of the Initial ABL Closing Date), with respect to any Plan unless the 30-day notice requirement with respect to such event has been waived by the PBGC or (ii) the requirements of Section 4043(b) of ERISA apply with respect to a contributing sponsor, as defined in Section 4001(a)(13) of ERISA, of a Plan, and an event described in paragraph (9), (10), (11), (12) or (13) of Section 4043(c) of ERISA is reasonably expected to occur with respect to such Plan within the following thirty (30) days; (b) the application for a minimum funding waiver with respect to a Plan; (c) the provision by the administrator of any Plan of a notice of intent to terminate such Plan, pursuant to Section 4041(a)(2) of ERISA (including any such notice with respect to a plan amendment referred to in Section 4041(e) of ERISA); (d) the cessation of operations at a facility of any Loan Party or any ERISA Affiliate in the circumstances described in Section 4062(e) of ERISA (except as may a occur as a result of the transactions contemplated by the KPP Settlement Agreement solely to the extent that (i) they relate to the transactions contemplated by the KPP Settlement Agreement that shall have been consummated within fifteen (15) days of the Initial ABL Closing Date and (ii) the Company and its Subsidiaries shall have no liability pursuant to Section 4062(e) following such consummation); (e) the withdrawal by any Loan Party or any ERISA Affiliate from a Multiple Employer Plan during a plan year for which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (f) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Plan; (g) a determination that any Plan is in "at risk" status (within the meaning of Section 303 of ERISA); or (h) the institution by the PBGC of proceedings to terminate a Plan pursuant to Section 4042 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.

"Events of Default" has the meaning specified in Section 6.01.

"Exchange Act" has the meaning specified in the definition of "Change of Control".

"Excluded Account" means any and all of the (i) payroll, employee benefits, healthcare, escrow, fiduciary, defeasance, redemption, trust, tax and other similar accounts, (ii) "zero balance" accounts from which balances are swept daily to a Concentration Account, (iii) other accounts prohibited by applicable law from being pledged to, or having a security interest therein granted to, a third party, and (iv) other Deposit Accounts of the Loan Parties (other than Deposit Accounts and other accounts into which customer or other third party payments in respect of the Collateral are scheduled to be or regularly made) with the aggregate balance for all such accounts under this clause (iv) of less than $5,000,000.

"Excluded Subsidiary" means (a) any Immaterial Subsidiary, (b) any direct or indirect domestic Subsidiary of a direct or indirect Foreign Subsidiary, (c) any Captive Insurance Subsidiary, (d) any domestic Subsidiary that has no material assets other than equity interests in one or more CFCs (a "Qualified CFC Holding Company"), (e) any Foreign Subsidiary, (f) any direct or indirect Subsidiary of a CFC or Qualified CFC Holding Company, (g) any Unrestricted Subsidiary, (h) any Subsidiary that is prohibited by applicable law from guaranteeing the Obligations and (i) any other Subsidiary to the extent the Agent and Borrower agree that the provision of a Guaranty by such Subsidiary of the Obligations would result in a material adverse tax consequence; provided, that, notwithstanding the foregoing, any Subsidiary that provides a guarantee in respect of the Term Loan Documents, the ABL Credit Facility Documents or the Convertible Note Documents shall not be an Excluded Subsidiary hereunder.

"Excluded Swap Obligation" with respect to any Loan Party, means each Swap Obligation as to which, and only to the extent that, such Loan Party's guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Loan Party does not constitute an "eligible contract participant" as defined in the act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Loan Party and all guarantees of Swap Obligations by other Loan Parties) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Loan Party.

"Existing Letters of Credit" means the letters of credit issued by Bank of America, N.A. for the account of Borrower listed on Schedule 1.01(e) hereto.

"FATCA" means Sections 1471 through 1474 of the Code (including any amended or successor version if substantively comparable and not materially more onerous to comply with), and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided, that, (a) if such day is not a Business Day, the Federal Funds Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (b) if no such rate is so published on such next succeeding Business Day, the Federal Funds Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) charged to the Agent on such day on such transactions as determined by the Agent; provided, further, that in no event shall such rate be less than zero percent (0.0%).

"Financial Officer" of any Person (other than a natural person) means the chief financial officer, president, chief executive officer, treasurer or controller or any other officer of such Person designated or authorized by any of the foregoing.

"Fixed Charge Coverage Ratio" means, as determined on the last day of any fiscal quarter, the ratio of (a) Consolidated EBITDA for the most recently completed period of four consecutive fiscal quarters ending on such date minus the aggregate amount of any unfinanced Capital Expenditures paid during such period minus income taxes paid in cash (net of refunds received but not less than zero) during such period to (b) (i) interest payable on, and amortization of debt discount in respect of, all Debt for Borrowed Money during such period (excluding (1) additional interest in respect of the any debt securities, deferred or amortized financing fees, debt issuance costs, commissions, fees and expenses and expensing of any bridge, commitment or other financing fees and (2) any original issue discount in respect of the Term Loan Debt, the Convertible Note Debt or any other Debt permitted hereunder); plus (ii) the aggregate amount of all scheduled principal payments (other than at final maturity); plus (iii) the

aggregate amount of all cash dividend payments to holders of capital stock (including Disqualified Stock) of the Company (excluding any items eliminated or consolidated) on account of such capital stock; minus (iv) interest income for such period, as the case may be, in each case, of the Company and its Restricted Subsidiaries on a Consolidated basis.

"Fixed Charge Coverage Ratio Trigger Event" has the meaning specified in the ABL Credit Facility Agreement as in effect on the date hereof.

"Foreign Subsidiary" means any Subsidiary organized under the laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia.

"Forward-Looking Information" has the meaning specified in Section 4.01(t).

"Fund" means any Person (other than an individual) that is or will be engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course.

"GAAP" has the meaning specified in Section 1.03.

"German Security Agreement" means any Collateral Document which is governed by German law.

"Governmental Authority" means the government of the United States of America, any other nation or any political subdivision thereof, whether state, local or other, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, in each case, with competent jurisdiction over such Person.

"Guaranteed Obligations" has the meaning specified in Section 7.01(a).

"Guarantors" means, collectively (a) each Subsidiary Guarantor, and (b) each Person who now or hereafter guarantees payment or performance of the whole or any part of the Obligations in accordance with Article VII or otherwise and "Guarantor" means any one of them.

"Guaranty" means the guaranty of each Guarantor set forth in Article VII.

"Guaranty Supplement" has the meaning specified in Section 7.05.

"Hazardous Materials" means (a) petroleum and petroleum products, byproducts or breakdown products, radioactive materials, asbestos-containing materials, polychlorinated biphenyls and radon gas and (b) any other chemicals, materials or substances designated, classified or regulated as hazardous or toxic or as a pollutant or contaminant under any Environmental Law.

"Hedging Agreement" means any "swap agreement" as defined in Section 101(53B)(A) of the Bankruptcy Code.

"HMRC" means Her Majesty's Revenue & Customs.

"Immaterial Subsidiary" means each Subsidiary designated by the Company to the Agent as an Immaterial Subsidiary on the Closing Date and thereafter, each Subsidiary of Company designated as an "Immaterial Subsidiary" pursuant to a certificate executed and delivered by a Responsible Officer of

the Company to the Agent within sixty (60) days after the delivery of annual financial statements pursuant to Section 5.01(h)(ii) (certifying as to each of the items set forth in this definition), but not including the Company, (a) having total assets (as determined in accordance with GAAP) in an amount of seven and one-half (7.5%) percent or less of the Consolidated total assets of the Company and its Subsidiaries shown on such financial statements or (b) contributing seven and one-half (7.5%) percent or less to the Consolidated net sales of the Company and its Subsidiaries for the fiscal year most recently ended; provided, that, the total assets (as so determined) and net sales (as so determined) of all Immaterial Subsidiaries shall not exceed seven and one-half (7.5%) percent of the Consolidated total assets shown on the Consolidated financial statements of Company and its Subsidiaries, or seven and one-half (7.5%) percent of Consolidated net sales of the Company and its Subsidiaries as of the delivery of financial statements pursuant to Section 5.01(h)(ii). In the event that total assets of all Immaterial Subsidiaries exceed seven and one-half (7.5%) percent of Consolidated total assets of Company and its Subsidiaries, or the total contribution to Consolidated net sales of all Immaterial Subsidiaries exceeds seven and one-half (7.5%) percent of net sales for any such fiscal period for which financial statements have been delivered pursuant to Section 5.01(h)(ii), as the case may be, (i) the Company will designate certain Subsidiaries which shall no longer constitute Immaterial Subsidiaries and will no longer be Immaterial Subsidiaries until redesignated by the Company and (ii) to the extent not otherwise excluded as a Loan Party, shall comply with the provisions of Section 5.01(i) of this Agreement as if they were a new Subsidiary.

"Indemnified Costs" has the meaning specified in Section 8.05(a).

"Indemnified Party" has the meaning specified in Section 9.04(b).

"Initial ABL Closing Date" means September 3, 2013.

"Initial ABL Closing Date Transactions" means, collectively, (a) the satisfaction and termination of the DIP ABL Credit Agreement and DIP Term Loan Credit Agreement and the Liens created in connection therewith (including the Cash Collateralization or backstopping of letters of credit thereunder), (b) the execution, delivery and performance of, the Credit Agreement, dated as of September 3, 2013, among the Borrower, the Guarantors, the banks, financial institutions and other institutional lenders and issuers of letters of credit from time to time party thereto, Merrill Lynch, Pierce, Fenner & Smith Incorporated, Barclays Bank PLC and J.P. Morgan Securities LLC, as joint lead arrangers and joint bookrunners, Barclays Bank PLC, as syndication agent, and Bank of America, N.A., as administrative agent and collateral agent for the Lenders, (c) the consummation of the other transactions contemplated by the Chapter 11 Plan (except to the extent such transactions are waived in accordance with the terms of the Chapter 11 Plan) and the Confirmation Order and (d) all other related transactions including the payment of fees and expenses in connection therewith, it being understood that as of the Closing Date, the only Initial ABL Closing Date Transaction is the $14,000,000 reverse earnout payment to be made to account parties in connection with the sale of the Borrower's DI/PI business.

"Insolvency Proceeding" means any proceeding commenced by or against any Person under any provision of the Bankruptcy Code or under any other state or federal bankruptcy or insolvency law, assignments for the benefit of creditors, formal or informal moratoria, compositions, extensions generally with creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

"Intellectual Property" has the meaning specified in Section 4.01(i).

"Intercreditor Agreements" means collectively (a) the Term Loan Intercreditor Agreement, (b) the Letter of Credit Facility Intercreditor Agreement, and (c) each other intercreditor agreement executed and delivered by the Agent in connection with the incurrence by the Company of Debt secured by other priority Liens in the Collateral to secure Debt permitted under Section 5.02(d)(xi) of the ABL Credit Facility Agreement; as such agreements may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"Investment" by any Person means any purchase, holding or acquisition (including pursuant to any merger with any other Person that was not a wholly owned Subsidiary prior to such merger) of any equity interests in or evidence of Debt or other securities (including any option, warrant or other right to acquire any of the foregoing) of, the making of or permitting to exist any loans or advances to, the guarantee of any obligations of, or the making of or permitting to exist any investment or any other interest in, any other Person, or any purchase or other acquisition of (in one transaction or a series of related transactions) any assets of any other Person constituting a business unit.

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

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

"Issuance" with respect to any Letter of Credit means the issuance, amendment, renewal or extension of such Letter of Credit.

"Issuing Bank" means Bank of America, N.A. and such other Affiliate or branch of Bank of America, N.A. as it may from time to time designate for such purpose as to any Letter of Credit.

"KPP Settlement Agreement" means (a) the Stock and Asset Purchase Agreement; (b) the Settlement Agreement, among the Borrower, Kodak Limited, KPP Trustees Limited, Kodak International Finance Limited and Kodak Polychrome Graphics Finance UK Limited, each dated April 26, 2013; and (c) any related contract, agreement, deed and undertaking described in either of the foregoing to the extent entered into in conjunction with the consummation of the transactions and agreements contemplated therein; provided, that, the documents set forth in clauses (a) through (b) may be modified or amended from time to time, which agreements implement the KPP Global Settlement.

"LC Cash Collateral Account" means an interest bearing cash deposit account to be established and maintained by the Agent over which the Agent shall have sole dominion and control, upon terms as may be reasonably satisfactory to the Agent.

"LC Facility Cash Collateral" means all of the sums from time to time available to be drawn from in the LC Cash Collateral Account.

"LC Related Documents" has the meaning specified in Section 2.07(a).

"Lease" means any agreement pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

"Lender Appointment Period" has the meaning specified in Section 8.07(a).

"Lender Insolvency Event" means that (i) a Lender or its Parent Company is insolvent, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, or (ii) such Lender or its Parent Company is the subject of a bankruptcy, insolvency, reorganization, liquidation, winding up or similar proceeding, or a receiver, interim receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its Parent Company, or such Lender or its Parent Company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment.

"Lenders" has the meaning in the introductory paragraph hereto, and shall include Issuing Bank and each Person that shall become a party hereto pursuant to Section 9.08.

"Letter of Credit" means any standby letter of credit or commercial letter of credit issued under the Letter of Credit Facility

"Letter of Credit Agreement" has the meaning specified in Section 2.02(a).

"Letter of Credit Availability" means the amount equal to (a) the LC Facility Cash Collateral minus (b) three percent (3%) of the Letter of Credit Obligations.

"Letter of Credit Commitment" means, with respect to Issuing Bank, the obligation of Issuing Bank to issue Letters of Credit for the account of the Company and its Subsidiaries up to the amount of the Letter of Credit Facility as such amount may be reduced time pursuant to Section 2.06, and in any event shall not be more than the amount of the Letter of Credit Facility and subject to the Letter of Credit Availability.

"Letter of Credit Facility" means, at any time, an amount equal to the lesser of (a) $50,000,000 or (b) the aggregate amount of the Commitments, as such amount may be reduced pursuant to Section 2.06.

"Letter of Credit Facility Intercreditor Agreement" means the Intercreditor Agreement, dated as of the date hereof, among the Agent, ABL Credit Facility Agent, Borrowers and Guarantors, as the same may from time to time be amended, amended and restated, modified, or replaced.

"Letter of Credit Fee Rate" means 3.75% per annum.

"Letter of Credit Obligations" means, at any time, the sum of (a) the Available Amount of all Letters of Credit issued and outstanding and, without duplication, and (b) the aggregate amount of all amounts drawn under Letters of Credit that have not been reimbursed by the Company.

"Letter of Credit Priority Collateral" means "LC Priority Collateral" as such term is defined in the Term Loan Intercreditor Agreement.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any lease having substantially the same economic effect as any of the foregoing) relating to such asset; provided, that, in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien; provided, further, that Liens shall not include any license, sublicense, release, immunity or covenant not to sue or with respect to intellectual property (including any Intellectual Property).

"Loan Documents" means (a) this Agreement, (b) the Notes, (c) Collateral Documents, (d) all Intercreditor Agreements, and (e) each Letter of Credit Agreement and LC Related Document, and each other document and instrument delivered in connection herewith, in each case as amended, restated, supplemented or otherwise modified from time to time.

"Loan Parties" means Borrower and Guarantors.

"Loan Party Materials" has the meaning specified in Section 5.01(h).

"Margin Stock" has the meaning specified in Regulation U of the Board of Governors.

"Material Adverse Effect" means a material adverse effect on (a) the business, condition (financial or otherwise), operations, performance or properties of the Company and its Consolidated Subsidiaries taken as a whole, (b) the rights and remedies of the Agent or any Lender under any Loan Document or (c) the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party.

"Material First-Tier Foreign Subsidiary" means any Foreign Subsidiary or Qualified CFC Holding Company that is owned directly by or on behalf of the Borrower or any Guarantor and is not an Immaterial Subsidiary.

"Material Subsidiary" means any Restricted Subsidiary other than an Immaterial Subsidiary.

"Maturity Date" means the earliest of: (a) February 26, 2024, (b) the termination of the ABL Credit Facility (or any Permitted Refinancing thereof), (c) the date that is ninety-one (91) days prior to the final maturity date under the Term Loan Agreement (or any Permitted Refinancing thereof), (d) the date that is ninety (90) days prior to the final maturity under the Convertible Note Documents (or any Permitted Refinancing thereof), (e) the date that is ninety-one (91) days prior to the date required for the redemption of the Series B Preferred Stock, or (f) the date that is ninety-one (91) days prior to the date required for the redemption of the Series C Preferred Stock.

"Maximum Rate" has the meaning specified in Section 2.09.

"Measurement Period" means, at any date of determination, the most recently completed four fiscal quarters for which financial statements have been delivered or are required to be delivered (or, with respect to determinations to be made prior to the delivery of the first set of financial statements, the most recently completed four fiscal quarters ended at least thirty (30) days prior to the Closing Date).

"Minimum Liquidity" means unrestricted cash and Cash Equivalents of the Loan Parties in one or more deposit accounts or securities accounts in the United States, in each case, that is subject to ta Control Agreement.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a multiemployer plan, as defined in Section 4001(a)(3) of ERISA, to which any Loan Party or any ERISA Affiliate is making or accruing an obligation to make contributions, or has within any of the preceding five (5) plan years made or accrued an obligation to make contributions.

"Multiple Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and at least one Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could have liability under Section 4064 or 4069 of ERISA in the event such plan has been or were to be terminated.

"Non-Defaulting Lender" means, at any time, a Lender that is not a Defaulting Lender or a Potential Defaulting Lender.

"Non-Extension Notice Date" has the meaning specified in Section 2.02(e).

"Note" means a promissory note of the Borrower payable to the order of any Lender, delivered pursuant to a request made under Section 2.16 in substantially the form of Exhibit A hereto, or such other form agreed to by the Agent, in each case, evidencing the aggregate indebtedness of the Borrower to such Lender resulting from the Letter of Credit Obligations owing to such Lender.

"Notice of Issuance" has the meaning specified in Section 2.03(a).

"Obligations" means all liabilities and obligations of every nature of each Loan Party from time to time owed to the Agent, the Issuing Bank and Lenders or any of them under the Loan Documents, including the Letter of Credit Obligations, together with all fees, costs, and expenses, liabilities, obligations, covenants, indemnities, and duties of, the Borrower or any other Loan Party arising under this Agreement, any other Loan Document or otherwise with respect to any Letter of Credit (including payments in respect of reimbursement of disbursements, interest thereon and obligations to provide Collateral therefor), whether direct or indirect (including those acquired by assumption), absolute or contingent, due or to become due, now existing or hereafter arising and including fees, costs, expenses, indemnities and other amounts which, but for the filing of a petition or other proceeding in an Insolvency Proceeding with respect to such Loan Party, would have accrued on any Obligation, whether or not a claim is allowed against such Loan Party for such amounts in the Insolvency Proceeding.

"OFAC" means Office of Foreign Assets Control of the U.S. Treasury Department.

"Other Taxes" has the meaning specified in Section 2.14(b).

"Parallel Debt" has the meaning specified in Section 8.14(a).

"Parent Company" means, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the shares of such Lender.

"Participant Register" has the meaning specified in Section 9.08(i).

"PATRIOT Act" means the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. 107-56, signed into law October 26, 2001.

"PBGC" means the Pension Benefit Guaranty Corporation (or any successor).

"Pension Agreements" means defined benefit pension plans and defined benefit postretirement plans as defined by Accounting Standards Codification 715, Compensation—Retirement Benefits.

"Permitted Acquisition" has the meaning set forth in the ABL Credit Facility Agreement as in effect on the date hereof.

"Permitted Holders" means any person or group of persons which includes any of Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited, Deseret Mutual Pension Trust, George Karfunkel, Renee Karfunkel, George Karfunkel Family LLC, Congregation Chemdas Yisroel, Chesed Foundation of America, Marneu Holding Company, Moses Marx, Phillippe Katz, K.F. Investors LLC, United Equities Commodities Company, Momar Corporation, 111 John Realty Corporation and any Lender and any Affiliate of any of the foregoing; provided that (a) a group consisting of Permitted Holders may include any person that forms a group with the persons set forth above and (b) after giving effect to the acquisition of Voting Stock by such person, the persons listed above beneficially own in the aggregate, directly or indirectly, a majority of the aggregate ordinary voting power of all persons in such group.

"Permitted Refinancing" means, with respect to any Person, any modification, refinancing, refunding, renewal, replacement, exchange or extension of any Debt of such Person; provided, that, (a) the principal amount (or accreted value, if applicable) thereof does not exceed the principal amount (or accreted value, if applicable) of the Debt so modified, refinanced, refunded, renewed, replaced, exchanged or extended except by an amount equal to accrued and unpaid interest and a reasonable premium thereon plus other reasonable and customary amounts paid, and customary fees and expenses reasonably incurred (including underwriting, arrangement or placement fees, discounts and commissions), in connection with such modification, refinancing, refunding, renewal, replacement, exchange or extension and by an amount equal to any existing commitments unutilized thereunder; (b) such modification, refinancing, refunding, renewal, replacement, exchange or extension (i) 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, exchanged or extended and (ii) has no scheduled amortization or payments of principal prior to ninety-one (91) days after the Termination Date or, if the Debt being modified, amended, restated, amended and restated, refinanced, refunded, renewed or extended is subject to scheduled amortization or payments of principal, prior to any such currently scheduled amortization or payments of principal; (c) if the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended is subordinated in right of payment to the Obligations, such modification, refinancing, refunding, renewal, replacement, exchange or extension is subordinated in right of payment to the Obligations on terms as favorable in all material respects to the Lenders as those contained in the documentation governing the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended; (d) the terms and conditions (including, if applicable, as to collateral) of any such modified, refinanced, refunded, renewed, replaced, exchanged or extended Debt are, either (i) customary for similar debt securities or bank financings in light of then-prevailing market conditions (it being understood that such Debt shall not include any financial maintenance covenants unless such financial covenant is added to this Agreement for the benefit of Lenders or does not take effect until after the Maturity Date and that any negative covenants shall be incurrence-based) or (ii) not materially less favorable to the Loan Parties or the Lenders, taken as a whole, than the terms and conditions of the Debt being modified, refinanced, refunded, renewed, replaced, exchanged or extended (provided, that, a certificate of a Responsible Officer of the Company delivered to the Agent in good faith at least five (5) Business Days prior to the incurrence of such Debt, together with a reasonably detailed description of the material terms and conditions of such Debt or drafts of the documentation relating thereto, stating that the Company has determined in good faith that such terms and conditions satisfy the requirement set out in the foregoing clause (d), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Agent provides notice to the Company of its objection during such five (5) Business Day period); (e) any such modification, refinancing, refunding, renewal, replacement, exchange or extension is incurred by the Person who is the obligor or guarantor, or a successor to the obligor or guarantor, on the Debt being modified, refinanced, refunded, renewed, replaced or extended unless otherwise permitted hereunder; (f) any such modification, refinancing, refunding, renewal, replacement, exchange or extension of the Term Loan Agreement shall be subject to (and the holders of, and agents and/or trustees in respect of, any such

Debt shall be bound by) the Term Loan Intercreditor Agreement; (g) any such modification, refinancing, refunding, renewal, replacement, exchange or extension of the ABL Credit Facility Agreement shall be subject to (and the holders of, and agents and/or trustees in respect of, any such Debt shall be bound by) the Letter of Credit Facility Intercreditor Agreement; and (h) at the time of entry into such Agreement, no Event of Default shall have occurred and be continuing.

"Person" means an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture, limited or unlimited liability company or other entity, or a government or any political subdivision or agency thereof.

"Plan" means a Single Employer Plan or a Multiple Employer Plan.

"Platform" has the meaning specified in Section 5.01(h).

"Post-Petition Interest" has the meaning specified in Section 7.06(b).

"Potential Defaulting Lender" means, at any time, a Lender (i) as to which the Agent has notified the Company that an event of the kind referred to in the definition of "Lender Insolvency Event" has occurred and is continuing in respect of any financial institution affiliate of such Lender, (ii) as to which the Agent or the Issuing Bank have in good faith reasonably determined and notified the Company that such Lender or its Parent Company or a financial institution affiliate thereof has notified the Agent, or has stated publicly, that it will not comply with its funding obligations under any other loan agreement or credit agreement or other similar/other financing agreement or (iii) that has, or whose Parent Company has, a rating for any class of its long-term senior unsecured debt lower than BBB- by S&P and Baa3 by Moody's. Any determination that a Lender is a Potential Defaulting Lender under any of clauses (i) through (iii) above will be made by the Agent or, in the case of clause (ii), the Issuing Bank, as the case may be, in their sole discretion acting in good faith and upon consultation with the Company. The Agent will promptly send to all parties hereto a copy of any notice to the Company provided for in this definition.

"Pre-Adjustment Successor Rate" has the meaning specified in Section 2.26.

"Primary Currency" has the meaning specified in Section 9.17(b).

"Projections" has the meaning specified in Section 5.01(h)(viii).

"Public Lender" has the meaning specified in Section 5.01(h).

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

"QFC Credit Support" has the meaning specified therefor in Section 9.22 of this Agreement.

"Qualified ECP" means a Loan Party with total assets exceeding $10,000,000, or that constitutes an "eligible contract participant" under the Commodity Exchange Act and can cause another Person to qualify as an "eligible contract participant" under Section 1a(18)(A)(v)(II) of such act.

"Ratable Share" of any amount means, with respect to any Lender at any time, the product of such amount times a fraction the numerator of which is the amount of such Lender's Commitment at such time (or, if the Commitments shall have been terminated pursuant to Section 2.06 or 6.01, such Lender's Commitment as in effect immediately prior to such termination) and the denominator of which is the aggregate amount of all Commitments at such time (or, if the Commitments shall have been terminated pursuant to Section 2.06 or 6.01, the aggregate amount of all Commitments as in effect immediately prior to such termination).

"Real Estate" means all Leases and all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Loan Party, including all easements, rights-of-way, and similar rights relating thereto and all Leases, tenancies, and occupancies thereof.

"Received Amount" has the meaning specified in Section 8.14(d).

"Register" has the meaning specified in Section 9.08(e).

"Related Business" means any business which is the same as or related, ancillary or complementary to, or a reasonable extension or expansion of, any of the businesses of the Company and its Restricted Subsidiaries on the Closing Date.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents, trustees, partners and advisors of such Person and such Person's Affiliates.

"Release" means any release, spill, emission, leaking, pumping, pouring, injection escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), including the migration of any Hazardous Material through the air, soil, surface water or groundwater.

"Remedial Action" means (a) all actions taken under any Environmental Law to (i) clean up, remove, remediate, contain, treat, monitor, assess or evaluate Hazardous Materials present in, or threatened to be Released into, the environment, (ii) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities or (b) any response actions authorized by 42 U.S.C. 9601 et seq. or analogous state law.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Plan, other than (a) those events as to which notice is waived pursuant to 29 C.F.R. Section 4043 as in effect on the date hereof (no matter how such notice requirement may be changed in the future) or (b) except as may occur as a result of the transactions contemplated by the KPP Settlement Agreement so long as the Borrower and its Subsidiaries have no liability with respect thereto and only with respect to the portion of the transactions contemplated by the KPP Settlement Agreement that have not been consummated as of the Initial ABL Closing Date.

"Required Lenders" means at any time Lenders owed at least a majority in interest of the sum of (a) the aggregate Unused Commitments at such time and (b) the aggregate Letter of Credit Obligations at such time (with the aggregate amount of each Lender's risk participation and funded participation in Letter of Credit Obligations being deemed held by such Lender for purposes of this definition); provided, that, (i) if any Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of Required Lenders at such time (for the avoidance of doubt such exclusion shall apply to both the numerator and denominator) (A) the Unused Commitment of such Lender at such time and (B) the Letter of Credit Obligations held or deemed held by such Lender at such time and (ii) at any time there are two or more Lenders (who are not Affiliates of one another or Defaulting Lenders), "Required Lenders" must include at least two Lenders (who are not Affiliates of one another).

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

"Responsible Officer" means the chief executive officer, president, chief financial officer, general counsel, executive vice president, secretary, assistant secretary, treasurer, assistant treasurer or controller (or any affiliate or subsidiary party the foregoing) of a Loan Party. Any document delivered hereunder or under any other Loan Document that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

"Restricted Payment" has the meaning specified in Section 5.02(h).

"Restricted Subsidiary" means each Subsidiary of Loan Parties that is not an Unrestricted Subsidiary.

"S&P" means Standard & Poor's, a division of The McGraw-Hill Companies, Inc.

"Sanction" means any international economic sanction administered or enforced by the United States Government (including OFAC), the United Nations Security Council, the European Union, Her Majesty's Treasury or other relevant sanctions Governmental Authority.

"Scheduled Unavailability Date" has the meaning specified in Section 2.26.

"Secured Debt" means, without duplication, the aggregate principal amount of Debt for Borrowed Money secured by a Lien on assets of the Company and its Restricted Subsidiaries determined on a Consolidated basis.

"Secured Obligations" means the "Secured Obligations", as defined in the Security Agreement.

"Secured Parties" means, collectively, the Agent, each Lender and Issuing Bank.

"Security Agreement" means the Security Agreement, dated as of the Closing Date, made by Borrower and each Guarantor in favor of Agent for the benefit of the Secured Parties, as such agreement may be amended, restated, supplemented, replaced or otherwise modified from time to time.

"Series A Preferred Certificate of Designations" means the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Borrower setting forth the terms of the Series A Preferred Stock to be delivered to the Agent upon execution thereof in the form provided to the Agent and the Lenders on the date of Amendment No. 1 (for the avoidance of doubt, without giving effect to any subsequent amendments, supplements or other modifications).

"Series A Preferred Stock" has the meaning specified in the definition of "Series A Preferred Stock Issuance.

"Series A Preferred Stock Issuance" means the issuance of the Borrower's 5.50% Series A Convertible Preferred Stock, no par value (the "Series A Preferred Stock"), to Southeastern Asset Management, Inc. and certain other investors (collectively, the "Purchasers") on or prior to the Amendment No. 1 Effective Date in a private placement exempt from registration under the Securities Act of 1933, as amended; provided that (a) the Series A Preferred Stock shall (i) have a liquidation preference of $100 per share and (ii) be convertible into shares of the Borrower's common stock, par value $0.01 per share, at the option of the Purchaser or upon the occurrence of certain events set forth in the Series A Preferred Certificate of Designations, (b) the aggregate liquidation preference of such Series A Preferred Stock shall not exceed $210,000,000, (c) cash dividends paid on such Series A Preferred Stock shall not exceed the amount set forth in the Series A Preferred Certificate of Designations and (d) all other terms of the Series A Preferred Stock and the Series A Preferred Stock Issuance shall be as set forth in the Series A Preferred Certificate of Designations.

"Series B Preferred Certificate of Designations" means the Certificate of Amendment to the Second Amended and Restated Certificate of Incorporation of the Borrower setting forth the terms of the Series A Preferred Stock to be delivered to the Agent upon execution thereof in the form provided to the Agent and the Lenders on the Closing Date (for the avoidance of doubt, without giving effect to any subsequent amendments, supplements or other modifications).

"Series B Preferred Stock" has the meaning specified in the definition of "Series B Preferred Stock Issuance.

"Series B Preferred Stock Issuance" means the issuance of the Borrower's 4.00% Series B Convertible Preferred Stock, no par value (the "Series B Preferred Stock"), on or prior to the Closing Date in a private placement exempt from registration under the Securities Act of 1933, as amended.

"Series C Preferred Stock" has the meaning specified in the definition of "Series C Preferred Stock Issuance.

"Series C Preferred Stock Issuance" means the issuance of the Borrower's 5.00% Series C Convertible Preferred Stock, no par value (the "Series C Preferred Stock"), within forty-five (45) days after the Closing Date (or such later date as Agent may agree) in a private placement exempt from registration under the Securities Act of 1933, as amended.

"Single Employer Plan" means a single employer plan, as defined in Section 4001(a)(15) of ERISA, that (a) is maintained for employees of any Loan Party or any ERISA Affiliate and no Person other than the Loan Parties and the ERISA Affiliates or (b) was so maintained and in respect of which any Loan Party or any ERISA Affiliate could have liability under Section 4069 of ERISA in the event such plan has been or were to be terminated.

"Solvent" means, with respect to any Person on a particular date, that on such date (a) the sum of the debt and liabilities (including subordinated and contingent liabilities) of such Person and its Subsidiaries, taken as a whole, does not exceed the fair value of the present assets of such Person and its Subsidiaries, taken as a whole; (b) the present fair saleable value of the assets of such Person and its Subsidiaries, taken as a whole, is greater than the total amount that will be required to pay the probable debt and liabilities (including subordinated and contingent liabilities) of such Person and its Subsidiaries as they become absolute and matured; (c) the capital of such Person and its Subsidiaries, taken as a whole, is not unreasonably small in relation to the business of such Person or its Subsidiaries, taken as a whole, contemplated as of the date hereof and as proposed to be conducted following the Closing Date; and (d) such Person and its Subsidiaries, taken as a whole, have not incurred, or believe that they will incur, debts or other liabilities including current obligations beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"Specified Collateral" has the meaning specified in the Security Agreement.

"Specified Loan Party" means a Loan Party that is not then an "eligible contract participant" under the Commodity Exchange Act (determined prior to giving effect to Section 7.08).

"Specified Transaction" means (a) any incurrence or repayment of Debt (other than for working capital purposes) or Investment that results in a Person becoming a Subsidiary, (b) any Permitted Acquisition, (c) any Disposition that results in a Subsidiary ceasing to be a Subsidiary of the Company, (d) any Disposition having an aggregate consideration in excess of $5,000,000 (other than Dispositions in the ordinary course of business), (e) 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 Company or a Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise or (f) any designation of any Restricted Subsidiary as an Unrestricted Subsidiary, or of any Unrestricted Subsidiary as a Restricted Subsidiary, in each case in accordance herewith.

"Stock and Asset Purchase Agreement" means the Amended and Restated Stock and Asset Purchase Agreement, dated August 31, 2013, among the Borrower, Qualex Inc., Kodak (Near East) Inc., as sellers and KPP Trustees Limited.

"Subordinated Obligations" has the meaning specified in Section 7.06.

"Subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity of which securities or other ownership interests representing more than fifty percent (50%) of the ordinary voting power or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held. Unless otherwise specified, "Subsidiary" shall mean a Subsidiary of the Company. A "Subsidiary" shall not include any variable interest entity.

"Subsidiary Guarantor" means the direct and indirect wholly-owned (other than directors' qualifying shares or similar holdings under applicable law) Subsidiaries of the Company organized under the laws of a state of the United States of America as listed on Part A of Schedule II hereto (other than Excluded Subsidiaries) and each other Subsidiary of the Company that shall be required to execute and deliver a guaranty pursuant to Section 5.01(i).

"Supported QFC" has the meaning specified therefor in Section 9.22 of this Agreement.

"Swap Obligations" means with respect to a Loan Party, its obligations under any agreement, contract or transaction that constitutes a "swap" within the meaning of Section 1a(47) of the Commodity Exchange Act.

"Taxes" has the meaning specified in Section 2.14(a).

"Termination Date" means the earlier of (a) the Maturity Date, or (b) the date of termination in whole of the Commitments pursuant to Section 2.06, 6.01 or 9.16(b).

"Term Loan Agent" means Alter Domus (US) LLC in its capacity as administrative agent pursuant to the Term Loan Documents, and its successors, assigns or any replacement agent appointed pursuant to the terms of the Term Loan Agreement.

"Term Loan Agreement" means (i) the Credit Agreement, dated as of the hereof, among the Company, as borrower, the lenders from time to time parties thereto, and Term Loan Agent, as it may be amended, restated, refinanced, replaced or otherwise modified from time to time and (ii) any other replacement, refinancing, restructuring, extension, renewal or refinancing thereof (in each case whether through one or more credit facilities or other debt issuances pursuant to the agreement set forth in subclause (i) or any other agreement, contract or indenture, including any such replacement or refinancing facility or indenture that increases or decreases the amount permitted to be borrowed thereunder or alters the maturity thereof and whether by the same or any other agent, lender or group of lenders, and any amendments, supplements, modifications, extensions, renewals, restatements, amendments and restatements or refundings thereof) to the extent permitted by this Agreement and the Term Loan Intercreditor Agreement.

"Term Loan Debt" means the Debt of the Company and its Subsidiaries under the Term Loan Agreement.

"Term Loan Documents" means the Term Loan Agreement, and each other agreement, certificate, document, or instrument executed or delivered by the Company or its Subsidiaries to the Term Loan Agent or any lender thereunder in connection therewith, whether prior to, on, or after the closing of the Term Loan Agreement, and any and all renewals, extensions, amendments, modifications, refinancings or restatements of any of the foregoing.

"Term Loan Intercreditor Agreement" means the Intercreditor Agreement, dated as of the date hereof, among the Agent, ABL Credit Facility Agent, Term Loan Agent, the Company and Guarantors, as the same may from time to time be amended, amended and restated, modified, or replaced.

"Term Loan Priority Collateral" has the meaning set forth in the Term Loan Intercreditor Agreement.

"TMM Assets" has the meaning set forth in the Stock and Asset Purchase Agreement.

"Total Assets" means, as of any date of determination, the aggregate amount of assets reflected on the consolidated balance sheet of the Company and its Restricted Subsidiaries most recently delivered by the Company pursuant to Section 5.01 on or prior to such date of determination.

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

"UK Financial Institution" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended from time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Pension Scheme" means the retirement benefits scheme known as the Kodak Pension Plan.

"UK Pensions Regulator" means the Pensions Regulator established in the United Kingdom pursuant to the Pensions Act of 2004.

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

"United States" and "US" mean the United States of America.

"Unrestricted Subsidiary" has the meaning specified in the ABL Credit Facility Agreement as in effect on the date hereof.

"Unused Commitment" means, with respect to each Lender at any time, (a) such Lender's Commitment at such time minus (b) the sum of (i) the aggregate principal amount of all amounts funded by such Lender (in its capacity as a Lender) and outstanding at such time, plus (ii) such Lender's Ratable Share of the aggregate Available Amount of all Letters of Credit outstanding at such time.

"U.S. Special Resolution Regimes" has the meaning specified therefor in Section 9.22 of this Agreement.

"Voting Stock" means capital stock issued by a corporation, or equivalent interests in any other Person, the holders of which are ordinarily, in the absence of contingencies, entitled to vote for the election of directors (or persons performing similar functions) of such Person, even if the right so to vote has been suspended by the happening of such a contingency.

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

"Withdrawal Liability" has the meaning specified in Part I of Subtitle E of Title IV of ERISA.

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

SECTION 1.02. Computation of Time Periods. In this Agreement in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding".

SECTION 1.03. Accounting Terms. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles in the United States of America ("GAAP"). If at any time any change in GAAP or the application thereof would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Company or the Required Lenders shall so request, the Agent, the Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP or the application thereof (subject to the approval of the Required Lenders); provided, that, until so amended, (a) such ratio or requirement shall continue to be computed in accordance with GAAP or the application thereof prior to such change therein and (b) the Borrower shall provide to the Agent financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP or the application thereof. 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, without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification having a similar result or effect) to value any Debt or other liabilities of the Company or any Subsidiary at "fair value", as defined therein and (ii) any treatment of Debt in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification 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).

SECTION 1.04. Reserved.

SECTION 1.05. Letter of Credit Amount. Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the Available Amount of such Letter of Credit in effect at such time; provided, that, with respect to any Letter of Credit that, by its terms or the terms of any LC Related Document related thereto, provides for one or more automatic increases in the stated amount thereof, the amount of such Letter of Credit shall be deemed to be the maximum stated amount of such Letter of Credit after giving effect to all such increases, whether or not such maximum stated amount is in effect at such time.

SECTION 1.06. Currency Equivalents Generally. Any amount specified in this Agreement (other than in Article II) or in any other Loan Document to be in Dollars shall also include the equivalent of such amount in any currency other than Dollars to the extent necessary to give effect to the intent of this Agreement, such equivalent amount thereof in the applicable currency to be determined by the Agent at such time on the basis of the exchange rate for the purchase of such currency with Dollars as quoted by the Agent.

SECTION 1.07. Pro Forma Calculations.

(a) Notwithstanding anything to the contrary herein, Consolidated EBITDA and the Fixed Charge Coverage Ratio (except in each case with respect to any transaction contemplated by the KPP Settlement Agreement) shall be calculated in the manner prescribed by this Section 1.07 for purposes other than in connection with the compliance of Section 5.03 hereof.

(b) For purposes of calculating Consolidated EBITDA and the Fixed Charge Coverage Ratio, Specified Transactions (and the incurrence or repayment of any Debt in connection therewith) that have been made (i) during the applicable Measurement Period and (ii) subsequent to such Measurement 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 Measurement Period. If since the beginning of any applicable Measurement 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 Measurement Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.07, then the Fixed Charge Coverage Ratio shall be calculated to give pro forma effect thereto in accordance with this Section 1.07 (but for the avoidance of doubt, not in connection with the calculation of Consolidated EBITDA and the Fixed Charge Coverage Ratio required under Section 5.03).

(c) Whenever pro forma effect is to be given to a Specified Transaction for purposes of this Section 1.07, the pro forma calculations shall be made in good faith by a Financial Officer of the Borrower and include, for the avoidance of doubt, the amount of cost savings, operating expense reductions, other operating improvements and synergies actually realized as of the date of such pro forma calculation (calculated on a pro forma basis as though such cost savings, operating expense reductions, other operating improvements and synergies had been realized on the first day of such period as if such cost savings, operating expense reductions, other operating improvements and synergies were realized during the entirety of such period) relating to such Specified Transaction, net of the amount of actual benefits realized during such period from such actions.

(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 Debt included in the calculations of the Fixed Charge Coverage Ratio (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 Measurement Period and (ii) subsequent to the end of the applicable Measurement Period and prior to or simultaneously with the event for which the calculation of any such ratio is made, then the Fixed Charge Coverage Ratio 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 first day of the applicable Measurement Period.

SECTION 1.08. Divisions. Any reference herein to a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer, or similar term, shall be deemed to apply to a division of or by a limited liability company or other type of entity under Delaware law, or an allocation of assets to a series of a limited liability company or other type of entity under Delaware law (or the unwinding of such a division or allocation) as if it were a merger, transfer, consolidation, amalgamation, assignment, sale, disposition or transfer or similar term, as applicable, to, of or with a separate Person. Any division of a limited liability company or other type of entity under Delaware law shall constitute a separate Person hereunder.

ARTICLE II

AMOUNTS AND TERMS OF THE LETTERS OF CREDIT

SECTION 2.01. The Letters of Credit. Issuing Bank agrees, on the terms and conditions hereinafter set forth, and in reliance upon the agreements of the other Lenders set forth in this Agreement, to issue or continue standby Letters of Credit for the account of the Company and its Subsidiaries from time to time on any Business Day during the period from the Closing Date until thirty (30) days before

the Termination Date in an aggregate Available Amount not to exceed (i) for all Letters of Credit at any time the lesser of (A) the Letter of Credit Facility or (B) the Letter of Credit Availability at such time, (ii) for all Letters of Credit issued by Issuing Bank at any time such Issuing Bank's Letter of Credit Commitment at such time, and (iii) for each such Letter of Credit an amount equal to the Unused Commitments of the Lenders at such time. No Letter of Credit shall have an expiration date (including all rights of the Company or the beneficiary to require renewal) later than five (5) Business Days before the Termination Date. Within the limits referred to above, the Company may from time to time request the Issuance of Letters of Credit under this Section 2.01. Notwithstanding anything to the contrary contained herein, only standby Letters of Credit shall be issued hereunder, unless otherwise expressly hereafter agreed by Issuing Bank. On and after the Closing Date, each Existing Letter of Credit shall be deemed to be a Letter of Credit issued hereunder for all purposes of this Agreement and the other Loan Documents and for all purposes hereof will be deemed to have been issued on the Closing Date.

SECTION 2.02. Issuance of Letters of Credit.

(a) Each Letter of Credit shall be issued upon notice, given not later than 11:00 a.m. (New York City time) on the fifth Business Day prior to the date of the proposed Issuance of such Letter of Credit (or on such shorter notice as Issuing Bank may agree), by the Company to Issuing Bank, and such Issuing Bank shall give the Agent, prompt notice thereof. Each such notice by the Company of Issuance of a Letter of Credit (a "Notice of Issuance") shall be by telephone, confirmed promptly in writing, or by telecopier (or any other electronic means agreed to by the Agent), specifying therein (A) the requested date of such Issuance (which shall be a Business Day), (B) the Available Amount of such Letter of Credit, (C) expiration date of such Letter of Credit (which shall not be later than five (5) Business Days before the Termination Date), (D) the name and address of the beneficiary of such Letter of Credit, (E) the form of such Letter of Credit, and that such Letter of Credit shall be issued pursuant to such application and agreement for letter of credit as such Issuing Bank and the Company shall agree for use in connection with such requested Letter of Credit (a "Letter of Credit Agreement") and (F) such other matters as Issuing Bank may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Notice of Issuance shall specify in form and detail reasonably satisfactory to Issuing Bank, (A) the Letter of Credit to be amended, (B) the proposed date of amendment thereof (which shall be a Business Day), (C) the nature of the proposed amendment and (D) such other matters as Issuing Bank may require. Additionally, the Company shall furnish to the Issuing Bank and the Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, as Issuing Bank or the Agent may require. If the requested form of such Letter of Credit is acceptable to Issuing Bank in its reasonable discretion (it being understood that any such form shall have only explicit documentary conditions to draw and shall not include discretionary conditions), Issuing Bank will, upon fulfillment of the applicable conditions set forth in Section 3.02, make such Letter of Credit available to the Company at its office referred to in Section 9.02 or as otherwise agreed with the Company in connection with such Issuance. In the event and to the extent that the provisions of any Letter of Credit Agreement shall conflict with this Agreement, the provisions of this Agreement shall govern.

(b) Issuing Bank shall not be under any obligation to issue any Letter of Credit if: (i) any order, judgment or decree of any Governmental Authority shall by its terms purport to enjoin or restrain Issuing Bank from issuing the Letter of Credit, or any law applicable to Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Issuing Bank shall prohibit, or request that Issuing Bank refrain from, the issuance of letters of credit generally or the Letter of Credit in particular or shall impose upon Issuing Bank with respect to the Letter of Credit any restriction, reserve or capital requirement (for which Issuing Bank is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which Issuing Bank in good faith deems material to it; (B) except as otherwise agreed by the Agent and Issuing

Bank, the Letter of Credit is in an initial stated amount less than $100,000, in the case of a commercial Letter of Credit, or $100,000, in the case of a standby Letter of Credit; (iii) the Letter of Credit is to be denominated in a currency other than Dollars; (iv) any Lender is at that time a Defaulting Lender, unless such Issuing Bank has entered into arrangements, including the delivery of Cash Collateral, satisfactory to such Issuing Bank (in its sole discretion) with the Company or such Lender to eliminate such Issuing Bank's actual or potential fronting exposure (after giving effect to Section 2.19(f)) with respect to the Defaulting Lender arising from either the Letter of Credit then proposed to be issued or that Letter of Credit and all other Letter of Credit Obligations as to which Issuing Bank has actual or potential fronting exposure, as it may elect in its sole discretion; (v) the Letter of Credit contains any provisions for automatic reinstatement of the stated amount after any drawing thereunder; or (vi) if after giving effect to the issuance of such Letter of Credit, the Available Amount of all then outstanding Letters of Credit would exceed the lesser of the Letter of Credit Availability or the Letter of Credit Facility.

(c) Issuing Bank shall not amend or continue any Letter of Credit if Issuing Bank would not be permitted at such time to issue the Letter of Credit in its amended or continued form under the terms hereof.

(d) Issuing Bank shall act on behalf of the Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and Issuing Bank shall have all of the benefits and immunities (i) provided to the Agent in Article VIII with respect to any acts taken or omissions suffered by Issuing Bank in connection with Letters of Credit issued by it or proposed to be issued by it and documents pertaining to such Letters of Credit as fully as if the term "Agent" as used in Article VIII included Issuing Bank with respect to such acts or omissions, and (ii) as additionally provided herein with respect to such Issuing Bank.

(e) If the Borrower so requests in an applicable Notice of Issuance, the Issuing Bank may, in its discretion, agree to issue a Letter of Credit that has automatic extension provisions (each an "Auto-Extension Letter of Credit"); provided, that, any such Auto-Extension Letter of Credit must permit the 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 not later than a day (the "Non-Extension Notice Date") in each such twelve month period to be agreed upon at the time such Letter of Credit is issued. Unless otherwise directed by the Issuing Bank, the Borrower shall not be required to make a specific request to the Issuing Bank for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Lenders shall be deemed to have authorized (but may not require) the Issuing Bank to permit the extension of such Letter of Credit at any time to a date not later than the expiration date of such Letter of Credit; provided, however, that the Issuing Bank shall not permit any such extension if (i) the Issuing Bank has determined that it would not be permitted, or would have no obligation, at such time to issue such Letter of Credit in its revised form (as extended) under the terms hereof or (ii) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Non-Extension Notice Date (A) from the Agent that the Required Lenders have elected not to permit such extension or (B) from the Agent, any Lender or any Loan Party that one or more of the applicable conditions specified in Section 3.02 is not then satisfied, and in each case directing the Issuing Bank not to permit such extension.

(f) Issuing Bank shall not have any obligation to issue any Letter of Credit hereunder if the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last extension thereof (without giving effect to any auto-extension features).

(g) Issuing Bank shall not have any obligation to issue any Letter of Credit hereunder if the expiry date of such requested Letter of Credit would occur more than twelve (12) months after the date of issuance or last extension thereof (without giving effect to any auto-extension features).

(h) Letter of Credit Reports. Upon Agent's request, Issuing Bank shall furnish (A) to the Agent (with a copy to the Company) on the first Business Day of each month a written report summarizing Issuance and expiration dates of Letters of Credit issued by such Issuing Bank during the preceding month and drawings during such month under all Letters of Credit and (B) to the Agent (with a copy to the Company) on the first Business Day of each calendar quarter a written report setting forth the average daily aggregate Available Amount during the preceding calendar quarter of all Letters of Credit issued by Issuing Bank.

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

(j) Letters of Credit Issued for Subsidiaries. Notwithstanding that a Letter of Credit issued or outstanding hereunder is in support of any obligations of, or is for the account of, a Subsidiary, the Company shall be obligated to reimburse Issuing Bank hereunder for any and all drawings under such Letter of Credit and all other Letter of Credit Obligations related thereto. The Company hereby acknowledges that the issuance of Letters of Credit for the account of Subsidiaries inures to the benefit of the Company, and that the Company's business derives substantial benefits from the businesses of such Subsidiaries.

SECTION 2.03. Reimbursement; Additional LC Cash Collateral; Release of LC Cash Collateral.

(a) If Issuing Bank makes a payment under a Letter of Credit, the Borrower shall pay to the Issuing Bank the amount paid by Issuing Bank on or before the Business Day after the Business Day on which such Letter of Credit Disbursement is made, together with any taxes, reasonable fees, charges or other reasonable costs or expenses incurred by the Issuing Bank in connection with such payment. In the event that Issuing Bank does not receive such payment, Issuing Bank shall apply (and, without prejudice to its obligations hereunder, the Borrower hereby authorizes and directs the Issuing Bank to apply) funds in the LC Cash Collateral Account to reimburse the Issuing Bank for all of the amounts paid by Issuing Bank in respect of a Letter of Credit. Upon the drawing of any Letter of Credit, to the extent funds are on deposit in the LC Cash Collateral Account, such funds shall be applied to reimburse the Issuing Bank to the extent permitted by applicable law. If no such funds are available from the LC Cash Collateral Account, including by operation of any stay or other injunction prohibiting or limiting the Issuing Bank from applying such funds, interest shall be payable on any and all amounts remaining unpaid by the Borrower under this Section from the date such amounts become payable until payment in full at the applicable interest rate as provided in Section 2.08. If no such funds are available from the LC Cash Collateral Account, each such payment shall be made to the Issuing Bank at its address for notices specified herein in Dollars and in immediately available funds.

(b) If at any time the Issuing Bank determines that any funds held in the LC Cash Collateral Account are subject to any Lien, right or claim of any Person other than the Issuing Bank, Agent and the Lenders, and other than any subordinate Lien that is subject to an intercreditor agreement between Agent and the holder of such Lien on terms and conditions satisfactory to Agent, or any claim that is junior in priority subject to an intercreditor agreement between Agent and the holder of such claim on terms and conditions satisfactory to Agent, or that the total amount of such funds is less than the amount equal to one hundred three percent (103%) of the aggregate amount of the Letter of Credit Obligations, then the Borrower will, within one (1) Business Day of demand by the Agent, pay to the Agent, as additional funds to be deposited and held in the LC Cash Collateral Account, such amount that is required so that the amount of the LC Cash Collateral that the Agent determines to be free and clear of any such Lien, right or claim is equal to one hundred three percent (103%) of the aggregate amount of the Letter of Credit Obligations.

(c) The Company may request from time to time that Agent release amounts available in the LC Cash Collateral Account; provided, that, (i) Agent shall have received a release notice in the form annexed hereto as Exhibit E signed by a Responsible Officer of the Company, (ii) on the date of, and after giving effect to, any such release of such amounts, which shall not be sooner than three (3) Business Days after receipt by Agent of such release notice, (A) no Default or Event of Default shall exist or have occurred and be continuing, and (B) the aggregate amounts in the LC Cash Collateral Account shall be not less than one hundred three percent (103%) of the aggregate amount of the then outstanding Letter of Credit Obligations.

SECTION 2.04. Participations. By the Issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing or decreasing the amount thereof) and without any further action on the part of Issuing Bank or the Lenders, Issuing Bank hereby grants to each Lender, and each Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Lender's Ratable Share of the Available Amount of such Letter of Credit. The Company hereby agrees to each such participation. In consideration and in furtherance of the foregoing, each Lender hereby absolutely and unconditionally agrees to pay to the Agent, for the account of Issuing Bank, such Lender's Ratable Share of each drawing made under a Letter of Credit funded by Issuing Bank and not reimbursed by the Company on the date funded, or of any reimbursement payment required to be refunded to the Company for any reason, which amount will be advanced, regardless of the satisfaction of the conditions set forth in Section 3.02. Each Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Promptly after receipt thereof, the Agent shall transfer such funds to such Issuing Bank. Each Lender agrees to fund its Ratable Share of an outstanding Letter of Credit Obligations on (i) the Business Day on which demand therefor is made by such Issuing Bank, provided, that, notice of such demand is given not later than 11:00 a.m. (New York City time) on such Business Day, or (ii) the first Business Day next succeeding such demand if notice of such demand is given after such time. If and to the extent that any Lender shall not have so made the amount of such Letter of Credit Obligations available to the Agent, such Lender agrees to pay to the Agent forthwith on demand such amount together with interest thereon, for each day from the date of demand by any such Issuing Bank until the date such amount is paid to the Agent, at the Federal Funds Rate for its account or the account of such Issuing Bank, as applicable. Each Lender further acknowledges and agrees that its participation in each Letter of Credit will be automatically adjusted to reflect such Lender's Ratable Share of the Available Amount of such Letter of Credit at each time such Lender's Commitment is amended pursuant to an assignment in accordance with Section 9.08 or otherwise pursuant to this Agreement.

SECTION 2.05. Fees.

(a) Commitment Fee. The Borrower agrees to pay to the Agent for the account of each applicable Lender a commitment fee on the aggregate amount of such Lender's Unused Commitment) from the Closing Date until the Termination Date calculated by multiplying such Lender's Unused Commitment by the Applicable Percentage in effect from time to time, payable in arrears monthly on the first day of each calendar month and on the Termination Date; provided, however, that no commitment fee shall accrue on any of the Commitments of a Defaulting Lender so long as such Lender shall be a Defaulting Lender.

(b) Letter of Credit Fees.

(i) The Borrower shall pay to the Agent for the account of each applicable Lender (other than a Defaulting Lender) a commission on such Lender's Ratable Share of the average daily aggregate Available Amount of all Letters of Credit issued and outstanding from time to time at a rate per annum equal to the Letter of Credit Fee Rate in effect from time to time during such calendar quarter, payable in arrears monthly on the first day of each calendar month, and on the Termination Date; provided, that, the Letter of Credit Fee Rate shall be deemed to be 200 basis points above the Letter of Credit Fee Rate in effect if the Borrower is required to pay default interest pursuant to Section 2.08(b).

(ii) The Borrower shall pay to Issuing Bank, for its own account, a fronting fee of 0.25% of the face amount of all Letters of Credit issued by Issuing Bank and outstanding from time to time, payable in arrears monthly on the first day of each calendar month and on the Termination Date and such other customary commissions, issuance fees, transfer fees and other customary fees and charges in connection with the Issuance or administration of each Letter of Credit as the Borrower and Issuing Bank shall agree.

SECTION 2.06. Termination or Reduction of the Commitments.

(a) Optional. The Borrower shall have the right at any time and without penalty, upon at least three (3) Business Days' notice to the Agent, to terminate in whole or permanently reduce in part the Unused Commitments; provided, that, each partial reduction (i) shall be in an aggregate amount of $5,000,000 and an integral multiple of $1,000,000 in excess thereof, (ii) shall be made ratably among the Lenders in accordance with their Commitments, and (iii) after giving effect to any such reduction, the Letter of Credit Obligations shall not exceed the aggregate amount of the Commitments as so reduced.

(b) Mandatory. Unless previously terminated, the Commitments and the Letter of Credit Commitment shall automatically terminate on the Maturity Date.

SECTION 2.07. Letter of Credit Drawings. The obligations of the Company hereunder and under any Letter of Credit Agreement and any other agreement or instrument relating to any Letter of Credit shall be unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement, such Letter of Credit Agreement and such other agreement or instrument under all circumstances, including, without limitation, the following circumstances (it being understood that any such payment by the Company is without prejudice to, and does not constitute a waiver of, any rights the Company might have or might acquire as a result of the payment by any Lender of any draft or the reimbursement by the Company thereof, including, without limitation, pursuant to Section 9.14):

(a) any lack of validity or enforceability of this Agreement or any Note, or of any Letter of Credit Agreement, any Letter of Credit or any other agreement or instrument relating thereto (such Letter of Credit Agreement, Letter of Credit and related instruments or instruments being, collectively, the "LC Related Documents");

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the obligations of Borrower in respect of any LC Related Document or any other amendment or waiver of or any consent to departure from all or any of the LC Related Documents;

(c) the existence of any claim, set-off, defense or other right that Borrower may have at any time against any beneficiary or any transferee of a Letter of Credit (or any Persons for which any such beneficiary or any such transferee may be acting), any Issuing Bank, the Agent, any Lender or any other Person, whether in connection with the transactions contemplated by the LC Related Documents or any unrelated transaction;

(d) any statement or any other document presented under a Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect;

(e) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit;

(f) any exchange, release or non-perfection of any Collateral or other collateral, or any release or amendment or waiver of or consent to departure from any guarantee, for all or any of the obligations of the Borrower in respect of the LC Related Documents; or

(g) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including, without limitation, any other circumstance that might otherwise constitute a defense available to, or a discharge of, the Company or a guarantor.

SECTION 2.08. Interest on Letter of Credit Obligations.

(a) Scheduled Interest. Borrower shall pay interest on the unpaid amount of the Letter of Credit Obligations to Agent for the account of Issuing Bank (or each Lender as the case may be) from the date of such Letter of Credit Obligation until such amount shall be paid in full, at the Base Rate in effect from time to time plus the Applicable Margin in effect from time to time, payable in arrears monthly on the first day of each calendar month or earlier upon demand and in any event on the Termination Date.

(b) Default Interest. Upon the occurrence and during the continuance of an Event of Default under Section 6.01(a), the Agent may, and upon the request of the Required Lenders shall, require and notify the Borrower to pay interest ("Default Interest") on (i) the unpaid amount of the Letter of Credit Obligations owing to Issuing Bank (or each Lender as the case may be), payable on demand at a rate per annum equal at all times to two percent (2%) per annum above the rate per annum required to be paid under Section 2.08(a) above provided, that, following acceleration of the Letter of Credit Obligations pursuant to Section 6.01, Default Interest shall accrue and be immediately payable hereunder whether or not previously required by the Agent.

SECTION 2.09. Maximum Interest Rates. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable law (the "Maximum Rate"). If the Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the applicable Obligations or, if it exceeds such unpaid principal, refunded to the Borrower, as applicable. In determining whether the interest contracted for, charged, or received by the Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 2.10. Reserved.

SECTION 2.11. Increased Costs.

(a) If, due to either (i) the introduction of or any change in or in the interpretation of any law or regulation or (ii) the compliance with any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law), there shall be any increase in the cost to any Lender of agreeing to make or making, funding or maintaining Letter of Credit Obligations or of agreeing to issue or of issuing or maintaining or participating in Letters of Credit (excluding for purposes of this Section 2.11 any such increased costs resulting from (x) Taxes (which for purposes of this exclusion shall include withholding taxes that are excluded from Taxes pursuant to Sections 2.14(a) and (e)) or Other Taxes (as to which Section 2.14 shall govern) and (y) changes in the basis of taxation of overall net income or overall gross income by the United States or by the foreign jurisdiction or state under the laws of which such Lender is organized or has its Applicable Lending Office or any political subdivision thereof), then the Borrower shall from time to time, upon written demand by such Lender (with a copy of such demand to the Agent), pay to the Agent for the account of such Lender additional amounts sufficient to compensate such Lender for such increased cost; provided, however, that before making any such demand, each Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to designate a different Applicable Lending Office if the making of such a designation would avoid the need for, or reduce the amount of, such increased cost and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender. A certificate as to the amount of such increased cost, submitted to the Borrower and the Agent by such Lender, shall be conclusive and binding for all purposes, absent manifest error.

Notwithstanding anything herein to the contrary, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "change in law", regardless of the date enacted, adopted or issued.

(b) If any Lender determines that compliance with any law or regulation or any guideline or request from any central bank or other Governmental Authority (whether or not having the force of law) affects or would affect the amount of capital or liquidity required or expected to be maintained by such Lender or any corporation controlling such Lender and that the amount of such capital or liquidity is increased by or based upon the existence of such Lender's commitment to lend or to issue or participate in Letters of Credit hereunder and other commitments of such type or the issuance or maintenance of or participation in the Letters of Credit (or similar contingent obligations), then, upon demand by such Lender (with a copy of such demand to the Agent), the Borrower shall pay to the Agent for the account of such Lender, from time to time as specified by such Lender, additional amounts sufficient to compensate such Lender or such corporation in the light of such circumstances, to the extent that such Lender reasonably determines such increase in capital or liquidity to be allocable to the existence of such Lender's commitment to lend or to issue or participate in Letters of Credit hereunder or to the issuance or maintenance of or participation in any Letters of Credit. A certificate as to such amounts submitted to the Borrower and the Agent by such Lender shall be conclusive and binding for all purposes, absent manifest error.

(c) A Lender will only be entitled to such compensation if such Lender provides a certificate to the Agent and the Company setting forth in reasonable detail (i) the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section and (ii) stating that the claim for additional amounts referred to therein is generally consistent with such Lender's treatment of similarly situated customers of such Lender whose transactions with such Lender are similarly affected by the change in circumstances giving rise to such payment. Such certificate, when delivered to the Company, shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days

after receipt thereof. Failure or delay on the part of any Lender to demand compensation pursuant to this Section 2.11(c) shall not constitute a waiver of such Lender's right to demand such compensation; provided, that, Borrower shall not be required to compensate a Lender or the Agent pursuant to this Section 2.11(c) for any increased costs or reductions incurred more than one hundred twenty (120) days prior to the date that such Lender or the Agent notifies the Company of the change in law giving rise to such increased costs or reductions and of such Lender's or the Agent's intention to claim compensation therefor; provided, further, that, if the change in law giving rise to such increased costs or reductions is retroactive, then the one hundred twenty (120) day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.12. Reserved.

SECTION 2.13. Payments and Computations.

(a) The Borrower shall make each payment hereunder without condition or deduction for any right of counterclaim, defense, recoupment or set-off, not later than 11:00 a.m. (New York City time) on the day when due in Dollars to the Agent at the Agent's Account in same day funds. The Agent will promptly thereafter cause to be distributed like funds relating to the payment of principal, interest, fees or commissions ratably (other than amounts payable pursuant to Section 2.04, 2.11, 2.14 or 9.04(c)) to the Lenders for the account of their respective Applicable Lending Offices, and like funds relating to the payment of any other amount payable to any Lender to such Lender for the account of its Applicable Lending Office, in each case to be applied in accordance with the terms of this Agreement. Upon its acceptance of an Assignment and Acceptance and recording of the information contained therein in the Register pursuant to Section 9.08(c), from and after the effective date specified in such Assignment and Acceptance, the Agent shall make all payments hereunder and under the Notes in respect of the interest assigned thereby to the Lender assignee thereunder, and the parties to such Assignment and Acceptance shall make all appropriate adjustments in such payments for periods prior to such effective date directly between themselves.

(b) Borrower hereby authorizes each Lender, if and to the extent payment owed to such Lender is not made when due hereunder or under the Note held by such Lender, to charge from time to time against any or all of Borrower's accounts with such Lender any amount so due.

(c) All computations of interest and of fees and Letter of Credit commissions shall be made by the Agent on the basis of a year of three hundred sixty (360) days, in each case for the actual number of days (including the first day but excluding the last day) occurring in the period for which such interest or fees or commissions are payable. Each determination by the Agent of an interest rate hereunder shall be conclusive and binding for all purposes, absent manifest error.

(d) Whenever any payment hereunder or under the Notes shall be stated to be due on a day other than a Business Day, such payment shall be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest, fee or commission, as the case may be.

(e) Unless the Agent shall have received notice from the Borrower prior to the date on which any payment is due to the Lenders hereunder that Borrower will not make such payment in full, the Agent may assume that Borrower has made such payment in full to the Agent on such date and the Agent may, in reliance upon such assumption, cause to be distributed to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrower shall not have so made such payment in full to the Agent, each Lender shall repay to the Agent forthwith on demand such amount distributed to such Lender together with interest thereon, for each day from the date such amount is distributed to such Lender until the date such Lender repays such amount to the Agent, at the Federal Funds Rate.

(f) Subject to Section 2.03 and 6.04, if the Agent receives funds for application to the Obligations of the Borrower under or in respect of the Loan Documents under circumstances for which the Loan Documents do not specify, or the Borrower does not direct, the manner in which, such funds are to be applied, the Agent may, but shall not be obligated to, elect to distribute such funds ratably to the outstanding Obligations, (i) first, toward payment of interest and fees then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of interest and fees then due to such parties, and (ii) second, toward payment of unreimbursed amounts drawn under Letters of Credit then due hereunder, ratably among the parties entitled thereto in accordance with the amounts of such Letter of Credit obligations then due to such parties.

(g) Except to the extent a time of payment of, or period within which payment is required in respect of, any amount payable hereunder or under any of the other Loan Documents is specified in any Loan Document, all amounts payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first day of each month at any time that Obligations or Commitments are outstanding. Borrower hereby authorizes Agent, from time to time without prior notice to Borrower, to charge all interest, fees, costs, expenses and other amounts payable hereunder or under any of the other Loan Documents when due and payable to the loan account, provided, that, interest and fees. Any interest, fees, costs, expenses, or other amounts payable hereunder or under any other Loan Document that are charged to a loan account shall thereupon constitute Obligations hereunder and shall initially accrue interest at the rate provided for herein. Agent shall have the right at any time and from to time to time to deduct all amounts at any time charged to the loan account from the LC Cash Collateral Account for payment thereof.

SECTION 2.14. Taxes.

(a) Any and all payments by any Loan Party to or for the account of any Lender, any Arranger or the Agent hereunder or under the Notes shall be made, in accordance with Section 2.13 or the applicable provisions of such other documents, free and clear of and without deduction for any and all present or future taxes, levies, imposts, deductions, remittances, charges or withholdings, and all liabilities with respect thereto, excluding, in the case of each Lender, Arranger and the Agent (i) taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction under the laws of which such Lender, Arranger or the Agent (as the case may be) is organized or in which its principal executive office is located, or any political subdivision thereof and, in the case of each Lender, taxes imposed on its overall net income, and franchise taxes imposed on it in lieu of net income taxes, by the jurisdiction of such Lender's Applicable Lending Office or any political subdivision thereof, (ii) any amounts required to be withheld under FATCA that would not have been imposed but for the failure of the Agent, Arranger or Lender, as applicable, to satisfy the applicable requirements of FATCA, and (iii) any amounts that are required to be withheld as a result of a Lender's failure to comply with the requirements of paragraph (e) or (j) of this Section (all such non-excluded taxes, levies, imposts, deductions, remittances, charges, withholdings and liabilities in respect of payments hereunder or under the Notes being hereinafter referred to as "Taxes"). If any Loan Party shall be required by law to deduct, remit or withhold any Taxes from or in respect of any sum payable hereunder or under any Note to any Lender, any Arranger or the Agent, (i) the sum payable to such Loan Party shall be increased as may be necessary so that after making all required deductions, remittances or withholdings (including deductions applicable to additional sums payable under this Section 2.14), such Lender, Arranger or the Agent (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Loan Party shall make such deductions and (iii) such Loan Party shall pay the full amount deducted, remitted or withheld to the relevant taxation authority or other authority in accordance with applicable law.

(b) In addition, each Loan Party shall pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made by such Loan Party hereunder or under any other Loan Documents or from the execution, delivery or registration of, performing under, or otherwise with respect to, this Agreement or the other Loan Documents (hereinafter referred to as "Other Taxes").

(c) The Loan Parties shall indemnify Issuing Bank, each Lender, Arranger and the Agent for and hold it harmless against the full amount of Taxes or Other Taxes (including, without limitation, taxes of any kind imposed or asserted by any jurisdiction on amounts payable under this Section 2.14) imposed on or paid or remitted by Issuing Bank, such Lender, Arranger or the Agent (as the case may be) and any liability (including penalties, interest and expenses) arising therefrom or with respect thereto. This indemnification shall be made within thirty (30) days from the date Issuing Bank, such Lender, Arranger or the Agent (as the case may be) makes written demand therefor with appropriate supporting documentation.

(d) Within thirty (30) days after the date of any payment of taxes, the appropriate Loan Party shall furnish to the Agent, at its address referred to in Section 9.02, the original or a certified copy of a receipt evidencing such payment to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Agent. In the case of any payment hereunder or under the Notes or any other documents to be delivered hereunder by or on behalf of a Loan Party through an account or branch outside the United States or by or on behalf of a Loan Party by a payor that is not a United States person, if such Loan Party determines that no Taxes are payable in respect thereof, such Loan Party shall furnish, or shall cause such payor to furnish, to the Agent, at such address, an opinion of counsel reasonably acceptable to the Agent stating that such payment is exempt from Taxes. For purposes of this subsection (d) and subsection (e), the terms "United States" and "United States person" shall have the meanings specified in Section 7701 of the Code.

(e) Each Lender organized under the laws of a jurisdiction outside the United States, on or prior to the date of its execution and delivery of this Agreement on or prior to the designation of any different Applicable Lending Office and on the date of the Assignment and Acceptance pursuant to which it becomes a Lender in the case of each other Lender, and from time to time thereafter as reasonably requested in writing by the Company (but only so long as such Lender remains lawfully able to do so), shall provide each of the Agent and the Company with two original Internal Revenue Service Forms W-8BEN, W-8BEN-E or W-8ECI or (in the case of a Lender that has certified in writing to the Agent that it is not (i) a "bank" as defined in Section 881(c)(3)(A) of the Code, (ii) a 10-percent shareholder (within the meaning of Section 871(h)(3)(B) of the Code) of any Loan Party or (iii) a CFC related to any Loan Party (within the meaning of Section 864(d)(4) of the Code)), Internal Revenue Service Form W-8BEN or W-8BEN-E, as appropriate, or any successor or other form prescribed by the Internal Revenue Service, certifying that such Lender is exempt from or entitled to a reduced rate of United States withholding tax on payments pursuant to this Agreement or any other Loan Document or, in the case of a Lender that has certified that it is not a "bank" as described above, certifying that such Lender is a foreign corporation, partnership, estate or trust. If the form provided by a Lender at the time such Lender first becomes a party to this Agreement indicates a United States interest withholding tax rate in excess of zero, withholding tax at such rate shall be considered excluded from Taxes unless and until such Lender provides the appropriate forms certifying that a lesser rate applies, whereupon withholding tax at such lesser rate only shall be considered excluded from Taxes for periods governed by such form; provided, however, that, if at the date of the Assignment and Acceptance pursuant to which a Lender assignee becomes a party to this Agreement, the Lender assignor was entitled to payments under subsection (a) in respect of United

States withholding tax with respect to interest paid at such date, then, to such extent, the term Taxes shall include (in addition to withholding taxes that may be imposed in the future or other amounts otherwise includable in Taxes) United States withholding tax, if any, applicable with respect to the Lender assignee on such date. If any form or document referred to in this subsection (e) requires the disclosure of information, other than information necessary to compute the tax payable and information required on the Closing Date by Internal Revenue Service Form W-8BEN, W-8BEN-E or W-8ECI or the related certificate described above, that the Lender reasonably considers to be confidential, the Lender shall give notice thereof to the Company and shall not be obligated to include in such form or document such confidential information, except directly to a Governmental Authority or other Person subject to a reasonable confidentiality agreement. In addition, upon the written request of the Company, any other certification, identification, information, documentation or other reporting requirement shall be delivered if (i) delivery thereof is required by a change in the law, regulation, administrative practice or any applicable tax treaty as a precondition to exemption from or a reduction in the rate of deduction or withholding; (ii) the Agent or Lender, as the case may be, is legally entitled to make delivery of such item; and (iii) delivery of such item will not result in material additional costs unless Borrower shall have agreed in writing to indemnify Lender or the Agent for such costs.

(f) For any period with respect to which a Lender has failed to provide the Company with the appropriate form, certificate or other document described in Section 2.14(e) (other than if such failure is due to a change in law, or in the interpretation or application thereof, occurring subsequent to the date on which a form, certificate or other document originally was required to be provided, or if such form, certificate or other document otherwise is not required under subsection (e) above), such Lender shall not be entitled to indemnification under Section 2.14(a) or (c) with respect to Taxes imposed by the United States of America by reason of such failure; provided, however, that should a Lender become subject to Taxes because of its failure to deliver a form, certificate or other document required hereunder, the Loan Parties, at such Lender's expense, shall take such steps as the Lender shall reasonably request to assist the Lender to recover such Taxes.

(g) Any Lender claiming any additional amounts payable pursuant to this Section 2.14 agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Applicable Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender.

(h) If any Lender determines, in its sole discretion, that it has actually and finally realized, by reason of a refund, deduction or credit of any Taxes paid or reimbursed by a Loan Party pursuant to subsection (a) or (c) above in respect of payments under this Agreement or the other Loan Documents, a current monetary benefit that it would otherwise not have obtained, and that would result in the total payments under this Section 2.14 exceeding the amount needed to make such Lender whole, such Lender shall pay to the applicable Loan Party, with reasonable promptness following the date on which it actually realizes such benefit, an amount equal to the lesser of the amount of such benefit or the amount of such excess, in each case net of all out-of-pocket expenses in securing such refund, deduction or credit; provided, that, the Borrower, upon the request of the Agent or such Lender, agrees to repay the amount paid over to any Loan Party to the Agent or such Lender in the event the Agent or such Lender is required to repay such amount to such Governmental Authority.

(i) If any Loan Party determines in good faith that a reasonable basis exists for contesting the applicability of any Tax or Other Tax, the Agent, the relevant Arranger or the relevant Lender shall cooperate with such Loan Party, upon the request and at the expense of such Loan Party, in challenging such Tax or Other Tax. Nothing in this Section 2.14(i) shall require the Agent, any Arranger or any Lender to disclose the contents of its tax returns or other confidential information to any Person.

(j) If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the applicable Loan Party and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the applicable Loan Party or the 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 applicable Loan Party or the Agent as may be necessary for the applicable Loan Party and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (j), "FATCA" shall include any amendments made to FATCA after the date of this Agreement. For purposes of determining withholding taxes imposed under FATCA, from and after the Closing Date, the Loan Parties and the Agent shall treat (and the Lenders hereby authorize the Agent to treat) this Agreement as not qualifying as a "grandfathered obligation" within the meaning of Treasury Regulation Section 1.1471-2(b)(2)(i).

SECTION 2.15. Sharing of Payments, Etc. Without expanding the rights of any Lender under this Agreement and, except as otherwise expressly provided in Section 6.04, if any Lender shall obtain any payment (whether voluntary, involuntary, through the exercise of any right of set-off, or otherwise) on account of the Letter of Credit Obligations owing to it in excess of its ratable share (according to the proportion of (i) the amount of such Letter of Credit Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Letter of Credit Obligations due and payable at such time to all Lenders hereunder) of payments on account of the Letter of Credit Obligations obtained by all the Lenders, such Lender shall forthwith purchase from the other Lenders such participations in the Letter of Credit Obligations owing to them as shall be necessary to cause such purchasing Lender to share the excess payment ratably with each of them; provided, however, that if all or any portion of such excess payment is thereafter recovered from such purchasing Lender, such purchase from each Lender shall be rescinded and such Lender shall repay to the purchasing Lender the purchase price to the extent of such Lender's ratable share (according to the proportion of (i) the purchase price paid to such Lender to (ii) the aggregate purchase price paid to all Lenders) of such recovery together with an amount equal to such Lender's ratable share (according to the proportion of (i) the amount of such Lender's required repayment to (ii) the total amount so recovered from the purchasing Lender) of any interest or other amount paid or payable by the purchasing Lender in respect of the total amount so recovered> The Borrower agrees that any Lender so purchasing a participation from another Lender pursuant to this Section 2.15 may, to the fullest extent permitted by law, exercise all its rights of payment (including the right of set-off) with respect to such participation as fully as if such Lender were the direct creditor of the Loan Parties in the amount of such participation.

SECTION 2.16. Evidence of Debt.

(a) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of Borrower to such Lender resulting from the Letter of Credit Obligations owing to such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time hereunder in respect of Letter of Credit Obligations. Borrower agrees that upon notice by any Lender to Borrower (with a copy of such notice to the Agent) to the effect that a Note is required or appropriate in order for such Lender to evidence (whether for purposes of pledge, enforcement or otherwise) the Letter of Credit Obligations owing to, or to be made by, such Lender, Borrower shall promptly execute and deliver to such Lender a Note, as applicable, properly completed, payable to the order of such Lender in an amount up to the Commitment of such Lender.

(b) The Register maintained by the Agent pursuant to Section 9.08(e) shall include a control account, and a subsidiary account for each Lender, in which accounts (taken together) shall be recorded (i) the date and amount of the Letter of Credit Obligations, (ii) the terms of each Assignment and Acceptance delivered to and accepted by it, (iii) the amount of any principal or interest due and payable or to become due and payable from Borrower to each Lender hereunder and (iv) the amount of any sum received by the Agent from each Borrower hereunder and each Lender's share thereof.

(c) Entries made in good faith by the Agent in the Register pursuant to subsection (b) above, and by each Lender in its account or accounts pursuant to subsection (a) above, shall be prima facie evidence of the amount of principal and interest due and payable or to become due and payable from Borrower to, in the case of the Register, each Lender and, in the case of such account or accounts, such Lender, under this Agreement, absent manifest error; provided, however, that the failure of the Agent or such Lender to make an entry, or any finding that an entry is incorrect, in the Register or such account or accounts shall not limit or otherwise affect the obligations of Borrower under this Agreement with respect to Letter of Credit Obligations made and not repaid.

SECTION 2.17. Use of Proceeds. On and after the Closing Date, the proceeds of the Letters of Credit shall be used to finance ongoing working capital needs and general corporate purposes of the Borrower.

SECTION 2.18. Reserved.

SECTION 2.19. Defaulting Lenders.

(a) Reserved.

(b) In the event that, at any time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall owe a Defaulted Amount to the Agent, the Issuing Bank or other applicable Lenders and (iii) Borrower shall make any payment hereunder or under any other Loan Document to the Agent for the account of such Defaulting Lender, then the Agent may, on its behalf or on behalf of such other Lenders and to the fullest extent permitted by applicable law, apply at such time the amount so paid by Borrower to or for the account of such Defaulting Lender to the payment of each such Defaulted Amount to the extent required to pay such Defaulted Amount. In the event that the Agent shall so apply any such amount to the payment of any such Defaulted Amount on any date, the amount so applied by the Agent shall constitute for all purposes of this Agreement and the other Loan Documents payment, to such extent, of such Defaulted Amount on such date. Any such amount so applied by the Agent shall be retained by the Agent or distributed by the Agent to such other Lenders, ratably in accordance with the respective portions of such Defaulted Amounts payable at such time to the Agent and such other Lenders and, if the amount of such payment made by Borrower shall at such time be insufficient to pay all Defaulted Amounts owing at such time to the Agent and the other Lenders, in the following order of priority:

(i) *first*, to the Agent for any Defaulted Amount then owing to the Agent in its capacity as Agent; and

(ii) *second*, to the Issuing Bank for any Defaulted Amounts then owing to it, in its capacity as such, ratably in accordance with such respective Defaulted Amounts then owing to the Issuing Bank; and

(iii) *third*, to any other Lenders for any Defaulted Amounts then owing to such other Lenders, ratably in accordance with such respective Defaulted Amounts then owing to such other Lenders.

Any portion of such amount paid by Borrower for the account of such Defaulting Lender remaining, after giving effect to the amount applied by the Agent pursuant to this subsection (b), shall be applied by the Agent as specified in subsection (c) of this Section 2.19.

(c) In the event that, at any time, (i) any Lender shall be a Defaulting Lender, (ii) such Defaulting Lender shall not owe a Defaulted Amount and (iii) Borrower, the Agent or any other Lender shall be required to pay or distribute any amount hereunder or under any other Loan Document to or for the account of such Defaulting Lender, then Borrower or such other Lender shall pay such amount to the Agent to be held by the Agent, to the fullest extent permitted by applicable law, in escrow or the Agent shall, to the fullest extent permitted by applicable law, hold in escrow such amount otherwise held by it. Any funds held by the Agent in escrow under this subsection (c) shall be deposited by the Agent in an account with the Agent, in the name and under the control of the Agent, but subject to the provisions of this subsection (c). The terms applicable to such account, including the rate of interest payable with respect to the credit balance of such account from time to time, shall be the Agent's standard terms applicable to escrow accounts maintained with it. Any interest credited to such account from time to time shall be held by the Agent in escrow under, and applied by the Agent from time to time in accordance with the provisions of, this subsection (c). The Agent shall, to the fullest extent permitted by applicable law, apply all funds so held in escrow from time to time to the extent necessary to make any amounts required to be made by such Defaulting Lender and to pay any amount payable by such Defaulting Lender hereunder and under the other Loan Documents to the Agent or any other Lender, as and when such amounts are required to be made or paid and, if the amount so held in escrow shall at any time be insufficient to make and pay all such amounts required to be made or paid at such time, in the following order of priority:

(i) *first*, to the Agent for any amount then due and payable by such Defaulting Lender to the Agent hereunder in its capacity as Agent;

(ii) *second*, to the Issuing Bank for any amounts then due and payable to it hereunder, in such capacity, by such Defaulting Lender, ratably in accordance with such respective amounts then due and payable to the Issuing Bank;

(iii) *third*, to any other Lenders for any amount then due and payable by such Defaulting Lender to such other Lenders hereunder, ratably in accordance with such respective amounts then due and payable to such other Lenders; and

(iv) *fourth*, to the Company, as applicable for any amounts then required to be made by such Defaulting Lender pursuant to a Commitment of such Defaulting Lender.

In the event that any Lender that is a Defaulting Lender shall, at any time, cease to be a Defaulting Lender, any funds held by the Agent in escrow at such time with respect to such Lender shall be distributed by the Agent to such Lender and applied by such Lender to the Obligations owing to such Lender at such time under this Agreement and the other Loan Documents ratably in accordance with the respective amounts of such Obligations outstanding at such time.

(d) The rights and remedies against a Defaulting Lender under this Section 2.19 are in addition to other rights and remedies that Borrower may have against such Defaulting Lender with respect to any Defaulted Amount.

(e) Anything contained herein to the contrary notwithstanding, in the event that (i) any Lender shall become a Defaulting Lender and (ii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five (5) Business Days after the Company's request that it cure such default, the Company shall have the right (but not the obligation) to repay such Defaulting Lender in an amount equal to the principal of, and all accrued interest on, all outstanding participations owing to such Lender, together with all other amounts due and payable to such Lender under the Loan Documents, and such Lender's Commitment hereunder shall be terminated immediately thereafter.

(f) If any Lender becomes, and during the period it remains, a Defaulting Lender or a Potential Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit pursuant to Section 2.03, the "Ratable Share" of each Non-Defaulting Lender under the Letter of Credit Facility shall be computed without giving effect to the Commitment of that Defaulting Lender; provided, that: (i) each such reallocation shall be given effect only if, at the date the applicable Lender becomes a Defaulting Lender, no Default or Event of Default exists; and (ii) the aggregate obligation of each Non-Defaulting Lender to acquire, refinance or fund participations in Letters of Credit shall not exceed the positive difference, if any, of (1) the applicable Commitment of that Non-Defaulting Lender minus (2) the aggregate Ratable Share of the Letter of Credit Obligations of that Lender.

(g) Issuing Bank, may, by notice to the Company and such Defaulting Lender or Potential Defaulting Lender through the Agent, require the Borrower to Cash Collateralize the obligations of Borrower to Issuing Bank in respect of such Letter of Credit in amount at least equal to the aggregate amount of the unreallocated obligations (contingent or otherwise) of such Defaulting Lender or such Potential Defaulting Lender in respect thereof, or to make other arrangements satisfactory to the Agent, and to the Issuing Bank, in their sole discretion to protect them against the risk of non-payment by such Defaulting Lender or Potential Defaulting Lender.

(h) If Borrower Cash Collateralizes any portion of a Defaulting Lender's or a Potential Defaulting Lender's exposure with respect to an outstanding Letter of Credit, Borrower shall not be required to pay any fees under Section 2.05 to any Defaulting Lender or Potential Defaulting Lender that is a Lender at any time when the Letter of Credit is so Cash Collateralized.

(i) If any Lender becomes, and during the period it remains, a Defaulting Lender or a Potential Defaulting Lender, for purposes of computing the amount of the obligation of each Non-Defaulting Lender to settle on participations pursuant to Sections 2.04, the "Ratable Share" of each Non-Defaulting Lender under the Letter of Credit Facility shall be computed without giving effect to such obligation of that Defaulting Lender

SECTION 2.20. Replacement of Certain Lenders. In the event a Lender ("Affected Lender") shall have (i) become a Defaulting Lender under Section 2.19, (ii) requested compensation from the Borrower under Section 2.14 with respect to Taxes or Other Taxes or with respect to increased costs or capital or under Section 2.11 or other additional costs incurred by such Lender which, in any case, are not being incurred generally by the other Lenders, (iii) has not agreed to any consent, waiver or amendment that requires the agreement of all Lenders or all affected Lenders in accordance with the terms of Section 9.01 and as to which the Required Lenders have agreed, , then, in any case, the Company or the Agent may make written demand on such Affected Lender (with a copy to the Agent in the case of a demand by the Company and a copy to the Company in the case of a demand by the Agent) for the Affected Lender to assign at par, and such Affected Lender shall use commercially reasonable efforts to assign pursuant to one or more duly executed Assignments and Acceptances five (5) Business Days after the date of such demand, to one or more financial institutions that comply with the provisions of Section 9.08 which the

Company or the Agent, as the case may be, shall have engaged for such purpose, all of such Affected Lender's rights and obligations under this Agreement and the other Loan Documents (including, without limitation, its Commitment, all amounts owing to it, all of its participation interests in existing Letters of Credit, and its obligation to participate in additional Letters of Credit hereunder) in accordance with Section 9.08. The Agent is authorized to execute one or more of such Assignments and Acceptances as attorney-in-fact for any Affected Lender failing to execute and deliver the same within five (5) Business Days after the date of such demand. Further, with respect to such assignment, the Affected Lender shall have concurrently received, in cash, all amounts due and owing to the Affected Lender hereunder or under any other Loan Document; provided, that, upon such Affected Lender's replacement, such Affected Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.11, 2.14 and 9.04, as well as to any fees accrued for its account hereunder and not yet paid, and shall continue to be obligated under Section 8.05 with respect to losses, obligations, liabilities, damages, penalties, actions, judgments, costs, expenses or disbursements for matters which occurred prior to the date the Affected Lender is replaced.

SECTION 2.21. Reserved.

SECTION 2.22. Reserved.

SECTION 2.23. Reserved.

SECTION 2.24. Obligations of Lenders Several. The obligations of the Lenders hereunder to fund participations in Letters of Credit and to make payments are several and not joint. The failure of any Lender to fund any such participation or to make any payment on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to purchase its participation or to make its payment hereunder.

SECTION 2.25. Reserved.

SECTION 2.26. Reserved.

ARTICLE III
CONDITIONS TO EFFECTIVENESS AND LENDING

SECTION 3.01. Conditions Precedent to Effectiveness. This Agreement shall be effective upon the satisfaction or waiver of the following conditions precedent in the determination of Agent:

(a) The Agent shall have received executed counterparts to this Agreement from the Company, each other Loan Party and each Lender;

(b) Receipt by Agent of projected balance sheets, income statements, statements of cash flows and availability of Borrower and its Restricted Subsidiaries giving effect to the ABL Credit Facility, the Term Loan Facility and the other Transactions, covering the term of the Letter of Credit Facility, which projections shall be on a monthly basis for the twelve-month period following the Closing Date, a quarterly basis for the twelve-month period thereafter and on an annual basis thereafter for the term of the Letter of Credit Facility, in each case with the results and assumptions in all of such projections in form and substance satisfactory to Agent.

(c) Execution and delivery of all Loan Documents by the parties thereto and including: (i) customary legal opinions, (ii) customary evidence of authority from each Loan Party, (iii) customary officer's certificates from each Loan Party, (iv) good standing certificates (to the extent applicable) in the respective jurisdictions of organization of each Loan Party, and (v) lien searches with respect to each Loan Party. Agent, for the benefit of itself, Lenders, and Issuing Bank, shall hold perfected, security interests in and liens upon the Collateral in the order of priority set forth in the Term Loan Intercreditor Agreement and Letter of Credit Facility Intercreditor Agreement, and Agent shall have received such evidence of the foregoing as it reasonably requires.

(d) Agent shall have received evidence that Borrower has entered into the ABL Credit Facility, which shall be on terms and conditions reasonably satisfactory to Agent and Lenders, and certain of the letters of credit under the ABL Credit Facility shall be deemed to be Letters of Credit under the Letter of Credit Facility as Agent may determine.

(e) Agent shall have received evidence that Borrower has entered into the Term Loan Facility, which shall be on terms and conditions reasonably satisfactory to Agent and Lenders, and Borrower shall have received not less than $225,000,000 in proceeds of loans under the Term Loan Facility.

(f) Agent shall have received correct and complete copies of each of the Convertible Note Documents, as duly authorized, executed and delivered by the parties thereto, each in form and substance reasonably satisfactory to Agent, and the Convertible Notes shall be issued and effective.

(g) Agent shall have received, in form and substance reasonably satisfactory to Agent, the Term Loan Intercreditor Agreement, as duly authorized, executed and delivered by the parties thereto;

(h) Agent shall have received, in form and substance reasonably satisfactory to Agent, the Letter of Credit Facility Intercreditor Agreement, as duly authorized, executed and delivered by the parties thereto;

(i) Agent shall have received (i) evidence that (A) $100,000,000 of the Series A Preferred Stock have been redeemed and cancelled and (B) the remaining balance of the Series A Preferred Stock have been exchanged for Series B Preferred Stock, such that after giving effect to such redemption and such exchange, Borrower has no further obligations or liabilities in respect of the Series A Preferred Stock and (ii) the agreements and documents providing for the redemption of the Series A Preferred Stock and relating to the Series B Preferred Stock Issuance, in each case which shall be on terms and conditions satisfactory to Agent..

(j) The opening Excess Availability (as defined in the ABL Credit Facility Agreement) at closing after the application of proceeds of the initial funding under the ABL Credit Facility and after payment of all fees and expenses of the Transactions payable on the Closing Date, shall be not less than $25,000,000.

(k) Agent shall have received not less than the amount equal to one hundred three percent (103%) of the Existing Letters of Credit that are deemed to be Letters of Credit on the Closing Date in immediately available funds for credit to the LC Cash Collateral Account.

(l) No Default or Event of Default under any of the Loan Documents shall exist. No material adverse change in the business, operations, profits, assets or prospects of Loan Parties shall have occurred since September 30, 2020.

(m) Arranger, Agent and Lenders shall have received the payment of all fees required to be paid on the Closing Date under the terms hereof or otherwise under the Loan Documents. Agent and Lenders shall have received payment of all reasonable and documented out-of-pocket costs and expenses (including, without limitation, the reasonable and documented fees and expenses of counsel for Agent).

(n) The Agent shall have received the following, each dated as of the Closing Date and in form and substance satisfactory to the Agent:

(i) Notes to the order of the Lenders to the extent requested by any Lender pursuant to Section 2.16,

(ii) Certified copies of the resolutions of the Board of Directors of each Loan Party approving each Loan Document to which it is a party, and of all documents evidencing other necessary corporate action and governmental approvals, if any, with respect to each Loan Document to which it is a party,

(iii) A certificate of the secretary or an assistant secretary of each Loan Party certifying the names and true signatures of the officers of such Loan Party authorized to sign each Loan Document to which it is or is to be a party and the other documents to be delivered hereunder and thereunder,

(iv) Such certificates of good standing (to the extent such concept exists in such jurisdiction) from the applicable secretary of state or similar official of the jurisdiction of organization, formation documents and organizational documents of each Loan Party as the Agent may reasonably require, and such other documents as the Agent may reasonably require to evidence that each Loan Party qualified to engage in business in each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification, except for such jurisdictions to the extent that the Company reasonably determines the failure to so qualify in such jurisdiction would not reasonably be expected to have a Material Adverse Effect;

(v) A certificate of the chief financial officer of the Company, in the form attached hereto as Exhibit B,

(vi) Copies of a recent Lien and judgment search in each jurisdiction reasonably requested by the Agent with respect to the Loan Parties,

(vii) A certificate from the Responsible Officer of the Company as to the matters set forth in Sections 3.01(d), 3.01(g) and 3.01(k),

(viii) Certificates of insurance with respect to the Loan Parties' property and liability insurance, together with a loss payable endorsement naming the Agent as loss payee; provided that the Agent and the Arranger acknowledge and confirm they have received the certificates required by this subclause (viii) in form and substance that is reasonably satisfactory,

(ix) A customary legal opinion of Sullivan & Cromwell, special counsel for the Company, in form and substance reasonably satisfactory to the Agent, and

(x) A customary legal opinion of Day Pitney LLP, New Jersey counsel for the Company, in form and substance reasonably satisfactory to the Agent.

(o) The Lenders shall have received at least three (3) Business Days prior to the Closing Date all documentation and information as is reasonably requested by the Lenders that is required by regulatory authorities under applicable "know your customer" and anti-money-laundering rules and regulations, including, without limitation, the PATRIOT Act, in each case to the extent requested in writing at least ten (10) Business Days prior to the Closing Date.

(p) All documents and instruments required to create and perfect the Agent's first priority (as to the Letter of Credit Priority Collateral) or other priority security interest in and Lien on the other Collateral (free and clear of all other Liens other than Permitted Collateral Liens (as defined in the ABL Credit Facility Agreement as in effect on the date hereof) and subject to exceptions permitted by Section 5.02(a)) shall have been executed and delivered and, if applicable, be in proper form for filing.

(q) (i) The representations and warranties of the Borrower and each other Loan Party contained in each Loan Document to which it is a party shall be correct on and as of the Closing Date in all material respects (except to the extent qualified by materiality or "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects), before and after giving effect to the effectiveness of this Agreement and the transactions contemplated hereby, as though made on and as of such date; provided, that, any representation or warranty as of a specific date shall only be true or correct in all material respects as of such date and (ii) no event shall have occurred and be continuing, or would result from the effectiveness of this Agreement or the transactions contemplated hereby, that would constitute a Default.

(r) No Default under the Loan Documents shall exist on the Closing Date.

SECTION 3.02. Conditions Precedent to Each Issuance. In addition to the conditions set forth in Section 2.02, the obligation of Issuing Bank for the Issuance of a Letter of Credit (including any amendment, renewal or extension thereof) is subject to the satisfaction of each of the following conditions precedent (and each of the giving of the applicable Notice of Issuance and the acceptance by the Borrower of such Issuance shall constitute a representation and warranty by the Company that on the date of such Issuance such statements are true):

(a) the representations and warranties of the Borrower and each other Loan Party contained in each Loan Document to which it is a party are correct in all material respects (except to the extent qualified by materiality or "Material Adverse Effect," in which case such representations and warranties shall be true and correct in all respects) on and as of such date, before and after giving effect to such such Issuance and to the application of the proceeds therefrom, as though made on and as of such date; provided, that, any representation or warranty as of a specific date shall only need be true or correct in all material respects as of such date;

(b) no event has occurred and is continuing, or would result from such Issuance or from the application of the proceeds therefrom, that constitutes a Default.

SECTION 3.03. Additional Conditions to Issuances. In addition to the other conditions precedent herein set forth, if any Lender becomes, and during the period it remains, a Defaulting Lender or a Potential Defaulting Lender, Issuing Bank will not be required to issue any Letter of Credit or to amend any outstanding Letter of Credit to increase the face amount thereof, alter the drawing terms thereunder or extend the expiry date thereof, unless Issuing Bank is satisfied that any exposure that would result from such Defaulting Lender or Potential Defaulting Lender is eliminated or fully covered by the Commitments of the Non-Defaulting Lenders or by Cash Collateralization or a combination thereof satisfactory to Issuing Bank.

SECTION 3.04. Determinations Under this Agreement. For purposes of determining compliance with the conditions specified in this Agreement, each Lender shall be deemed to have consented to, approved or accepted or to be satisfied with each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to the Lenders unless an officer of the Agent responsible for the transactions contemplated by this Agreement shall have received notice from such Lender prior to the date that the Company, by notice to the Lenders, designates as the proposed Closing Date, specifying its objection thereto. The Agent shall promptly notify the Lenders of the occurrence of the Closing Date.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES

SECTION 4.01. Representations and Warranties of the Company. The Company and each other Loan Party represents and warrants (as applicable) as follows:

(a) Each Loan Party is duly organized, validly existing and, to the extent such concept is applicable, in good standing under the laws of the jurisdiction of its organization, except as to any Loan Party, other than the Company, where such failure to be organized, existing or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and is qualified to do business and in good standing as a foreign entity in every jurisdiction where its assets are located and wherever necessary to carry out its business and operations, except in jurisdictions where the failure to be so qualified or in good standing has not had, and would not be reasonably expected to have, a Material Adverse Effect.

(b) The execution, delivery and performance by each Loan Party of each Loan Document to which it is or is to be party, and the consummation of the transactions contemplated hereby and thereby, are within such Loan Party's corporate, limited liability company or partnership powers, as applicable, have been duly authorized by all necessary corporate, limited liability company or partnership action, as applicable, and do not (i) contravene such Loan Party's charter or by-laws, (ii) violate law, rule, regulation (including, without limitation, with respect to the Borrower, Regulation X of the Board of Governors of the Federal Reserve System), order, writ, judgment, injunction, decree, determination or award, (iii) conflict with or result in the breach of, or constitute a default or require any payment to be made under, any material contractual restriction, binding on or affecting such Loan Party or (iv) except for the Liens created under the Loan Documents, result in or require the creation or imposition of any Lien upon or with respect to any of the properties of any Loan Party or any of its Restricted Subsidiaries (other than Liens permitted under Section 5.02(a)).

(c) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or regulatory body or any other third party is required for (i) the due execution, delivery, recordation, filing or performance by any Loan Party of any Loan Document to which it is or is to be a party, (ii) other than as set forth in Section 6(m) of the Security Agreement, the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (iii) other than in respect of the Specified Collateral as set forth in Section 6(m) of the Security Agreement, the perfection or maintenance of the Liens created under the Collateral Documents (including the priority required thereunder) or (iv) except for any notices that may be required pursuant to any applicable Intercreditor Agreement, the exercise by the Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents.

(d) This Agreement has been, and each other Loan Document when delivered hereunder will have been, duly executed and delivered by each Loan Party party thereto. This Agreement is, and each other Loan Document when delivered hereunder will be, the legal, valid and binding obligation of each Loan Party party thereto enforceable against such Loan Party in accordance with their respective terms, except as enforceability may be affected by applicable bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting enforcement of creditors' rights generally and by general principles of equity, whether enforcement is sought in a proceeding in equity or at law.

(e) The Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as at December 31, 2019, and the related Consolidated statement of earnings and Consolidated statement of cash flows of the Company and its Consolidated Subsidiaries for the fiscal year then ended, accompanied by an opinion of PricewaterhouseCoopers LLP, independent public accountants, copies of which have been furnished to each Lender, fairly present, in all material respects, the Consolidated financial condition of the Company and its Consolidated Subsidiaries as at such date and the Consolidated statement of earnings and Consolidated statement of cash flows of the Company and its Consolidated Subsidiaries for the period ended on such date, all in accordance with GAAP. Since December 31, 2019, there has been no Material Adverse Effect except as disclosed in filings made with, or documents furnished to, the Securities and Exchange Commission or as described in any press release, in each case prior to the date of this Agreement.

(f) Other than as disclosed on Schedule 4.01(f), there is no pending or, to the knowledge of the Company, threatened in writing action, suit, investigation, litigation or proceeding, including, without limitation, any Environmental Action, affecting any Loan Party before any court, governmental agency or arbitrator that (i) is reasonably likely to have a Material Adverse Effect or (ii) purports to affect the legality, validity or enforceability of this Agreement or any other Loan Document or the consummation of the transactions contemplated hereby.

(g) Neither Borrower nor any other Loan Party is engaged in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U issued by the Board of Governors of the Federal Reserve System), and no proceeds of any Letter of Credit will be used to purchase or carry any margin stock or to extend credit to others for the purpose of purchasing or carrying any margin stock.

(h) Neither Borrower nor any other Loan Party is an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act of 1940, as amended.

(i) Except as disclosed on Schedule 4.01(i), each Loan Party and each of their respective Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents, technology, know-how and processes necessary for the conduct of its business as currently conducted except for those the failure to own or license which are not reasonably expected to have a Material Adverse Effect (the "Intellectual Property"). To the knowledge of the Company, no claim has been asserted and is pending against any Intellectual Property by any Person challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does any Loan Party know of any valid basis for any such claim, except, in either case, for such claims that in the aggregate are not reasonably expected to have a Material Adverse Effect. The use of such Intellectual Property by the Company and its Subsidiaries and the operation of their businesses does not infringe on the rights of any Person, except for such claims and infringements that, in the aggregate, are not reasonably expected to have a Material Adverse Effect.

(j) No ERISA Event has occurred or is reasonably expected to occur with respect to any Plan that has resulted in or is reasonably expected to result in a material liability of any Loan Party or any ERISA Affiliate.

(k) Neither any Loan Party nor any ERISA Affiliate has incurred or is reasonably expected to incur any Withdrawal Liability to any Multiemployer Plan that in the aggregate could reasonably be expected to have a Material Adverse Effect.

(l) Neither any Loan Party nor any ERISA Affiliate has been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or has been terminated, within the meaning of Title IV of ERISA, or has been determined to be in "endangered" or "critical" status within the meaning of Section 432 of the Code or Section 305 of ERISA, and no such Multiemployer Plan is reasonably expected to be insolvent or to be terminated, within the meaning of Title IV of ERISA or in endangered or critical status.

(m) Except as would not reasonably be expected to result in a Material Adverse Effect, as of the Closing Date, no event comprising (i) the commencement of winding up of the UK Pension Scheme, except pursuant to the KPP Settlement Agreement, (ii) the cessation of participation in the UK Pension Scheme by any Affiliate of the Borrower, except pursuant to the KPP Settlement Agreement, or (iii) the issue of a warning notice by the UK Pensions Regulator that it is considering issuing a financial support direction or contribution notice in relation to the UK Pension Scheme, has occurred, and (to the knowledge of the Borrower or Kodak Limited) the UK Pensions Regulator has not stated any intention to do so.

(n) As of the Closing Date, no Loan Party nor any Affiliate of any Loan Party has incurred any liability to the UK Pension Scheme as a result of ceasing to participate in the UK Pension Scheme and (to the knowledge of the Borrower or Kodak Limited) no Affiliate of any Loan Party has stated any intention to cease to participate in the UK Pension Scheme, except pursuant to the KPP Settlement Agreement.

(o) As of the Closing Date, no Loan Party nor any Affiliate of any Loan Party has been notified by the trustees of the UK Pension Scheme that the UK Pension Scheme is being wound up and (to the knowledge of the Borrower or Kodak Limited) the trustees of the UK Pension Scheme have not stated any intention to do so, except pursuant to the KPP Settlement Agreement.

(p) Except as would not reasonably be expected to result in a Material Adverse Effect or, except pursuant to the KPP Settlement Agreement, as of the Closing Date, the UK Pension Schemes are duly registered for HMRC tax purposes, all material obligations of each Affiliate required to be performed in connection with the UK Pension Schemes and any funding agreements therefor have been performed in a timely fashion; and there are no material outstanding disputes involving the Borrower or any of its Affiliates concerning the UK Pension Schemes.

(q) None of the Loan Parties or their Subsidiaries is a party to or bound by any collective bargaining or similar agreement with any union, labor organization or other bargaining agent except as set forth on Schedule 4.01(q).

(r) Except to the extent the Company or a Subsidiary has set aside on its books adequate reserves in accordance with GAAP, the operations and properties of the Company and each of its Consolidated Subsidiaries comply in all material respects with all applicable Environmental Laws and Environmental Permits, except as could not reasonably be expected to have a Material Adverse Effect, all past non-compliance with such Environmental Laws and Environmental Permits has been or is reasonably expected to be resolved without ongoing obligations or costs that have had or are reasonably expected to have a Material Adverse Effect, and no circumstances exist that are reasonably likely to (A) form the basis of an Environmental Action against the Company or any of its Subsidiaries or any of their properties that is reasonably expected to have a Material Adverse Effect or (B) cause any such property to be subject to any restrictions on ownership, occupancy, use or transferability under any Environmental Law that is reasonably expected to have a Material Adverse Effect.

(s) The Company and each of its Subsidiaries has good and marketable fee simple title to or valid leasehold interests in all of the real property owned or leased by the Company or such Subsidiary and good title to all of their personal property, except where the failure to hold such title or leasehold interests, individually or in the aggregate is not reasonably expected to have a Material Adverse Effect. To the knowledge of the Company, the Company and each of its Subsidiaries enjoy peaceful and undisturbed possession under all of their respective leases except where the failure to enjoy such peaceful and undisturbed possession, individually or in the aggregate, is not reasonably expected to have a Material Adverse Effect.

(t) All factual information (other than information of an industry specific or general economic nature), taken as a whole, furnished by or on behalf of the Company, in writing to the Agent, the Arranger or any Lender on or prior to the Closing Date, for purposes of this Agreement and all other such factual information (other than information of an industry specific or general economic nature), taken as a whole, furnished by the Company in writing to the Agent, the Arranger or any Lender pursuant to the terms of this Agreement (after the date of this Agreement) will be, true and accurate in all material respects on the date as of which such information is dated or furnished and not incomplete by knowingly omitting to state any material fact necessary to make such information, taken as a whole, not materially misleading at such time, provided, that, with respect to any projected financial information (including the Projections), estimates or other forward-looking statements (collectively, "Forward-Looking Information"), the Company represents only that such information was prepared in good faith based upon assumptions, and subject to such qualifications, believed to be reasonable at the time; provided, it is understood that such Projections are not to be viewed as facts or as a guarantee of performance of achievement of any particular results and that actual results may vary from projected results (many of which factors are beyond the control of the Company and Subsidiaries and their respective officers, representatives and advisors) and that such variances may be material and that no assurance can be given that such Forward-Looking Information will be realized. The information included in the Beneficial Ownership Certification most recently provided to Agent and each Lender is true and complete in all respects.

(u) All filings and other actions necessary to perfect and protect the security interest in the Collateral (other than in respect of the Specified Collateral as set forth in Section 6(m) of the Security Agreement) created under the Collateral Documents have been duly made or taken and are in full force and effect, and the Collateral Documents create in favor of the Agent for the benefit of the Secured Parties a valid and, together with such filings and other actions, perfected except as otherwise provided in the Intercreditor Agreements security interest with the applicable priority in the Collateral (other than the Specified Collateral), securing the payment of the Secured Obligations (as defined in each Security Agreement), and all filings and other actions necessary to perfect and protect such security interest have been duly taken. The Loan Parties are the legal and beneficial owners of the Collateral free and clear of any Lien, except for the liens and security interests created or permitted under the Loan Documents.

(v) The Company, together with its Restricted Subsidiaries, on a Consolidated basis is Solvent.

(w) (i) Set forth on Part A of Schedule II hereto is a complete and accurate list of all direct and indirect Subsidiaries of the Company that are organized under the laws of a state of the United States of America, and (ii) set forth on Part B of Schedule II hereto is a complete and accurate list of all Subsidiaries of Company, showing, in each case, as of the Closing Date (as to each such Subsidiary) the jurisdiction of its formation, the number of shares, membership interests or partnership interests (as

applicable) of each class of its equity interests authorized, and the number outstanding, on the Closing Date and the percentage of each such class of its equity interests owned directly by the applicable Loan Party and the number of shares covered by all outstanding options, warrants, rights of conversion or purchase and similar rights at the Closing Date. Except as set forth on Part C of Schedule II hereto, all of the outstanding equity interests in each Loan Party's Subsidiaries have been validly issued, are fully paid and non-assessable and, except as otherwise provided herein, are owned by such Loan Party or one or more of its Subsidiaries, other than director's qualifying shares or similar minority interests required under the laws of the Subsidiary's formation, free and clear of all Liens, except those created under the Collateral Documents or permitted under the Loan Documents.

(x) Part I of Schedule III sets forth all Deposit Accounts that are maintained by the Loan Parties as of the Closing Date, which schedule shall include, with respect to each depository as of the Closing Date (i) the name and address of such depository; (ii) the account number(s) maintained with such depository; and (iii) a contact person at such depository. Part II of Schedule III sets forth all lock boxes that are maintained by the Loan Parties as of the Closing Date.

(y) [Reserved].

(z) (i) The Company and its Restricted Subsidiaries have timely filed with the appropriate United States federal, state, local and foreign taxing authorities all federal income tax returns and reports and all other material tax returns and reports that were required to be filed by them and all such tax returns are true and correct in all material respects, (ii) the Company and its Restricted Subsidiaries have timely paid and discharged all taxes owed by them, whether or not shown on such tax returns or reports, and (iii) there is no proposed tax assessment against the Company or any of its Restricted Subsidiaries except, in the cases of clauses (ii) and (iii) of this clause (z), for the payment of any such taxes or any tax assessments which are being actively contested by the Company or such Restricted Subsidiary in good faith and by appropriate proceedings or which have not had, and would not be reasonably expected to have, a Material Adverse Effect; provided, appropriate reserves, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

(aa) Each of the Borrower and its Restricted Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

(bb) Neither the Letters of Credit nor the use of the proceeds of any thereof will violate any Sanction or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "Executive Order"). Furthermore, neither the Borrower nor any Subsidiary, nor to the knowledge of the Borrower and its Subsidiaries, any director, officer, employee, agent, affiliate or representative thereof is a Person that is (x) included on OFAC's List of Specifically Designated Nationals or HMT's Consolidated List of Financial Sanctions Targets and the Investment Ban List, or any similar list enforced by any other relevant sanctions authority, (y) operating, organized or resident in a Designated Jurisdiction or (z) controlled by any Person or Persons described in clauses (x) and (y). The Borrower has instituted and maintains in effect policies and procedures designed to promote and achieve compliance by the Borrower, its Subsidiaries and its and their respective directors, officers, employees, agents and affiliates with Sanctions laws and regulations.

(cc) Each Loan Party is in compliance, in all material respects, with the PATRIOT Act. No part of the proceeds of the Letters of Credit will be used by the Borrower or any Subsidiary, directly or, to the knowledge of the Borrower or any Subsidiary, 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 any Anti-Corruption Law, including, without limitation, the United States Foreign Corrupt Practices Act of 1977, as amended. Each Loan Party is in compliance with Anti-Corruption Laws in all material respects. The Borrower has instituted and maintained in effect policies and procedures designed to promote and achieve compliance by the Borrower, its Subsidiaries and its and their respective directors, officers, employees, agents and affiliates with Anti-Corruption Laws.

(dd) As of the Closing Date and except as set forth on Schedule 4.01(dd), there are no strikes, lockouts or slowdowns against the Borrower or any Restricted Subsidiary pending or, to the knowledge of the Borrower, threatened. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (i) the Borrower and its Restricted Subsidiaries are in compliance with the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with hours worked by or payments made to employees or any similar matters (including but not limited to the appropriate classification of employees as exempt or non-exempt), (ii) the Borrower and its Restricted Subsidiaries have properly classified all individuals engaged as contractors as such under all applicable Federal, state, local or foreign law, (iii) the Borrower and its Restricted Subsidiaries are in compliance with the Worker Adjustment and Retraining Notification Act and all other state, local or foreign laws relating to plant closings or mass layoffs and (iv) all payments due from the Borrower or any Restricted Subsidiary, or for which any claim may be made against the Borrower or any Restricted Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Borrower or such Subsidiary. Neither the Borrower nor any Subsidiary is subject to any claims arising out of any employment matter, whether pending as of the Closing Date or to its knowledge threatened, which would, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect. Except as does not, or would not reasonably be expected to, have a Material Adverse Effect, the consummation of the Closing Date Transactions 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 the Borrower or any Restricted Subsidiary is bound.

(ee) No Loan Party is an EEA Financial Institution.

(ff) No Loan Party is engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock. No proceeds of Letters of Credit will be used by the Company to purchase or carry, or to reduce or refinance any Debt incurred to purchase or carry, any Margin Stock or for any related purpose governed by Regulations T, U or X of the Board of Governors.

ARTICLE V
COVENANTS OF THE LOAN PARTIES

SECTION 5.01. Affirmative Covenants. So long as any Obligation (other than contingent indemnification obligations not yet due and payable) of any Loan Party under any Loan Document shall remain unpaid, any Letter of Credit is outstanding or any Lender shall have any Commitment or Issuing Bank the Letter of Credit Commitment hereunder, each Loan Party shall and shall cause each of its Restricted Subsidiaries to:

(a) Compliance with Laws. Comply, and cause each of its Restricted Subsidiaries to comply, in all material respects, with (x) all applicable laws, rules, regulations and orders, such compliance to include, without limitation, compliance with ERISA, Environmental Laws, and the PATRIOT Act, except where such non-compliance is not reasonably expected to have a Material Adverse Effect and (y) Sanctions laws and regulations.

(b) Payment of Taxes, Etc. Pay and discharge, and cause each of its Restricted Subsidiaries to pay and discharge, before the same shall become delinquent, (i) all taxes, assessments and governmental charges or levies imposed upon it or upon its property and (ii) all material lawful claims that, if unpaid, might by law become a Lien upon its property; provided, however, that neither the Company nor any of its Restricted Subsidiaries shall be required to pay or discharge any such tax, assessment, charge or claim that is being contested in good faith and by proper proceedings and as to which appropriate reserves are being maintained, unless and until any Lien resulting therefrom attaches to its property and becomes enforceable against its other creditors. If an obligation providing the basis for a Lien covered by paragraph (b) of the definition of Permitted Liens (as such term is defined in the ABL Credit Facility Agreement as in effect on the date hereof) is not an obligation of the Company or any of its Restricted Subsidiaries, the Company or any of its Restricted Subsidiaries shall be deemed to be contesting such obligation for purposes of this paragraph 5.01(b) so long as the obligor thereof is contesting such obligation or the Company or any of its Restricted Subsidiaries is using commercially reasonable efforts to contest the Lien or to cause the obligor thereof to satisfy the obligation providing the basis for such Lien; provided, that, neither the Company nor any of its Restricted Subsidiaries shall have any obligation to perform the obligation providing the basis for such Lien.

(c) Maintenance of Insurance. Maintain, and cause each Restricted Subsidiary to maintain, insurance with responsible and reputable insurance companies or associations in such amounts and covering such risks as is usually carried by companies engaged in similar businesses and owning similar properties in the same general areas in which the Company or such Restricted Subsidiary operates; provided, however, that the Company and its Restricted Subsidiaries may self-insure to the extent consistent with prudent business practice.

(d) Preservation of Corporate Existence. Preserve and maintain, and cause each of its Restricted Subsidiaries (other than Immaterial Subsidiaries) to preserve and maintain, its corporate existence, rights (charter and statutory) and franchises; provided, however, that the Company and its Restricted Subsidiaries may consummate any amalgamation, merger or consolidation permitted under Section 5.02(b) and provided, further, that neither the Company nor any of its Restricted Subsidiaries shall be required to preserve any right or franchise if the Company determines that the preservation thereof is no longer desirable in the conduct of the business of the Company or such Restricted Subsidiary, as the case may be, and that the loss thereof is not reasonably expected to have a Material Adverse Effect.

(e) Visitation Rights. At any reasonable time, on reasonable notice and from time to time, permit the Agent or any of the Lenders (accompanied by the Agent) or any agents or representatives thereof, to examine and make copies of and abstracts from the records and books of account of, and visit the properties of, the Company and any of its Subsidiaries, and to discuss the affairs, finances and accounts of the Company and any of its Subsidiaries with any of their officers or directors and with their independent certified public accountants, provided, that, all such information is subject to the provisions of Section 9.09. At any time prior to the occurrence of a continuing Event of Default, the right of the Agent and any of the Lenders (accompanied by the Agent) to visit the property of the Company and any of its Subsidiaries shall be subject to reasonable rules and restrictions of the Company for such access, and such visit shall not unreasonably interfere with the ongoing conduct of the business of the Company and its Subsidiaries at such properties.

(f) Keeping of Books. Keep and maintain proper books of record and account on a Consolidated basis for Company and its Subsidiaries in conformity in all material respects with GAAP in effect from time to time.

(g) Maintenance of Properties, Etc. Maintain and preserve, and cause each of its Restricted Subsidiaries to maintain and preserve in all material respects, all of its properties that are used or useful in the conduct of its business in good working order and condition, ordinary wear and tear excepted, except where the failure to so maintain or preserve is not reasonably expected to have a Material Adverse Effect.

(h) Reporting Requirements. Furnish to the Agent and Lenders:

(i) as soon as available and in any event within forty-five (45) days after the end of each of the first three quarters of each fiscal year of the Company, the Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as of the end of such quarter and Consolidated statements of earnings and cash flows of the Company and its Consolidated Subsidiaries for the period commencing at the end of the previous fiscal year and ending with the end of such quarter, duly certified by the chief financial officer of the Company as having been prepared in accordance with GAAP subject to normal year-end audit adjustments and other items, such as footnotes, omitted in interim statements, and concurrently with delivery of financial statements under this clause (i), or more frequently (but no more frequently than monthly) if requested by Agent while a Default or Event of Default exists, a Compliance Certificate executed by the chief financial officer of the Company, which shall include setting forth in reasonable detail the calculations necessary to demonstrate compliance with Section 5.03 (regardless of whether such covenant is then in effect) provided, that, to the extent such financial statements include information regarding Unrestricted Subsidiaries, the Company shall include a note and or notes containing reconciliation statements eliminating all financial information pertaining to Unrestricted Subsidiaries;

(ii) as soon as available and in any event within ninety (90) days after the end of each fiscal year of the Company, a copy of the annual audit report for such year for the Company and its Consolidated Subsidiaries, containing the Consolidated statement of financial position of the Company and its Consolidated Subsidiaries as of the end of such fiscal year and Consolidated statements of earnings and cash flows of the Company and its Consolidated Subsidiaries for such fiscal year, in each case accompanied by an opinion by PricewaterhouseCoopers LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit or other material qualification or exception, except for any such qualification or exception with respect to (i) any Debt maturing within three hundred sixty-four (364) days after the date of such financial statements, (ii) changes in accounting principles or practices reflecting changes in GAAP and required or approved by Borrower's independent public accountants or (iii) prospective or actual financial covenant breaches; provided, that, for avoidance of doubt, any "explanatory paragraph," "emphasis-of-matter paragraph" or like statement shall not constitute a "going concern" or like qualification or exception for purposes of this paragraph) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Company and its Consolidated Subsidiaries on a Consolidated basis, and certificates of a Responsible Officer of the Company as to compliance with the terms of this Agreement and setting forth in reasonable detail the calculations necessary to demonstrate compliance with Section 5.03 (regardless of whether such covenant is then in effect); provided, that, to the extent such financial statements include information regarding Unrestricted Subsidiaries, the Company shall include a note and or notes containing reconciliation statements eliminating all financial information pertaining to Unrestricted Subsidiaries;

(iii) as soon as possible and in any event within five (5) days after the Company has knowledge of the occurrence of each Default continuing on the date of such statement, a statement of a Responsible Officer of the Company setting forth details of such Default and the action that the Company has taken and/or proposes to take with respect thereto;

(iv) promptly after the same become publicly available, copies of all reports that the Company sends to any of its stockholders generally, and copies of all reports and registration statements that the Company or any Subsidiary files with the Securities and Exchange Commission or any national securities exchange;

(v) notice of all actions and proceedings before any court, governmental agency or arbitrator affecting the Company or any of its Subsidiaries of the type which would have been required to be disclosed under Section 4.01(f), promptly after the later of the commencement thereof or knowledge that such actions or proceedings are reasonably likely to be of a type which would have been required to be disclosed under Section 4.01(f);

(vi) as soon as available and in any event no later than ninety (90) days after the end of each fiscal year, amended or supplemented Schedules setting forth such information as would be required to make the representations set forth in Section 6(a), (f), (g), (k), (l), (o) and (s)(iii) of the Security Agreement true and correct as if the Schedules referenced therein were delivered on such date;

(vii) such other information with respect to the Company or any of its Restricted Subsidiaries, as the Agent may from time to time reasonably request;

(viii) as soon as available, and in any event no later than ninety (90) days after the end of each fiscal year of the Company, a reasonably detailed consolidated budget of the Company and its Consolidated Subsidiaries for the fiscal year immediately following such fiscal year on a quarterly basis, and for each year thereafter through the Termination Date on an annual basis (including a projected Consolidated balance sheet of the Company and its Consolidated Subsidiaries as of the end of the following fiscal year), the related projected Consolidated statements of cash flow and income for such fiscal year and the projected Letters of Credit expected as of the end of each month during such fiscal year (collectively, the "Projections"), which Projections shall be accompanied by a certificate of a Responsible Officer of the Company stating that such Projections are based on then reasonable estimates and then available information and assumptions; it being understood that the Projections are made on the basis of the Company's then current good faith views and assumptions believed to be reasonable when made with respect to future events, and assumptions that the Company believes to be reasonable as of the date thereof and further being understood that projections, including the Projections, are subject to significant uncertainties and contingencies, many of which are beyond the Company's control, inherently unreliable and that actual performance may differ materially from the Projections and no assurance is given by the delivery of such Projections or otherwise that the Projections will be realized;

(ix) a Borrowing Base Certificate substantially in the form of Exhibit F shall be furnished to the Agent on or before the twenty-first (21st) day following the end of each fiscal month, which monthly Borrowing Base Certificate shall reflect the LC Facility Cash Collateral updated as of the end of each such month;

(x) Promptly and in any event within twenty (20) days after any Loan Party or any ERISA Affiliate (A) knows or has reason to know that any ERISA Event has occurred, a statement of a Responsible Officer of such Loan Party describing such ERISA Event and the action, if any, that such Loan Party or such ERISA Affiliate has taken and proposes to take with respect thereto and (B) furnishes any records, documents or other information to the PBGC with respect to any Plan pursuant to Section 4010 of ERISA.

(xi) Promptly and in any event within two (2) business days after receipt thereof by any Loan Party, copies of each notice from the PBGC or other governmental or regulatory authority stating its intention to terminate any Plan or to have a trustee appointed to administer any Plan.

(xii) Promptly and in any event within five (5) Business Days after receipt thereof by any Loan Party or any ERISA Affiliate from the sponsor of a Multiemployer Plan, copies of each notice concerning (A) the imposition of Withdrawal Liability by any such Multiemployer Plan, (B) the termination, within the meaning of Title IV of ERISA, of any such Multiemployer Plan or (C) the amount of liability incurred, or that may be incurred, by such Loan Party or any ERISA Affiliate in connection with any event described in clause (A) or (B).

(xiii) Except to the extent prohibited by the Pensions Act 2004, promptly and in any event within three (3) Business Days after a Responsible Officer of the Borrower or Kodak Limited knows or has reason to know that (A) the UK Pension Scheme has commenced winding up, (B) the UK Pensions Regulator has issued a warning notice that it is considering issuing a financial support direction or contribution notice to the Borrower or any of its Affiliates in relation to the UK Pension Scheme or (C) the Borrower or any of its Affiliates which currently participates in the UK Pension Scheme has ceased to participate and thus triggered a liability on its cessation of participation, a statement of a Responsible Officer of the Borrower (or, if applicable, cause to be furnished to the Lenders a statement of a Responsible Officer of Kodak Limited) noting such event and the action, if any, which is proposed to be taken with respect thereto.

(xiv) Notice of the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against any Loan Party with respect to the Chapter 11 Plan or the Confirmation Order, promptly after the commencement thereof.

(xv) Promptly upon the effectiveness thereof, copies of any amendment, supplement, waiver or other modification with respect to any of the ABL Credit Facility Documents, Term Loan Documents, Convertible Note Documents, Series B Preferred Stock or Series C Preferred Stock.

Documents required to be delivered pursuant to Section 5.01(h)(i), (ii) and (iv) (to the extent any such documents are included in materials otherwise filed with or furnished to the Securities Exchange Commission), shall be deemed to have been delivered on the date (i) on which the Company provides such documents to the Agent, or provides a link thereto on the Company's website on the Internet at the website address listed on Schedule 9.02; or (ii) on which such documents are posted on the Company's behalf on an Internet or intranet website, if any, to which each Lender and the Agent have access (whether a commercial, third-party website or whether sponsored by the Agent); provided, that, upon written reasonable request of the Agent, the Company shall deliver paper copies of such documents to the Agent until a written request to cease delivering paper copies is given by the Agent and (B) the Company shall notify the Agent (by telecopier or electronic mail) of the posting of any such documents and provide to the Agent by electronic mail electronic versions (i.e., soft copies) of such documents. The Agent shall have no obligation to request the delivery of or to maintain paper copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request by a Lender for delivery, and each Lender shall be solely responsible for timely accessing posted documents or requesting delivery of paper copies of such documents from the Agent and maintaining its copies of such documents.

Each Loan Party hereby acknowledges that (a) the Agent and the Arranger will make available to the Lenders and the Issuing Bank materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Loan Party Materials") by posting the Loan Party Materials on IntraLinks or another similar electronic system (the "Platform") and (b) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Company or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. Each Loan Party hereby agrees that it will use commercially reasonable efforts to identify that portion of the Loan Party Materials that may be distributed to the Public Lenders and that (w) all such Loan Party Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Loan Party Materials "PUBLIC", the Loan Parties shall be deemed to have authorized the Agent, and the Arranger, the Issuing Bank and the Lenders to treat such Loan Party Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Company or its securities for purposes of United States Federal and state securities laws (provided, however, that to the extent such Loan Party Materials constitute Borrower Information, they shall be treated as set forth in Section 9.09); (y) all Loan Party Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information"; and (z) the Agent and the Arranger shall be entitled to treat any Loan Party Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information". Notwithstanding the foregoing, the Loan Parties shall be under no obligation to mark any Loan Party Materials "PUBLIC".

(i) Covenant to Guarantee Obligations and Give Security. Upon the formation or acquisition after the Closing Date of (1) any Subsidiaries other than Excluded Subsidiaries, or (2) the acquisition of any property by any Loan Party, and such property, in the judgment of the Agent (as to which judgment the Agent has given notice to the Company (such notice, a "Request")), shall not already be subject (other than in respect of the Specified Collateral) to a perfected first priority security interest in favor of the Agent for the benefit of the Secured Parties as to the LC Priority Collateral, a perfected second priority security interest in favor of Agent for the benefit of the Secured Parties as to the ABL Priority Collateral and a third priority security interest in favor of Agent for the benefit of the Secured Parties as to all other Collateral, then in each case at the Company's expense:

(i) in connection with the formation or acquisition of a Subsidiary other than an Excluded Subsidiary within thirty (30) days after such formation or acquisition, cause each such Subsidiary, to duly execute and deliver to the Agent a guaranty supplement, in the form of Exhibit C hereto, guaranteeing the Guaranteed Obligations,

(ii) within forty-give (45) days or, in the case of any item that would constitute Term Priority Collateral, within the time periods set forth in the Term Loan Documents or otherwise agreed by the Term Loan Agent (but in no event more than sixty (60) days), after (A) such Request or acquisition of property by any Loan Party, duly execute and deliver, and cause each Loan Party to duly execute and deliver, to the Agent such additional pledges, assignments (it being understood that, to the extent the applicable Collateral constitutes Term Loan Priority Collateral (as defined in the Term Loan Intercreditor Agreement), physical delivery of control thereof by the Agent shall not be required so long as such Collateral is delivered to, or under the control of, the Term Loan Agent in accordance with the Term Loan Intercreditor Agreement), security agreement supplements, intellectual property security agreement supplements and other security agreements as specified by, and in form and substance reasonably satisfactory to, the Agent, securing payment of all of the Guaranteed Obligations of such Loan Party and constituting Liens on all such properties and (B) such formation or acquisition of any such Subsidiary other than (x) an Immaterial Subsidiary or (y) a Foreign Subsidiary that is not a Material First-Tier Foreign Subsidiary of the Company, duly execute and deliver and cause each Loan Party acquiring

equity interests in such Subsidiary to duly execute and deliver to the Agent pledges, assignments and security agreement supplements related to such equity interests as specified by, and in form and substance satisfactory to, the Agent, securing payment of all of the Guaranteed Obligations of such Loan Party, provided, that, if such new property is equity interests in a CFC, no more than sixty-five percent (65%) of the voting equity interests in any such CFC shall be required to be so pledged; provided, further, that no Foreign Subsidiary will be subject to local pledge perfection if in the applicable foreign jurisdiction such Foreign Subsidiary would have to consult a works council in order to perfect the pledge),

(iii) within sixty (60) days after such Request, formation or acquisition, take, and cause each Loan Party to take, whatever action (including, without limitation, the filing of UCC financing statements (or similar registrations or filings), the giving of notices and the endorsement of notices on title documents) may be necessary or advisable in the reasonable opinion of the Agent to vest in the Agent (or in any representative of the Agent designated by it) valid and subsisting Liens on the properties purported to be subject to the pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements delivered pursuant to this Section 5.01(i), enforceable against all third parties in accordance with their terms (other than in respect of the Specified Collateral as set forth in Section 6(m) of the Security Agreement),

(iv) within sixty (60) days after such Request, formation or acquisition, deliver to the Agent, upon the request of the Agent in its sole discretion, a signed copy of one or more favorable opinions, addressed to the Agent and the other Secured Parties, of counsel for the Loan Parties reasonably acceptable to the Agent as to (1) such guaranties, guaranty supplements, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements described in clauses (i), (ii) and (iii) above being legal, valid and binding obligations of each Loan Party thereto enforceable in accordance with their terms and as to the matters contained in clause (iii) above, subject to customary exceptions, (2) such recordings, filings, notices, endorsements and other actions being sufficient to create valid perfected Liens on such assets, and (3) such other matters as the Agent may reasonably request, consistent with the opinions delivered on the Closing Date (to the extent applicable).

(v) at any time and from time to time, promptly execute and deliver, and cause each Loan Party and each Restricted Subsidiary other than an Excluded Subsidiary to execute and deliver, any and all further instruments and documents and take, and cause such Subsidiary to take, all such other action as the Agent may deem reasonably necessary or desirable in obtaining the full benefits of, or in perfecting and preserving the Liens of, such guaranties, pledges, assignments, security agreement supplements, intellectual property security agreement supplements and security agreements to the extent required by this Section 5.01(i) and the applicable Collateral Documents.

Notwithstanding the foregoing, (i) the Borrower shall have no obligation to provide in favor of the Secured Parties perfected security interests in any real property held by the Borrower or its Subsidiaries and (ii) the Agent may waive, modify or extend any of the periods or other requirements set out herein.

(j) Further Assurances.

(i) Promptly upon the reasonable request by the Agent, or any Lender through the Agent, correct, and cause each of the other Loan Parties promptly to correct, any material defect or error that may be discovered in any Loan Document or in the execution, acknowledgment, filing or recordation thereof, and

(ii) Promptly upon the reasonable request by the Agent, or any Lender through the Agent, do, execute, acknowledge, deliver, record, re-record, file, re-file, register and reregister any and all such further acts, pledge agreements, assignments, financing statements and continuations thereof, termination statements, notices of assignment, transfers, certificates, assurances and other instruments as the Agent, or any Lender through the Agent, may reasonably require from time to time in order to (A) carry out more effectively the purposes of the Loan Documents, (B) to the fullest extent permitted by applicable law and the terms of this Agreement and the Collateral Documents, subject any Loan Party's properties, assets, rights or interests to the Liens now or hereafter intended to be covered by any of the Collateral Documents, (C) perfect and maintain the validity, effectiveness and priority of any of the Collateral Documents and any of the Liens intended to be created thereunder and (D) assure, convey, grant, assign, transfer, preserve, protect and confirm more effectively unto the Secured Parties the rights granted or now or hereafter intended to be granted to the Secured Parties under any Loan Document or under any other instrument executed in connection with any Loan Document to which any Loan Party or any of its Subsidiaries formed or acquired after the Closing Date is or is to be a party, and cause each of its Subsidiaries to do so. Notwithstanding anything to the contrary contained herein, Agent shall not accept delivery of any joinder to any Loan Document with respect to any Subsidiary of any Loan Party that is not a Loan Party, if such Subsidiary qualifies as a "legal entity customer" under the Beneficial Ownership Regulation unless such Subsidiary has delivered a Beneficial Ownership Certification in relation to such Subsidiary and Agent has completed its Patriot Act searches, OFAC/PEP searches and customary individual background checks for such Subsidiary, the results of which shall be satisfactory to Agent.

(k) Transactions with Affiliates. Conduct, and cause each of its Restricted Subsidiaries to conduct, all transactions in which the fair market value of the transaction is in excess of $5,000,000 that are otherwise permitted under this Agreement with any of their Affiliates on terms that are fair and reasonable and no less favorable to the Company or such Restricted Subsidiary than it would obtain in a comparable arm's-length transaction (determined in the reasonable judgment of the Company) with a Person not an Affiliate (it being agreed that such condition may be satisfied by the Company's or such Restricted Subsidiary's obtaining a "fairness" opinion from a nationally recognized investment bank or accounting firm or other person reasonably acceptable to the Agent but the Company or such Restricted Subsidiary is not obligated to so obtain a "fairness" opinion), other than, (i) transactions between or among the Company and its Restricted Subsidiaries and not involving any other Affiliate, (ii) the consummation of the Closing Date Transactions, (iii) Restricted Payments and payments permitted under Section 5.02(h), (iv) employment and severance arrangements between the Company and its 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 arrangements in the ordinary course of business, (v) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, managers, officers, employees and consultants of the Company and its Restricted Subsidiaries (or any direct or indirect parent of the Company) in the ordinary course of business to the extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries, (vi) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 5.01(k) or any amendment thereto to the extent such an amendment is not materially adverse to the Lenders, (vii) transactions with a Person who was not an Affiliate immediately before the consummation of such transaction that becomes an Affiliate as a result of such transaction and (viii) transactions entered into in the ordinary course of business, including, but not limited to, transactions with licensors, suppliers or other purchasers or sales of goods or services (including any intellectual property).

(l) Maintenance of Cash Management System. (i) Establish and maintain a cash management system on the terms set forth in Section 2.18 of the ABL Credit Facility Agreement as in effect on the date hereof and (ii) continue to maintain one or more Concentration Accounts to be used by Borrower as its principal concentration account for day-to-day operations conducted by Borrower.

(m) Foreign Security Interests. (i) Within the time periods set forth on Schedule 5.01(m) (or such longer time as may be reasonably agreed by the Agent), the Loan Parties shall have executed and delivered to the Agent all documents and instruments required to create and perfect the Agent's third priority (to the extent applicable) security interest in the Collateral consisting of the capital stock of those Subsidiaries listed on Schedule 5.01(m) in the applicable foreign jurisdictions, free and clear of all other liens, subject to exceptions permitted hereunder and subject as to priority to the security interests securing the obligations in respect of the Term Loan Debt or any Debt constituting a Permitted Refinancing thereof and (ii) within thirty (30) days after the Closing Date (or such longer time as may be reasonably agreed by the Agent), the Loan Parties shall have executed and delivered to the Agent all documents and instruments required to create and perfect the Agent's first priority (to the extent applicable) security interest in the Collateral consisting of the capital stock of those Subsidiaries listed on Schedule 5.01(m) in the applicable foreign jurisdictions, free and clear of all other liens, subject to exceptions permitted hereunder; provided, that, in each case of clauses (i) and (ii) above, if the burden of obtaining any such pledge outweighs the benefit afforded thereby, the Agent may agree not to require the pledge of such stock by any Loan Party.

(n) Reserved.

(o) Benefit Plans Payments. The Borrower, the Restricted Subsidiaries and all ERISA Affiliates shall make all required contributions to any Plans, Single Employer Plans or Multiemployer Plans which, if not made, would reasonably be expected to result in a Material Adverse Effect, unless such payment is being contested pursuant to Section 5.01(b).

(p) Lender Meetings. The Borrower will, upon the request of the Agent or the Required Lenders, participate in one teleconference with the Agent and the Lenders during each fiscal quarter (or, for so long as an Event of Default is continuing, more frequent teleconferences as the Agent may reasonably request) during normal business hours at such time as may be mutually agreed to by the Borrower and the Agent (which may be a joint meeting with the ABL Lenders at the Company's option).

(q) Environmental Matters. Without limitation of any other covenants, rights or other obligations expressed elsewhere in this Agreement:

(i) Each Loan Party will, and will cause each of its Restricted Subsidiaries, to take all reasonable actions required under Environmental Laws to (A) the extent it has knowledge thereof, cure any violation of applicable Environmental Laws by any Loan Party or its Restricted Subsidiaries that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (B) make an appropriate response to any claim, suit or proceeding against any Loan Party or any of its Restricted Subsidiaries asserting any Environmental Liability (in each case to the extent such Loan Party has knowledge of such claim, suit or proceeding) and discharge any obligations it may have to any Person thereunder, where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (C) implement any and all Remedial Actions required to comply with Environmental Laws or that are legally required by any Governmental Authority acting within its jurisdiction (following final resolution of the Loan Party's or its Restricted Subsidiaries' challenges or appeals, if any, of the relevant Governmental Authority's order or decision) or that are otherwise necessary to maintain the value and marketability of its owned or leased Real Estate for industrial usage, except where failure to perform any such Remedial Action would not reasonably be expected to result in a Material Adverse Effect.

(ii) Promptly upon obtaining knowledge of the occurrence thereof, the Borrower shall deliver to the Agent written notice describing in reasonable detail (A) any Release that would reasonably be expected to require a Remedial Action or give rise to Environmental Liability, in each case that would reasonably be expected to result in a Material Adverse Effect, (B) any Remedial Action by any Loan Party, its Restricted Subsidiaries or any other Person in response to the presence or Release of Hazardous Materials that would reasonably be expected to result in Environmental Liability of any Loan Party or its Restricted Subsidiaries that would be reasonably expected to result in a Material Adverse Effect, (C) any claim, demand, suit or proceeding (including any request for information by a Governmental Authority) that would reasonably be expected to result in Environmental Liability of any Loan Party or its Restricted Subsidiaries that would reasonably be expected to result in a Material Adverse Effect, (D) any Loan Party or its Restricted Subsidiaries' discovery of any occurrence or condition at any of its owned or leased Real Estate, or on any adjoining Real Estate, that would reasonably be expected to cause such owned or leased Real Estate or any part thereof to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof or any lien in favor of any Governmental Authority to secure the satisfaction of any liability under any Environmental Laws that, in each case, would reasonably be expected to result in a Material Adverse Effect, (E) any proposed acquisition of equity interests, assets or property by any Loan Party or any of its Restricted Subsidiaries that would reasonably be expected to expose any Loan Party or any of its Restricted Subsidiaries to, or result in, Environmental Liability that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (F) any proposed action to be taken by any Loan Party or any of its Restricted Subsidiaries to modify current operations in a manner that would reasonably be expected to subject any Loan Party or any of its Restricted Subsidiaries to additional obligations or requirements under Environmental Laws that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(r) Post Closing Covenants.

(i) Issue at least $100,000,000 in aggregate original face amount of Series C Preferred Stock on or prior to April 12, 2021; provided, that, (A) such date shall be automatically extended until such time as the Borrower and the investors in such Series C Preferred Stock shall have made all filings required to be made pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and all waiting periods (and all extensions thereof) applicable to the issuance of such Series C Preferred Stock shall have been terminated or shall have expired and any required approvals or consents under the HSR Act have been obtained, and (B) Borrower shall promptly make all filings required to be made pursuant to the HSR Act and diligently and in good faith take all actions required to terminate any waiting periods and obtain any required approvals or consents under the HSR Act in connection with the Series C Preferred Stock Issuance, and

(ii) Comply, and cause its Subsidiaries to comply, with the obligations set forth in Schedule 5.01(r).

SECTION 5.02. Negative Covenants. So long as any Obligations (other than contingent indemnification obligations not yet due and payable of any Loan Party under any Loan Document) shall remain unpaid, any Letter of Credit is outstanding or any Lender shall have any Commitment or Issuing Bank a Letter of Credit Commitment hereunder, the Company shall not and shall cause each of its Restricted Subsidiaries not to:

(a) Liens. Create or suffer to exist, or permit any of its respective Restricted Subsidiaries to create or suffer to exist, any Lien on or with respect to any of its properties, whether now owned or hereafter acquired, or assign, or permit any of its Subsidiaries to assign, any right to receive income, other than the Liens permitted under the ABL Credit Facility Agreement as in effect on the date hereof.

(b) Mergers. Merge, amalgamate or consolidate with or into any Person, or permit any of its Restricted Subsidiaries (other than Immaterial Subsidiaries) to do so, provided, that, notwithstanding the foregoing (i) any Restricted Subsidiary of the Company that is a Loan Party may merge, amalgamate or consolidate with or into the Company (subject to clause (iv) below) or any other Loan Party, (ii) any Restricted Subsidiary of the Company that is not a Loan Party may merge, amalgamate or consolidate with or into the Company or any other Subsidiary of the Company, (iii) any Restricted Subsidiary may merge, amalgamate or consolidate with any other Person so long as such Restricted Subsidiary is the surviving or continuing corporation or a Person which shall become a Restricted Subsidiary substantially contemporaneously with such merger, amalgamation or consolidation is the surviving person (provided, that, if any such Person is a Loan Party, the surviving or continuing entity shall be a Loan Party or a Person which shall become a Loan Party substantially contemporaneously with such merger, amalgamation or consolidation), (iv) the Company may merge, amalgamate or consolidate with any other Person so long as the Company is the surviving corporation; provided, in each case, that no Event of Default shall have occurred and be continuing at the time of such proposed transaction or would result therefrom.

(c) Accounting Changes. Make or permit, or permit any of its Restricted Subsidiaries to make or permit, any change in accounting policies or reporting practices, except as required or permitted by GAAP.

(d) Debt. Create or suffer to exist, or permit any of its Restricted Subsidiaries to create or suffer to exist, any Debt other than Debt that is permitted under the ABL Credit Facility Agreement as in effect on the date hereof.

(e) Sales and Other Transactions. Dispose of, or permit any of its Restricted Subsidiaries to Dispose of any assets (including by an allocation of assets among newly divided limited liability companies pursuant to a "plan of division"), other than Dispositions permitted under the ABL Credit Facility Agreement as in effect on the date hereof.

(f) Payment Restrictions Affecting Subsidiaries. Directly or indirectly enter or permit a Restricted Subsidiary to enter into any agreement or arrangement limiting the ability of any of its Restricted Subsidiaries to declare or pay dividends or other distributions in respect of its equity interests or repay or prepay any Debt owed to, make loans or advances to, or otherwise transfer assets to or make Investments in, the Company or any Restricted Subsidiary of the Company (whether through a covenant restricting dividends, loans, asset transfers or investments, a financial covenant or otherwise), except (i) as provided in this Agreement, (ii) any agreement or instrument evidencing Debt existing on the Closing Date (as amended, modified, supplemented or replaced, or subject to a Permitted Refinancing, in each case to the extent such restrictions are not expanded in scope in any material respect), (iii) any agreement in effect at the time a Person first became a Restricted Subsidiary of the Company, so long as such agreement was not entered into solely in contemplation of such Person becoming a Subsidiary of the Company; (iv) specific property encumbered to secure payment of particular Debt to be sold pursuant to an executed agreement with respect to a Disposition or intellectual property license permitted hereunder; (v) restrictions set forth in the documents governing the Term Loan Debt, the ABL Credit Facility Debt, the Convertible Note Debt and in the documents governing other existing Debt as set forth on Schedule 5.02(d); (vi) by reason of customary provisions restricting assignments, licenses, subletting or other transfers contained in leases, licenses, joint venture agreements, purchase and sale or merger agreements and other similar agreements entered into in the ordinary course of business so long as such restrictions do not extend to assets other than those that are the subject of such lease, license or other agreement, as the case may be; or (vii) customary restrictions in connection with financings by Foreign Subsidiaries.

(g) Change in Nature of Business. Make, or permit any of its Restricted Subsidiaries to make, any material change in the nature of the business as carried on or as contemplated to be carried on by the Company and its Restricted Subsidiaries taken as a whole at the Closing Date.

(h) Dividends and Other Payments. Declare or make any dividend payment or other distribution of assets, properties, cash, rights, obligations or securities on account of any shares of any class of capital stock of the Company, or purchase, redeem or otherwise acquire for value (or permit any of its Restricted Subsidiaries to do so) any shares of any class of capital stock of the Company or any warrants, rights or options to acquire any such shares, now or hereafter outstanding (a "Restricted Payment"), except that the Company may make a Restricted Payment to the extent permitted under the ABL Credit Facility Agreement as in effect on the date hereof.

(i) Investments in Other Persons. Make, or permit any of its Restricted Subsidiaries to make, any Investment in any Person, except to the extent permitted under the ABL Credit Facility Agreement as in effect on the date hereof.

(j) Prepayments, Payments, Amendments, Etc. of Debt.

(i) Prepay, redeem, purchase, defease, convert into cash or otherwise satisfy prior to the scheduled maturity thereof in any manner, any public or secured or unsecured debt securities, any Term Loan Debt, any ABL Credit Facility Debt or Convertible Note Debt, or prepay, redeem, purchase, defease, or convert into cash, or otherwise satisfy prior to the scheduled maturity thereof in any manner or make any payment in violation of any subordination terms of, any Debt for Borrowed Money except to the extent permitted under the ABL Credit Facility Agreement as in effect on the date hereof or

(ii) (A) directly or indirectly, amend, modify, or change any of the terms or provisions of the Term Loan Documents except as permitted by the Term Loan Intercreditor Agreement, (B) directly or indirectly, amend, modify or change in any manner adverse to the rights or interests of Agent or the Lenders any term or condition of any Debt subordinated in right of payment to any of the Obligations, or (C) directly or indirectly, amend, modify or change the Convertible Note Documents, the Series B Preferred Stock, the Series C Preferred Stock, or after the issuance thereof any Debt permitted to be issued under Section 5.02(d)(xxx) except to the extent permitted under the ABL Credit Facility Agreement as in effect on the date hereof.

SECTION 5.03. Financial Covenants.

(a) Fixed Charge Coverage Ratio. So long as any Fixed Charge Coverage Ratio Trigger Event shall have occurred and be continuing, the Company and its Restricted Subsidiaries on a Consolidated basis will maintain a Fixed Charge Coverage Ratio, for the four fiscal quarters most recently ended as of the fiscal quarter for which financial statements have been delivered pursuant to Section 5.01, of not less than 1.00 to 1.00.

(b) Reserved.

(c) Minimum Liquidity. Borrower shall on the last day of each fiscal quarter have Minimum Liquidity of not less than $80,000,000, tested on the receipt by Agent of the financial statements required pursuant to Section 5.01(h)(i) and (ii), as applicable, with respect to such fiscal quarter.

SECTION 6.01. Events of Default. If any of the following events ("Events of Default") shall occur and be continuing:

(a) (i) Borrower shall fail to pay any reimbursement obligation in respect of a Letter of Credit when the same becomes due and payable; (ii) Borrower shall fail to pay any interest on any Letter of Credit Obligations or fees within three (3) Business Days after the same becomes due and payable; or (iii) any Loan Party shall fail to make any other payment under any Loan Document, within three (3) Business Days after notice of such failure is given by the Agent or any Lender to the Company; or

(b) Any representation or warranty made by Borrower herein or by any Loan Party in any Loan Document to which it is a party or by Borrower (or any of its officers) in a certificate delivered under or in connection with any Loan Document shall prove to have been incorrect in any material respect when made; or

(c) (i) The Company or Restricted Subsidiary shall fail to perform or observe any term, covenant or agreement contained in Sections 5.01(d), 5.01(e), clauses (i) through (vii) and (ix) of 5.01(h), 5.02 or 5.03 hereof, or (ii) any Loan Party or any Subsidiary of any Loan Party shall fail to perform or observe any other term, covenant or agreement contained in any Loan Document on its part to be performed or observed if such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Company by the Agent; or

(d) The Company or any of its Restricted Subsidiaries shall fail to pay any principal of or premium or interest on the Term Loan Debt, the ABL Credit Facility Debt or any other Debt (excluding Debt outstanding hereunder of the Company or such Restricted Subsidiary (as the case may be)) that is outstanding in a principal, or in the case of Swap Obligations, net amount of, at least (i) $25,000,000 in the aggregate in the case of Debt of the Borrower or any of its Restricted Subsidiaries that are domestic Subsidiaries and (ii) $50,000,000 in the aggregate in the case of Restricted Subsidiaries that are Foreign Subsidiaries, when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; or any other event shall occur or condition shall exist under any agreement or instrument relating to any such Debt and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to cause, or to permit the holders or beneficiaries of such Debt (or a trustee or agent on behalf of such holders or beneficiaries) to cause, with the giving of notice if required, such Debt to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Debt to be made, in each case prior to the stated maturity of such Debt; or any such Debt shall be declared to be due and payable, or required to be prepaid or redeemed (other than by a regularly scheduled required prepayment or redemption), purchased or defeased, or an offer to prepay, redeem, purchase or defease such Debt shall be required to be made, in each case prior to the stated maturity thereof; or

(e) Borrower or any of its Restricted Subsidiaries (other than Immaterial Subsidiaries) shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against Borrower, any Loan Party or any Material Subsidiary seeking to adjudicate it as bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief or the appointment of a

receiver, interim receiver, monitor, trustee, custodian or other similar official for it or for any substantial part of its property and, in the case of any such proceeding instituted against it (but not instituted by it), either such proceeding shall remain undismissed or unstayed for a period of sixty (60) days, or any of the actions sought in such proceeding (including, without limitation, the entry of an order for relief against, or the appointment of a receiver, trustee, custodian or other similar official for, it or for any substantial part of its property) shall occur; or Borrower, any Loan Party or any Material Subsidiary shall take any corporate action to authorize any of the actions set forth above in this subsection (e); provided, that, in the case of any Foreign Subsidiary, such event, individually, or when aggregated with all such events occurring after the Closing Date, would reasonably be expected to have a Material Adverse Effect; or

(f) Other than with respect to the matters set forth on Schedule 6.01(f) (but solely to the extent that neither the Borrower nor any of its Material Subsidiaries (excluding Subsidiaries which would be permitted, at all times while the applicable judgment remains outstanding, to be designated as Immaterial Subsidiaries, without regard for if such designation has been made) has any obligation with respect to judgments relating to items listed on Schedule 6.01(f), judgments or orders for the payment of money in excess of $25,000,000 (or its US Dollar equivalent) in the aggregate shall be rendered against the Company or any of its Subsidiaries and either (i) enforcement proceedings shall have been commenced by any creditor upon such judgment or order or (ii) there shall be any period of thirty (30) consecutive days during which a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect; or

(g) A Change of Control shall occur; or

(h) Any ERISA Event shall have occurred with respect to a Plan and such ERISA Event could reasonably be expected to result in a Material Adverse Effect; or any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan in an amount that, when aggregated with all other amounts required to be paid to Multiemployer Plans by the Loan Parties and the ERISA Affiliates as Withdrawal Liability (determined as of the date of such notification), exceeds $25,000,000; or

(i) Any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that it has incurred Withdrawal Liability to such Multiemployer Plan in an amount that, when aggregated with all other amounts required to be paid to Multiemployer Plans by the Loan Parties and the ERISA Affiliates as Withdrawal Liability (determined as of the date of such notification), exceeds $25,000,000; or

(j) Any Loan Party or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is insolvent or is being terminated, within the meaning of Title IV of ERISA, or has been determined to be in “endangered” or “critical” status within the meaning of Section 432 of the Code or Section 305 of ERISA, and as a result of such insolvency or termination or determination, the aggregate annual contributions of the Loan Parties and the ERISA Affiliates to all Multiemployer Plans that are then insolvent, being terminated or in endangered or critical status have been or will be increased over the amounts contributed to such Multiemployer Plans for the plan years of such Multiemployer Plans immediately preceding the plan year in which such insolvency or termination or determination, occurs by an amount exceeding $25,000,000; or

(k) Any provision of any Collateral Document material to the substantial realization of the rights of the Lenders under the Collateral Documents taken as a whole, or any provision of any other Loan Document after delivery thereof shall for any reason cease to be valid and binding on or enforceable against any Loan Party party to it, or any such Loan Party shall so state in writing; or

(l) Any Collateral Document or financing statement after delivery thereof shall for any reason (other than pursuant to the terms thereof) cease to create a valid and perfected first priority lien on and security interest in any of the Letter of Credit Priority Collateral and with respect to any Collateral other than Letter of Credit Priority Collateral, such failure shall remain unremedied for thirty (30) days after the earlier of (A) an officer of the Borrower becoming aware of such failure and (B) written notice thereof being given to the Borrower by the Agent.

then, and in any such event, the Agent (i) shall at the request, or may with the consent, of the Required Lenders, by notice to the Company, declare the obligation of Issuing Bank to issue Letters of Credit to be terminated, whereupon the same shall forthwith terminate, and (ii) shall at the request, or may with the consent, of the Required Lenders, by notice to the Company, declare the Obligations, including all interest thereon and all other amounts payable under this Agreement to be forthwith due and payable, whereupon the Obligations, all such interest and all such amounts shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by Borrower and each other Loan Party; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to Borrower under the Federal Bankruptcy Code, (A) the obligation of Issuing Bank to issue Letters of Credit shall automatically be terminated and (B) the Letter of Credit Obligations, all such interest and all such amounts shall automatically become and be due and payable, without presentment, demand, protest or any notice of any kind, all of which are hereby expressly waived by Borrower and each other Loan Party.

SECTION 6.02. Actions in Respect of the Letters of Credit upon Default. If any Event of Default shall have occurred and be continuing, the Agent may, or shall at the request, of the Required Lenders, irrespective of whether it is taking any of the actions described in Section 6.01, make demand upon the Borrower to, and forthwith upon such demand the Borrower will, (a) pay to the Agent on behalf of the Lenders in same day funds at the Agent's office designated in such demand, for deposit in the LC Cash Collateral Account, any amount required so that the LC Cash Collateral is not less than one hundred three percent (103%) of the Letter of Credit Obligations or (b) make such other arrangements in respect of the outstanding Letters of Credit as shall be acceptable to the Agent; provided, however, that in the event of an actual or deemed entry of an order for relief with respect to the Company under the Federal Bankruptcy Code, any amount required so that the LC Cash Collateral is not less than one hundred three percent (103%) of the Letter of Credit Obligations shall be immediately due and payable to the Agent for the account of the Lenders without notice to or demand upon the Borrower, which are expressly waived by the Borrower, to be held in the LC Cash Collateral Account.

SECTION 6.03. [Reserved].

SECTION 6.04. Application of Funds.

(a) Payments made by Borrower and other Loan Parties hereunder shall be applied (i) first, as specifically required hereby; (ii) second, to Obligations then due and owing; (iii) third, to other Obligations specified by Borrower; and (iv) fourth, as determined by Agent in its discretion.

(b) Notwithstanding anything to the contrary set forth in any Loan Document, during the occurrence and continuance of an Event of Default, any amounts received by the Agent on account of the Obligations, whether received from or on account of any Loan Party, or in respect of any Collateral, setoff or otherwise, shall be applied by the Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Agent and amounts payable under Article II) payable to the Agent in its capacity as such;

Second, to payment of all amounts owing to Agent in respect of Letter of Credit Obligations and participations that a Defaulting Lender has failed to settle or fund;

Third, to payment of that portion of the Obligations constituting fees, indemnities and other amounts payable to the Issuing Bank (including fees, charges and disbursements of counsel to the Issuing Bank payable under the Loan Documents and amounts payable under Article II);

Fourth, to payment of that portion of the Obligations constituting fees, indemnities and other amounts (other than principal, interest, Letter of Credit fees and commitment fees) payable to the Lenders (including fees, charges and disbursements of counsel to the respective Lenders payable under the Loan Documents and amounts payable under Article II (in each case, other than fees, indemnities and other amounts) ratably among them in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to payment of that portion of the Obligations constituting accrued and unpaid Letter of Credit fees, unreimbursed amounts under Letters of Credit and other Obligations arising under the Loan Documents, ratably among the Lenders in proportion to the respective amounts described in this clause Fifth payable to them;

Sixth, to the Agent for the account of the Issuing Bank, to Cash Collateralize that portion of Letter of Credit Obligations comprising the aggregate undrawn amount of Letters of Credit,;

Ninth, to payment of all other Obligations ratably among the Lenders and the Issuing Bank in proportion to the respective amounts described in this clause Ninth held by them; and

Last, the balance, if any, after all of the Obligations have been paid in full in cash, to the Borrower or as otherwise required by law.

Subject to Section 6.02, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to Section 6.04(a) or clause Sixth above, shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as cash collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above.

Amounts shall be applied to payment of each category of Obligations only after full payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. The allocations set forth in this Section are solely to determine the rights and priorities among Secured Parties, and may be changed by agreement of the affected Secured Parties, without the consent of any Loan Party. This Section is not for the benefit of or enforceable by any Loan Party, and each Loan Party irrevocably waives the right to direct the application of any payments or Collateral proceeds subject to this Section.

ARTICLE VII
GUARANTY

SECTION 7.01. Guaranty; Limitation of Liability.

(a) Borrower and each Subsidiary Guarantor, jointly and severally, hereby absolutely, unconditionally and irrevocably guarantees the punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Obligations of each other Loan Party and each other Subsidiary of the Company now or hereafter existing

under or in respect of the Loan Documents (including, without limitation, any extensions, modifications, substitutions, amendments or renewals of any or all of the foregoing obligations), whether direct or indirect, absolute or contingent, and whether for principal, interest, premiums, fees, indemnities, contract causes of action, costs, expenses or otherwise, exclusive of Excluded Swap Obligations (such obligations being the "Guaranteed Obligations"), and agrees to pay any and all expenses (including, without limitation, reasonable fees and expenses of counsel) incurred by the Agent or any other Lender in enforcing any rights under this Guaranty or any other Loan Document. Without limiting the generality of the foregoing, each Guarantor's liability shall extend to all amounts that constitute part of the Guaranteed Obligations and would be owed by any other Loan Party or Subsidiary of the Company, as applicable, to the Agent or any Lender under or in respect of the Loan Documents but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party or Subsidiary, as the case may be.

(b) Each Guarantor, and by its acceptance of this Guaranty, the Agent and each other Lender, hereby confirms that it is the intention of all such Persons that this Guaranty and the obligations of each Subsidiary Guarantor hereunder not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Voidable Transfer Act, Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Guaranty and the obligations of such Guarantor hereunder. To effectuate the foregoing intention, the Agent, the Lenders and the Guarantors hereby irrevocably agree that the obligations of such Guarantor under this Guaranty at any time shall be limited to the maximum amount as will result in the obligations of such Guarantor under this Guaranty not constituting a fraudulent transfer or conveyance.

(c) Each Subsidiary Guarantor hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to the Agent or any Lender under this Guaranty or any guaranty supplement of the Guaranteed Obligations, such Subsidiary Guarantor will contribute, to the maximum extent permitted by law, such amounts to each other Subsidiary Guarantor and each other guarantor so as to maximize the aggregate amount paid to the Agent and the Lenders under or in respect of the Loan Documents.

SECTION 7.02. Guaranty Absolute. Each Guarantor guarantees that the applicable Guaranteed Obligations will be paid strictly in accordance with the terms of the Loan Documents, regardless of any law, regulation or order now or hereafter in effect in any jurisdiction affecting any of such terms or the rights of the Agent or any Lender with respect thereto. The obligations of each Guarantor under or in respect of this Guaranty are independent of the applicable Guaranteed Obligations or any other obligations of any other Loan Party under or in respect of the Loan Documents, and a separate action or actions may be brought and prosecuted against each Guarantor to enforce this Guaranty, irrespective of whether any action is brought against Borrower or any other Loan Party or whether Borrower or any other Loan Party is joined in any such action or actions. The liability of each Guarantor under this Guaranty shall be irrevocable, absolute and unconditional irrespective of, and each Guarantor hereby irrevocably waives any defenses it may now have or hereafter acquire in any way relating to, any or all of the following:

(a) any lack of validity or enforceability of any Loan Document or any agreement or instrument relating thereto;

(b) any change in the time, manner or place of payment of, or in any other term of, all or any of the applicable Guaranteed Obligations or any other obligations of any other Loan Party under or in respect of the Loan Documents, or any other amendment or waiver of or any consent to departure from any Loan Document, including, without limitation, any increase in the applicable Guaranteed Obligations resulting from the extension of additional credit to any Loan Party or any of its Subsidiaries or otherwise;

(c) any taking, exchange, release or non-perfection of any Collateral or any other collateral, or any taking, release or amendment or waiver of, or consent to departure from, any other guaranty, for all or any of the applicable Guaranteed Obligations;

(d) any manner of application of Collateral or any other collateral, or proceeds thereof, to all or any of the applicable Guaranteed Obligations or any manner of sale or other Disposition of any Collateral or any other collateral for all or any of the applicable Guaranteed Obligations or any other obligations of any Loan Party under the Loan Documents or any other assets of any Loan Party or any of its Subsidiaries;

(e) any change, restructuring or termination of the corporate structure or existence of any Loan Party or any of its Subsidiaries;

(f) any failure of the Agent or any Lender to disclose to any Loan Party any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party now or hereafter known to the Agent or such Lender (each Guarantor waiving any duty on the part of the Agent and the Lenders to disclose such information);

(g) the failure of any other Person to execute or deliver this Agreement, any Guaranty Supplement or any other guaranty or agreement or the release or reduction of liability of any Guarantor or other guarantor or surety with respect to the applicable Guaranteed Obligations; or

(h) any other circumstance (including, without limitation, any statute of limitations) or any existence of or reliance on any representation by the Agent or any Lender that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any other guarantor or surety.

This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of any of the applicable Guaranteed Obligations is rescinded or must otherwise be returned by the Agent or any Lender or any other Person upon the insolvency, bankruptcy or reorganization of the Borrower or any other Loan Party or otherwise, all as though such payment had not been made.

SECTION 7.03. Waivers and Acknowledgments.

(a) Each Guarantor hereby unconditionally and irrevocably waives promptness, diligence, notice of acceptance, presentment, demand for performance, notice of nonperformance, default, acceleration, protest or dishonor and any other notice with respect to any of the applicable Guaranteed Obligations and this Guaranty and any requirement that the Agent or any Lender protect, secure, perfect or insure any Lien or any property subject thereto or exhaust any right or take any action against any Loan Party or any other Person or any Collateral.

(b) Each Guarantor hereby unconditionally and irrevocably waives any right to revoke this Guaranty and acknowledges that this Guaranty is continuing in nature and applies to all applicable Guaranteed Obligations whether existing now or in the future.

(c) Each Guarantor hereby unconditionally and irrevocably waives (i) any defense arising by reason of any claim or defense based upon an election of remedies by the Agent or any Lender that in any manner impairs, reduces, releases or otherwise adversely affects the subrogation, reimbursement, exoneration, contribution or indemnification rights of such Guarantor or other rights of such Guarantor to proceed against any of the other Loan Parties, any other guarantor or any other Person or any Collateral and (ii) any defense based on any right of set-off or counterclaim against or in respect of the obligations of such Guarantor hereunder.

(d) Each Guarantor hereby unconditionally and irrevocably waives any duty on the part of the Agent or any Lender to disclose to such Guarantor any matter, fact or thing relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any other Loan Party or any of its Subsidiaries now or hereafter known by the Agent or such Lender.

(e) Each Guarantor acknowledges that it will receive substantial direct and indirect benefits from the financing arrangements contemplated by the Loan Documents and that the waivers set forth in Section 7.02 and this Section 7.03 are knowingly made in contemplation of such benefits.

SECTION 7.04. Subrogation. Each Guarantor hereby unconditionally and irrevocably agrees not to exercise any rights that it may now have or hereafter acquire against Borrower, any other Loan Party or any other insider guarantor that arise from the existence, payment, performance or enforcement of such Guarantor's obligations under or in respect of this Guaranty or any other Loan Document, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification and any right to participate in any claim or remedy of the Agent or any Lender against Borrower, any other Loan Party or any other guarantor of some or all of the Guaranteed Obligations or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, including, without limitation, the right to take or receive from Borrower, any other Loan Party or any other insider guarantor, directly or indirectly, in cash or other property or by set-off or in any other manner, payment or security on account of such claim, remedy or right, unless and until all of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty shall have been paid in full in cash, all Letters of Credit shall have expired or been terminated and the Commitments shall have expired or been terminated. If any amount shall be paid to any Guarantor in violation of the immediately preceding sentence at any time prior to the latest of (a) the payment in full in cash of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty, (b) the Termination Date and (c) the latest date of expiration or termination of all Letters of Credit, such amount shall be received and held in trust for the benefit of the Agent and the Lenders, shall be segregated from other property and funds of such Guarantor and shall forthwith be paid or delivered to the Agent in the same form as so received (with any necessary endorsement or assignment) to be credited and applied to the applicable Guaranteed Obligations and all other amounts payable under this Guaranty by such Guarantor, whether matured or unmatured, in accordance with the terms of the Loan Documents, or to be held as Collateral for any applicable Guaranteed Obligations or other amounts payable under this Guaranty by such Guarantor thereafter arising. If (i) any Guarantor shall make payment to the Agent or any Lender of all or any part of the applicable Guaranteed Obligations, (ii) all of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty by such Guarantor shall have been paid in full in cash, (iii) the Termination Date shall have occurred and (iv), all Letters of Credit shall have expired or been terminated, the Agent and the Lenders will, at such Guarantor's request and expense, execute and deliver to such Guarantor appropriate documents, without recourse and without representation or warranty, necessary to evidence the transfer by subrogation to such Guarantor of an interest in the applicable Guaranteed Obligations resulting from such payment made by such Guarantor pursuant to this Guaranty.

SECTION 7.05. Guaranty Supplements. Upon the execution and delivery by any Person of a guaranty supplement in substantially the form of Exhibit C hereto (each, a "Guaranty Supplement"), (a) such Person shall be referred to as an "Additional Guarantor" and shall become and be a Guarantor hereunder, and each reference in this Guaranty to a "Guarantor" shall also mean and be a reference to such Additional Guarantor, and (b) each reference herein to "this Guaranty," "hereunder," "hereof" or words of like import referring to this Guaranty, and each reference in any other Loan Document to the "Guaranty," "thereunder," "thereof" or words of like import referring to this Guaranty, shall mean and be a reference to this Guaranty as supplemented by such Guaranty Supplement.

SECTION 7.06. Subordination.

Each Guarantor hereby subordinates any and all debts, liabilities and other obligations owed to such Guarantor by each other Loan Party (the "Subordinated Obligations") to the applicable Guaranteed Obligations to the extent and in the manner hereinafter set forth in this Section 7.06:

(a) Prohibited Payments, Etc. Except during the continuance of an Event of Default, each Guarantor may receive regularly scheduled payments from any other Loan Party on account of the Subordinated Obligations. After the occurrence and during the continuance of any Event of Default, however, unless the Required Lenders otherwise agree, no Guarantor shall demand, accept or take any action to collect any payment on account of the Subordinated Obligations.

(b) Prior Payment of Guaranteed Obligations. In any proceeding under any Bankruptcy Law relating to any other Loan Party, each Guarantor agrees that the Lenders shall be entitled to receive payment in full in cash of all applicable Guaranteed Obligations (including all interest and expenses accruing after the commencement of a proceeding under any Bankruptcy Law, whether or not constituting an allowed claim in such proceeding ("Post-Petition Interest")) before such Guarantor receives payment of any Subordinated Obligations.

(c) Turn-Over. After the occurrence and during the continuance of any Event of Default, each Guarantor shall, if the Agent (with the consent or at the direction of the Required Lenders) so requests, collect, enforce and receive payments on account of the Subordinated Obligations as trustee for the Agent and the Lenders and deliver such payments to the Agent on account of the applicable Guaranteed Obligations (including all Post-Petition Interest), together with any necessary endorsements or other instruments of transfer, but without reducing or affecting in any manner the liability of such Guarantor under the other provisions of this Guaranty.

(d) Agent Authorization. After the occurrence and during the continuance of any Event of Default, the Agent is authorized and empowered (but without any obligation to so do), in its discretion, (i) in the name of each Guarantor, to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and to apply any amounts received thereon to the applicable Guaranteed Obligations (including any and all Post-Petition Interest), and (ii) to require each Guarantor (A) to collect and enforce, and to submit claims in respect of, the Subordinated Obligations and (B) to pay any amounts received on such obligations to the Agent for application to the applicable Guaranteed Obligations (including any and all Post-Petition Interest).

SECTION 7.07. Continuing Guaranty; Assignments. This Guaranty is a continuing guaranty and shall (a) except as provided in the next succeeding sentence, remain in full force and effect until the latest of (i) the payment in full in cash of the applicable Guaranteed Obligations and all other amounts payable under this Guaranty, (ii) the Termination Date and (iii) the latest date of expiration or termination of all Letters of Credit, (b) be binding upon each Guarantor, its successors and assigns and (c) inure to the benefit of and be enforceable by the Agent and the Lenders and their successors, permitted transferees and permitted assigns. Upon the sale of a Guarantor or any or all of the assets of any Guarantor to the extent permitted in accordance with the terms of the Loan Documents or upon such Guarantor otherwise ceasing to be a Subsidiary of the Company organized under the laws of a state of the United States of America without violation of the terms of this Agreement, such Guarantor (and its Subsidiaries) or such assets shall be automatically released from this Guaranty or any Guaranty Supplement, and all pledges and security interests of the equity of such Guarantor or any Subsidiary of such Guarantor and all other pledges and security interests in the assets of such Guarantor and any of its Subsidiaries shall be released as provided in Section 9.16. Without limiting the generality of clause (c) above, the Agent or any Lender

may assign or otherwise transfer all or any portion of its rights and obligations under this Agreement (including, without limitation, all or any portion of its Commitments, the Letter of Credit Obligations owing to it and any Note or Notes held by it) to any other Person, and such other Person shall thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise, in each case as and to the extent provided in Section 9.08. No Guarantor shall have the right to assign its rights hereunder or any interest herein without the prior written consent of the Lenders.

SECTION 7.08. Qualified ECPs. Each Loan Party that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this Section 7.08 voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until full payment of all Guaranteed Obligations. Each Loan Party intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Loan Party for all purposes of the Commodity Exchange Act.

ARTICLE VIII
THE AGENT

SECTION 8.01. Authorization and Action.

(a) Pursuant to Section 8.07, each Lender hereby irrevocably appoints Bank of America to act on its behalf as the Agent hereunder and under the other Loan Documents, including the Term Loan Intercreditor Agreement and the Letter of Credit Facility Intercreditor Agreement, and authorizes the Agent to enter into this Agreement and the other Loan Documents to which it is a party, including the Term Loan Intercreditor Agreement and the Letter of Credit Facility Intercreditor Agreement, to take such actions on its behalf and to exercise such powers as are delegated to the Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto.

(b) Each of the Lenders hereby agrees that the Agent in its various capacities under the Term Loan Intercreditor Agreement may take such actions on its behalf as is contemplated by the terms of the Term Loan Intercreditor Agreement. Each Lender hereunder (i) consents to any subordination of Liens provided for in the Term Loan Intercreditor Agreement, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Term Loan Intercreditor Agreement, (iii) authorizes and instructs the Agent to enter into the Term Loan Intercreditor Agreement as Agent and on behalf of such Lender and (iv) agrees that the Agent may take such actions on behalf of such Lender as is contemplated by the terms of the Term Loan Intercreditor Agreement.

(c) Each of the Lenders hereby agrees that the Agent in its various capacities under the Letter of Credit Facility Intercreditor Agreement may take such actions on its behalf as is contemplated by the terms of the Letter of Credit Facility Intercreditor Agreement. Each Lender hereunder (i) consents to any subordination of Liens provided for in the Letter of Credit Facility Intercreditor Agreement, (ii) agrees that it will be bound by and will take no actions contrary to the provisions of the Letter of Credit Facility Intercreditor Agreement, (iii) authorizes and instructs the Agent to enter into the Letter of Credit Facility Intercreditor Agreement as Agent and on behalf of such Lender and (iv) agrees that the Agent may take such actions on behalf of such Lender as is contemplated by the terms of the Letter of Credit Facility Intercreditor Agreement.

(d) The provisions of this Article are solely for the benefit of the Agent, the Issuing Bank, and the Lenders, and neither Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions.

SECTION 8.02. Agent Individually.

(a) The Person serving as the Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrower or any of their Subsidiaries or other Affiliate thereof as if such Person were not the Agent hereunder and without any duty to account therefor to the Lenders.

(b) Each Lender understands that the Person serving as Agent, acting in its individual capacity, and its Affiliates (collectively, the "Agent's Group") are engaged in a wide range of financial services and businesses (including investment management, financing, securities trading, corporate and investment banking and research) (such services and businesses are collectively referred to in this Section 8.02 as "Activities") and may engage in the Activities with or on behalf of one or more of the Loan Parties or their respective Affiliates. Furthermore, the Agent's Group may, in undertaking the Activities, engage in trading in financial products or undertake other investment businesses for its own account or on behalf of others (including the Loan Parties and their Affiliates and including holding, for its own account or on behalf of others, equity, debt and similar positions in the Borrower, another Loan Party or their respective Affiliates), including trading in or holding long, short or derivative positions in securities, loans or other financial products of one or more of the Loan Parties or their Affiliates. Each Lender understands and agrees that in engaging in the Activities, the Agent's Group may receive or otherwise obtain information concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) which information may not be available to any of the Lenders that are not members of the Agent's Group. None of the Agent nor any member of the Agent's Group shall have any duty to disclose to any Lender or use on behalf of the Lenders, and shall not be liable for the failure to so disclose or use, any information whatsoever about or derived from the Activities or otherwise (including any information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Loan Party or any Affiliate of any Loan Party) or to account for any revenue or profits obtained in connection with the Activities, except that the Agent shall deliver or otherwise make available to each Lender such documents as are expressly required by any Loan Document to be transmitted by the Agent to the Lenders.

(c) Each Lender further understands that there may be situations where members of the Agent's Group or their respective customers (including the Loan Parties and their Affiliates) either now have or may in the future have interests or take actions that may conflict with the interests of any one or more of the Lenders (including the interests of the Lenders hereunder and under the other Loan Documents). Each Lender agrees that no member of the Agent's Group is or shall be required to restrict its activities as a result of the Person serving as Agent being a member of the Agent's Group, and that each member of the Agent's Group may undertake any Activities without further consultation with or notification to any Lender. None of (i) this Agreement nor any other Loan Document, (ii) the receipt by the Agent's Group of information (including Borrower Information) concerning the Loan Parties or their Affiliates (including information concerning the ability of the Loan Parties to perform their respective Obligations hereunder and under the other Loan Documents) nor (iii) any other matter shall give rise to any fiduciary, equitable or contractual duties (including, without limitation, any duty of trust or confidence) owing by the Agent or any member of the Agent's Group to any Lender including any such duty that would prevent or restrict the Agent's Group from acting on behalf of customers (including the Loan Parties or their Affiliates) or for its own account.

SECTION 8.03. Duties of Agent; Exculpatory Provisions.

(a) The Agent's duties hereunder and under the other Loan Documents are solely ministerial and administrative in nature and the Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, (i) the Agent shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing, (ii) the Agent shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided, that, the Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Agent or any of its Affiliates to liability or that is contrary to any Loan Document or applicable law and (iii) the Agent 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 Company or any of its Affiliates that is communicated to or obtained by the Person serving as the Agent or any of its Affiliates in any capacity.

(b) The Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 9.01 or 9.03) or (ii) in the absence of its own gross negligence or willful misconduct. The Agent shall be deemed not to have knowledge of any Default or the event or events that give or may give rise to any Default unless and until the Company or any Lender shall have given notice to the Agent describing such Default and such event or events.

(c) Neither the Agent nor any member of the Agent's Group shall be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty, representation or other information made or supplied in or in connection with this Agreement, any other Loan Document or the information presented to the other Lenders by the Company, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith or the adequacy, accuracy and/or completeness of the information contained therein, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or the perfection or priority of any Lien or security interest created or purported to be created by the Collateral Documents or (v) the satisfaction of any condition set forth in Article III or elsewhere herein, other than (but subject to the foregoing clause (ii)) to confirm receipt of items expressly required to be delivered to the Agent.

(d) Nothing in this Agreement or any other Loan Document shall require the Agent or any of its Related Parties to carry out any "know your customer" or other checks in relation to any Person on behalf of any Lender and each Lender confirms to the Agent that it is solely responsible for any such checks it is required to carry out and that it may not rely on any statement in relation to such checks made by the Agent or any of its Related Parties.

SECTION 8.04. Reliance by Agent. The Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the issuance of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender, the Agent may presume that such condition is satisfactory to such Lender unless an officer of the Agent responsible for the transactions contemplated hereby shall have received notice to the contrary from such Lender prior to the issuance of such Letter of Credit, and in the case of a participation, such Lender shall not have made available to the Agent such Lender's ratable portion of such participation. The Agent may consult with legal counsel (who may be counsel for the Company or any other Loan Party), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05. Indemnification.

(a) Each Lender severally agrees to indemnify the Agent (to the extent not promptly reimbursed by the Company) from and against such Lender's Ratable Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against the Agent in any way relating to or arising out of this Agreement or any action taken or omitted by the Agent under this Agreement (collectively, the "Indemnified Costs"), provided, that, no Lender shall be liable for any portion of the Indemnified Costs resulting from the Agent's gross negligence or willful misconduct as found in a non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse the Agent promptly upon demand for its ratable share of any reasonable out-of-pocket expenses (including reasonable counsel fees) incurred by the Agent in connection with the preparation, execution, delivery, administration, modification, amendment or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement, to the extent that the Agent is not promptly reimbursed for such expenses by the Company. In the case of any investigation, litigation or proceeding giving rise to any Indemnified Costs, this Section 8.05 applies whether any such investigation, litigation or proceeding is brought by the Agent, any Lender or a third party.

(b) Each Lender severally agrees to indemnify the Issuing Bank (to the extent not promptly reimbursed by the Company) from and against such Lender's Ratable Share of any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever that may be imposed on, incurred by, or asserted against any such Issuing Bank in any way relating to or arising out of the LC Related Documents or any action taken or omitted by such Issuing Bank hereunder or in connection herewith; provided, however, that no Lender shall be liable for any portion of such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements resulting from such Issuing Bank's gross negligence or willful misconduct as found in a non-appealable judgment by a court of competent jurisdiction. Without limitation of the foregoing, each Lender agrees to reimburse any such Issuing Bank promptly upon demand for its Ratable Share of any costs and expenses (including, without limitation, fees and expenses of counsel) payable by the Company under Section 9.04, to the extent that such Issuing Bank is not promptly reimbursed for such costs and expenses by the Company.

(c) The failure of any Lender to reimburse the Agent or any Issuing Bank promptly upon demand for its ratable share of any amount required to be paid by the Lenders to the Agent as provided herein shall not relieve any other Lender of its obligation hereunder to reimburse the Agent or any Issuing Bank for its ratable share of such amount, but no Lender shall be responsible for the failure of

any other Lender to reimburse the Agent or any Issuing Bank for such other Lender's ratable share of such amount. Without prejudice to the survival of any other agreement of any Lender hereunder, the agreement and obligations of each Lender contained in this Section 8.05 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes. Each of the Agent and Issuing Bank agrees to return to the Lenders their respective ratable shares of any amounts paid under this Section 8.05 that are subsequently reimbursed by the Company.

SECTION 8.06. Delegation of Duties. The Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more co-agents or sub-agents appointed by the Agent. The Agent and any such co-agent or sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. Each such co-agent and sub-agent and the Related Parties of the Agent and each such co-agent and sub-agent (including their respective Affiliates in connection with the syndication of the Letter of Credit Facility) shall be entitled to the benefits of all provisions of this Article VIII and Article IX (as though such co-agents and sub-agents were the "Agent" under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 8.07. Resignation of Agent.

(a) The Agent may at any time give notice of its resignation to the Lenders and the Company. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Company, to appoint a successor, which shall be a bank with an office in New York, New York, or an Affiliate of any such bank with an office in New York, New York. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation (such thirty (30) day period, the "Lender Appointment Period"), then the retiring Agent may on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above. In addition and without any obligation on the part of the retiring Agent to appoint, on behalf of the Lenders, a successor Agent, the retiring Agent may at any time upon or after the end of the Lender Appointment Period notify the Company and the Lenders that no qualifying Person has accepted appointment as successor Agent and the effective date of such retiring Agent's resignation. Upon the resignation effective date established in such notice and regardless of whether a successor Agent has been appointed and accepted such appointment, the retiring Agent's resignation shall nonetheless become effective and (i) the retiring Agent shall be discharged from its duties and obligations as Agent hereunder and under the other Loan Documents and (ii) all payments, communications and determinations provided to be made by, to or through the Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders appoint a successor Agent as provided for above in this paragraph. Upon the acceptance of a successor's appointment as Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties as Agent of the retiring (or retired) Agent, and the retiring Agent shall be discharged from all of its duties and obligations as Agent hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this paragraph). The fees payable by the Company to a successor Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Company and such successor. After the retiring Agent's resignation hereunder and under the other Loan Documents, the provisions of this Article and Section 9.04 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Agent was acting as Agent.

(b) Any resignation pursuant to this Section by a Person acting as Agent shall, unless such Person shall notify the Company and the Lenders otherwise, also act to relieve such Person and its Affiliates of any obligation to issue new, or extend existing, Letters of Credit where such issuance or extension is to occur on or after the effective date of such resignation. Upon the acceptance of a

successor's appointment as Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank, (ii) the retiring Issuing Bank shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents arising on or after the effective date of such successor's appointment, and (iii) the successor Issuing Bank shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangement satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

SECTION 8.08. Non-Reliance on Agent and Other Lenders.

(a) Each Lender confirms to the Agent, each other Lender and each of their respective Related Parties that it (i) possesses (individually or through its Related Parties) such knowledge and experience in financial and business matters that it is capable, without reliance on the Agent, any other Lender or any of their respective Related Parties, of evaluating the merits and risks (including tax, legal, regulatory, credit, accounting and other financial matters) of (x) entering into this Agreement, (y) providing the extensions of credit hereunder and under the other Loan Documents and (z) in taking or not taking actions hereunder and thereunder, (ii) is financially able to bear such risks and (iii) has determined that entering into this Agreement and making extensions of credit hereunder and under the other Loan Documents is suitable and appropriate for it.

(b) Each Lender acknowledges that (i) it is solely responsible for making its own independent appraisal and investigation of all risks arising under or in connection with this Agreement and the other Loan Documents, (ii) that it has, independently and without reliance upon the Agent, any other Lender or any of their respective Related Parties, made its own appraisal and investigation of all risks associated with, and its own credit analysis and decision to enter into, this Agreement based on such documents and information, as it has deemed appropriate and (iii) it will, independently and without reliance upon the Agent, any other Lender or any of their respective Related Parties, continue to be solely responsible for making its own appraisal and investigation of all risks arising under or in connection with, and its own credit analysis and decision to take or not take action under, this Agreement and the other Loan Documents based on such documents and information as it shall from time to time deem appropriate, which may include, in each case:

(A) the financial condition, status and capitalization of the Company and each other Loan Party;

(B) the legality, validity, effectiveness, adequacy or enforceability of this Agreement and each other Loan Document and any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document;

(C) determining compliance or non-compliance with any condition hereunder to the making of the issuance of a Letter of Credit and the form and substance of all evidence delivered in connection with establishing the satisfaction of each such condition;

(D) the adequacy, accuracy and/or completeness of any information delivered by the Agent, any other Lender or by any of their respective Related Parties under or in connection with this Agreement or any other Loan Document, the transactions contemplated hereby and thereby or any other agreement, arrangement or document entered into, made or executed in anticipation of, under or in connection with any Loan Document.

SECTION 8.09. No Other Duties, etc. Anything herein to the contrary notwithstanding, none of the Persons acting as, Arranger or bookrunner or syndication agent listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as a Lender hereunder.

SECTION 8.10. Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Bankruptcy Law or any other judicial proceeding relative to any Loan Party, the Agent (irrespective of whether the Letter of Credit Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Agent shall have made any demand on Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Letter of Credit Obligations and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Bank and the Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Bank and the Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Bank and the Agent hereunder) 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, interim receiver, monitor, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and Issuing Bank to make such payments to the Agent and, if the Agent shall consent to the making of such payments directly to the Lenders and Issuing Bank, to pay to the Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Agent and its agents and counsel, and any other amounts due the Agent hereunder.

Nothing contained herein shall be deemed to authorize the Agent to authorize or consent to or accept or adopt on behalf of any Lender or Issuing Bank any plan of reorganization, arrangement, adjustment or composition or proposal affecting the Obligations or the rights of any Lender or Issuing Bank to authorize the Agent to vote in respect of the claim of any Lender or Issuing Bank or in any such proceeding.

SECTION 8.11. Intercreditor Arrangements. Each of the Lenders hereby authorizes and directs the Agent to enter into one or more Intercreditor Agreements (subject to Section 8.01, other than the Term Loan Intercreditor Agreement and the Letter of Credit Facility Intercreditor Agreement) on behalf of such Lender, with the consent of Required Lenders. Each of the Lenders hereby agrees that the Agent in its various capacities thereunder may take such actions on its behalf as is contemplated by the terms of any such Intercreditor Agreements. With respect to any such Intercreditor Agreement executed and delivered by the Agent in accordance with this Agreement, each Lender hereunder (a) consents to any subordination of Liens provided for in such Intercreditor Agreement, (b) agrees that it will be bound by and will take no actions contrary to the provisions of such Intercreditor Agreement, (c) authorizes and instructs the Agent to enter into such Intercreditor Agreement as Agent and on behalf of such Lender and (d) agrees that the Agent may take such actions on behalf of such Lender as is contemplated by the terms of such Intercreditor Agreement.

SECTION 8.12. [Reserved].

SECTION 8.13. [Reserved].

SECTION 8.14. Parallel Debt and Dutch Security Rights. For the purpose of ensuring and preserving the validity and continuity of the security rights to be granted pursuant to Security Documents that are governed by the laws of The Netherlands (including, but not limited to, a Dutch notarial deed of pledge relating to shares in the share capital of Eastman Kodak Holdings B.V.), the parties hereto agree as follows:

(a) The Borrower hereby irrevocably and unconditionally undertakes to pay to Agent, as creditor in its own right and acting on its own behalf, and not as agent or representative of any other person, amounts equal to and in the currency of the amounts payable by the Borrower to the Lenders in respect of the Obligations of the Borrower (other than under the Parallel Debt (as defined hereafter)) from time to time as and when such amounts fall due for payment (the "Parallel Debt").

(b) Each of the parties hereto acknowledges that:

(i) the Parallel Debt represents Agent's own separate and independent claim to receive payment of the Parallel Debt from the Borrower; and

(ii) the Parallel Debt constitutes an undertaking, obligation and liability of the Borrower to Agent which is transferable, separate and independent from, and without prejudice to, the Obligations of the Borrower,

(iii) it being understood that the amounts owed by the Borrower to the Agent under this Agreement shall at any time never exceed the aggregate of the amounts owed by the Borrower to the Lenders under the Obligations of the Borrower at any such time.

(c) The Parallel Debt will become due and payable as and to the extent one or more of the Obligations of the Borrower becomes due and payable, without any further notice being required.

(d) To the extent Agent irrevocably received any amount in payment of the Parallel Debt (the "Received Amount"), the Obligations of the Borrower shall be reduced by an aggregate amount equal to the Received Amount as if the Received Amount was received as a payment of such Obligations."

SECTION 8.15. Certain Matters Relating to German Law. In relation to the German Security Agreements, the following additional provisions shall apply:

(a) The Agent, with respect to the part of the Collateral secured pursuant to the German Security Agreements or any other Collateral created under German law ("German Collateral"), shall:

(i) hold, administer and realize such German Collateral that is transferred or assigned by way of security (*Sicherungseigentum/Sicherungsabtretung*) or otherwise granted to it and is creating or evidencing a non-accessory security right (*nicht akzessorische Sicherheit*) in its own name as trustee (*Treuhänder*) for the benefit of the Secured Parties; and

(ii) hold, administer, and realize any such German Collateral that is pledged (*verpfändet*) or otherwise transferred to the Agent and is creating or evidencing an accessory security right (*akzessorische Sicherheit*) as agent.

(b) With respect to the German Collateral, each Secured Party hereby authorizes and grants a power of attorney (*Vollmacht*) to the Agent (whether or not by or through employees or agents) to:

(i) accept as its representative (*Stellvertreter*) any pledge or other creation of any accessory security right granted in favor of such Secured Party in connection with the German Security Agreements and to agree to and execute on its behalf as its representative (*Stellvertreter*) any amendments and/or alterations to any German Security Agreements or any other agreement related to such German Collateral which creates a pledge or any other accessory security right (*akzessorische Sicherheit*) including the release or confirmation of release of such security;

(ii) execute on behalf of itself and the Secured Parties where relevant and without the need for any further referral to, or authority from, the Secured Parties or any other person all necessary releases of any such German Collateral secured under the German Security Agreements or any other agreement related to such German Collateral;

(iii) realize such Collateral in accordance with the German Security Agreements or any other agreement securing such German Collateral;

(iv) make, receive all declarations and statements and undertake all other necessary actions and measures which are necessary or desirable in connection with such German Collateral or the German Security Agreements or any other agreement securing the German Collateral;

(v) take such action on its behalf as may from time to time be authorized under or in accordance with the German Security Agreements; and

(vi) to exercise such rights, remedies, powers and discretions as are specifically delegated to or conferred upon the Secured Parties under the German Security Agreements together with such powers and discretions as are reasonably incidental thereto.

(c) Each of the Secured Parties agrees that, if the courts of Germany do not recognize or give effect to the trust expressed to be created by this Agreement or any Collateral Document, the relationship of the Secured Parties to the Agent shall be construed as one of principal and agent but, to the extent permissible under the laws of Germany, all the other provisions of this Agreement shall have full force and effect between the parties hereto.

(d) Each Secured Party hereby ratifies and approves all acts and declarations previously done by the Agent on such person's behalf (including for the avoidance of doubt the declarations made by the Agent as representative without power of attorney (*Vertreter ohne Vertretungsmacht*) in relation to the creation of any pledge (*Pfandrecht*) on behalf and for the benefit of each Secured Party as future pledgee or otherwise).

(e) For the purpose of performing its rights and obligations as Agent and to make use of any authorization granted under the German Security Agreements, each Secured Party hereby authorizes the Agent to act as its agent (*Stellvertreter*), and releases the Agent from any restrictions on representing several persons and self-dealing under any applicable law, and in particular from the restrictions of Section 181 of the German Civil Code (*Bürgerliches Gesetzbuch*). The Agent has the power to grant sub-power of attorney, including the release from the restrictions of section 181 of the German Civil Code.

SECTION 8.16. German Parallel Debt.

(a) The Borrower hereby irrevocably and unconditionally undertakes (and to the extent necessary undertakes in advance) to pay to the Agent amounts equal to any amounts owing from time to time by the Borrower to any Secured Party under this Agreement and any other Loan Document pursuant to any Obligations as and when those amounts are due under any Loan Document (such payment undertakings under this Section 8.16 and the obligations and liabilities resulting therefrom being the "Parallel Debt").

(b) The Agent shall have its own independent right to demand payment of the Parallel Debt by the Borrower. The Borrower and the Agent acknowledge that the obligations of the Borrower under this Section 8.16 are several, separate and independent (*selbständiges Schuldanerkenntnis*) from, and shall not in any way limit or affect, the corresponding obligations of the Borrower to any Secured Party under this Agreement or any other Loan Document (the "Corresponding Debt") nor shall the amounts for which the Borrower is liable under this Section 8.16 be limited or affected in any way by its Corresponding Debt provided that:

(i) the Parallel Debt shall be decreased to the extent that the Corresponding Debt has been irrevocably paid or discharged (other than, in each case, contingent obligations);

(ii) the Corresponding Debt shall be decreased to the extent that the Parallel Debt has been irrevocably paid or discharged;

(iii) the amount of the Parallel Debt shall at all times be equal to the amount of the Corresponding Debt; and

(iv) for the avoidance of doubt, the Parallel Debt will become due and payable at the same time when the Corresponding Debt becomes due and payable.

(c) The security granted under any German Security Agreement with respect to the Parallel Debt is granted to the Agent in its capacity as sole creditor of the Parallel Debt.

(d) Without limiting or affecting the Agent's rights against the Borrower (whether under this Agreement or any other Loan Document), the Borrower acknowledges that:

(i) Nothing in this Agreement shall impose any obligation on the Agent to advance any sum to the Borrower or otherwise under any Loan Document; and

(ii) for the purpose of any vote taken under any Loan Document, the Agent shall not be regarded as having any participation or commitment other than those which it has in its capacity as a Lender.

(e) The parties to this Agreement acknowledge and confirm that the provisions contained in this Agreement shall not be interpreted so as to increase the maximum total amount of the Obligations.

(f) The Parallel Debt shall remain effective in case a third person should assume or be entitled, partially or in whole, to any rights of any of the Lenders under any of the other Loan Documents, be it by virtue of assignment, novation or otherwise.

(g) All monies received or recovered by the Agent pursuant to this Agreement and all amounts received or recovered by the Agent from or by the enforcement of any security granted to secure the Parallel Debt shall be applied in accordance with this Agreement.

ARTICLE IX

MISCELLANEOUS

SECTION 9.01. Amendments, Waivers. No amendment or waiver of any provision of this Agreement or any of the other Loan Documents, nor consent to any departure by any Loan Party therefrom, shall in any event be effective unless the same shall be in writing and signed by the Required Lenders, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that

(a) no amendment, waiver or consent shall, unless in writing and signed by all the Lenders, do any of the following:

(i) change the percentage of the Commitments or of the aggregate unpaid principal amount of the Letter of Credit Obligations, or the number of Lenders, that shall be required for the Lenders or any of them to take any action hereunder,

(ii) release all or substantially all of the Collateral in any transaction or series of related transactions,

(iii) release one or more Guarantors (or otherwise limit such Guarantors' liability with respect to the Obligations owing to the Agent, and the Lenders under the Guaranties) if such release or limitation is in respect of all or substantially all of the value of the Guaranties, taken as a whole, to the Lenders,

(iv) amend this Section 9.01 or the definition of "Required Lenders" or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder,

(v) change Section 2.06(a) in a manner that would alter the pro rata reduction or termination of Commitments required thereby,

(vi) [reserved],

(vii) amend, modify or change the provisions of Section 6.04 (including to change the order of application of any reduction in the Commitments or any prepayment of Letter of Credit Obligations from the application thereof), or without the written consent of each Lender; or

(viii) except as expressly permitted herein or in any other Loan Document, subordinate the Obligations hereunder or the Liens granted hereunder or under the other Loan Documents, to any other Debt or Lien, as the case may be,

(b) no amendment, waiver or consent shall, unless in writing and signed by each Lender affected thereby, do any of the following:

(i) increase the Commitment of such Lender,

(ii) reduce or forgive the amount of, or interest on, the Letter of Credit Obligations or any fees or other amounts payable hereunder,

(iii) postpone any date fixed for any payment of any amount in respect of, or interest on, the Letter of Credit Obligations or any fees or other amounts payable hereunder, or

(iv) [reserved],

provided, further, that (x) no amendment, waiver or consent shall, unless in writing and signed by the Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Agent under this Agreement or any Note and (y) no amendment, waiver or consent shall, unless in writing and signed by the Issuing Bank in addition to the Lenders required above to take such action, adversely affect the rights or obligations of the Issuing Bank in its capacity as such under this Agreement, provided, however, notwithstanding clauses (ii) and (iii) of clause (a) above, no consent or waiver or other approval of any Lender shall be required for any release of a Guaranty or Guaranty Supplement as provided in Section 7.07 or any release of Collateral as provided in Section 9.16 or in any Collateral Document.

Notwithstanding the foregoing, if the Agent and the Borrower shall have jointly identified any ambiguity, inconsistency, defect, typographical error or manifest error in this Agreement or any other Loan Document, then the Agent and the Borrower shall be permitted to amend such provision without any further action or consent of any other party.

SECTION 9.02. Notices, Etc.

(a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to Borrower, the Agent, or any Issuing Bank, to the address, telecopier number, electronic mail address or telephone number specified for such Person on Schedule 9.02; and

(ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to Borrower).

Notices and other communications sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices and other communications sent by telecopier shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next business day for the recipient). Notices and other communications delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

(b) Notices and other communications to the Lenders and the Issuing Bank hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Agent, provided, that, the foregoing shall not apply to notices to any Lender or Issuing Bank pursuant to Article II if such Lender or Issuing Bank, as applicable, has notified the Agent that it is incapable of receiving notices under such Article by electronic communication. The Agent or Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it, provided, that, approval of such procedures may be limited to particular notices or communications.

(c) Electronic Communications. Unless the Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided, that, if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(d) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE LOAN PARTY MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE LOAN PARTY MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE LOAN PARTY MATERIALS OR THE PLATFORM. In no event shall the Agent, any Arranger or any of their respective Related Parties (collectively, the "Agent Parties") have any liability to the Borrower, any Lender, any Issuing Bank or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Borrower's or the Agent's or the Arranger's transmission of Loan Party Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the bad faith, gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to the Borrower, any Lender, any Issuing Bank or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).

(e) Change of Address, Etc. Each of the Borrower, the Agent and Issuing Bank may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the other parties hereto. Each other Lender may change its address, telecopier or telephone number for notices and other communications hereunder by notice to the Borrower, the Agent and the Issuing Bank. In addition, each Lender agrees to notify the Agent from time to time to ensure that the Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender. Furthermore, each Public Lender agrees to cause at least one individual at or on behalf of such Public Lender to at all times have selected the "Private Side Information" or similar designation on the content declaration screen of the Platform in order to enable such Public Lender or its delegate, in accordance with such Public Lender's compliance procedures and applicable law, including United States Federal and state securities laws, to make reference to Loan Party Materials that are not made available through the "Public Side Information" portion of the Platform and that may contain material non-public information with respect to the Borrower or their securities for purposes of United States Federal or state securities laws.

(f) Reliance by Agent, Issuing Bank and Lenders. The Agent, the Issuing Bank and the Lenders shall be entitled to rely and act upon any notices (including telephonic Notices of Issuance) purportedly given by or on behalf of the Borrower even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein, or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. The Borrower shall indemnify the Agent, Issuing Bank, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of Borrower. All telephonic notices to and other telephonic communications with the Agent may be recorded by the Agent, and each of the parties hereto hereby consents to such recording.

SECTION 9.03. No Waiver; Remedies. No failure on the part of any Lender or the Agent to exercise, and no delay in exercising, any right hereunder or under any Note shall operate as a waiver thereof; nor shall any single or partial exercise of any such right preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Agent in accordance with Section 6.01 for the benefit of all the Lenders and the Issuing Bank; provided, however, that the foregoing shall not prohibit (a) the Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Agent) hereunder and under the other Loan Documents, (b) Issuing Bank from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 9.06 (subject to the terms of Section 2.15), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Bankruptcy Law; and provided, further, that if at any time there is no Person acting as Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Agent pursuant to Article VI and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.15, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 9.04. Costs and Expenses.

(a) The Company agrees to pay on demand all reasonable out of pocket costs and expenses of the Agent and Issuing Bank in connection with the preparation, execution, delivery, administration, modification and amendment of this Agreement, the Notes and the other documents to be delivered hereunder, including, without limitation, (A) all due diligence, syndication (including printing, distribution and bank meetings), transportation, computer, duplication, appraisal, consultant, and audit expenses, (B) the reasonable fees and expenses of counsel for Agent and Issuing Bank with respect thereto, (C) fees and expenses incurred in connection with the creation, perfection or protection of the liens under the Loan Documents (including all reasonable search, filing and recording fees) and (D) costs associated with insurance reviews, Collateral audits, field exams, collateral valuations and collateral reviews to the extent provided herein, provided, however, the Company shall not be required to pay fees or expenses of more than one counsel in any jurisdiction where the Collateral is located, with respect to advising Agent and Issuing Bank as to its rights and responsibilities, or the perfection, protection or preservation of rights or interests, under the Loan Documents, with respect to negotiations with any Loan Party or with other creditors of any Loan Party or any of its Subsidiaries arising out of any Default or any

events or circumstances that may give rise to a Default and with respect to presenting claims in or otherwise participating in or monitoring any bankruptcy, insolvency or other similar proceeding involving creditors' rights generally and any proceeding ancillary thereto. The Company further agrees to pay on demand all costs and expenses of the Agent, Issuing Bank and each Lender, if any (including, without limitation, reasonable counsel fees and expenses), in connection with the enforcement (whether through negotiations, legal proceedings or otherwise) of the Loan Documents, whether in any action, suit or litigation, or any bankruptcy, insolvency or other similar proceeding affecting creditors' rights generally, including, without limitation, reasonable fees and expenses of counsel for the Agent, Issuing Bank and each Lender in connection with the enforcement of rights under this Agreement and the other Loan Documents.

(b) The Company agrees to indemnify and hold harmless the Agent, each Arranger, Issuing Bank and each Lender and each of their Related Parties (each, an "Indemnified Party") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of outside counsel) incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of (including, without limitation, in connection with any investigation, litigation or proceeding or preparation of a defense in connection therewith) (i) the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Letters of Credit (which, for the avoidance of doubt, does not include any Taxes or Other Taxes which shall be governed by Section 2.14) or (ii) the actual or alleged presence of Hazardous Materials on any property of the Company or any of its Subsidiaries or any Environmental Action relating in any way to the Company or any of its Subsidiaries, except to the extent such claim, damage, loss, liability or expense resulted from such Indemnified Party's gross negligence or willful misconduct as found in a non-appealable judgment by a court of competent jurisdiction. In the case of an investigation, litigation or other proceeding to which the indemnity in this Section 9.04(b) applies, such indemnity shall be effective whether or not such investigation, litigation or proceeding is brought by any Loan Party, its directors, equityholders or creditors or an Indemnified Party or any other Person, whether or not any Indemnified Party is otherwise a party thereto and whether or not the transactions contemplated hereby are consummated. The Company and each Indemnified Party agrees not to assert any claim for special, indirect, consequential or punitive damages against the Company, the Agent, any Lender, any of their Affiliates, or any of their respective directors, officers, employees, attorneys and agents, on any theory of liability, arising out of or otherwise relating to the Notes, this Agreement, any of the transactions contemplated herein or the actual or proposed use of the proceeds of the Letters of Credit.

(c) Without prejudice to the survival of any other agreement of any Loan Party hereunder or under any other Loan Document, the agreements and obligations of the Borrower contained in Sections 2.11, 2.14 and 9.04 shall survive the payment in full of principal, interest and all other amounts payable hereunder and under the Notes.

(d) No Indemnified Party referred to in subsection (b) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnified Party through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnified Party as determined by a final and nonappealable judgment of a court of competent jurisdiction.

(e) All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.

(f) The agreements in this Section shall survive the resignation of the Agent, Issuing Bank, the replacement of any Lender, the termination of the aggregate Commitments and the repayment, satisfaction or discharge of all the other Obligations.

SECTION 9.05. Payments Set Aside. To the extent that any payment by or on behalf of Borrower is made to the Agent, any Issuing Bank or any Lender, or the Agent, any Issuing Bank or any Lender exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by the Agent, Issuing Bank or such Lender in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Bankruptcy Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and Issuing Bank severally agrees to pay to the Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the Federal Funds Rate from time to time in effect. The obligations of the Lenders and the Issuing Bank under clause (b) of the preceding sentence shall survive the payment in full of the Obligations and the termination of this Agreement.

SECTION 9.06. Right of Set-off. Upon (i) the occurrence and during the continuance of any Event of Default and (ii) the making of the request or the granting of the consent specified by Section 6.01 to authorize the Agent to declare the Letter of Credit Obligations due and payable pursuant to the provisions of Section 6.01, the Agent, Issuing Bank, and each Lender and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other indebtedness at any time owing by the Agent, Issuing Bank, or such Lender or such Affiliate to or for the credit or the account of Borrower against any and all of the obligations of Borrower now or hereafter existing under this Agreement and any Note held by the Agent, Issuing Bank, or such Lender, whether or not such Lender shall have made any demand under this Agreement or such Note and although such obligations may be unmatured, provided, however, that no such right shall exist against any deposit designated as being for the benefit of any Governmental Authority, provided, further, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Agent for further application in accordance with the provisions of Section 2.19 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower after any such set-off and application, provided, that, the failure to give such notice shall not affect the validity of such set-off and application. The rights of each Lender, the Agent, Issuing Bank, and each such Affiliate under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) that the Agent, the Issuing Bank, the Lenders or such Affiliates may have.

SECTION 9.07. Binding Effect. This Agreement shall become effective in accordance with Section 3.01 and thereafter shall be binding upon and inure to the benefit of the Borrower, the Agent, and each Lender and their respective successors and assigns, except that Borrower shall not have the right to assign its rights hereunder or any interest herein without the prior written consent of all of the Lenders.

SECTION 9.08. Assignments and Participations.

(a) Each Lender may, with the consent of the Agent (not to be unreasonably withheld or delayed) in the case of an assignment to a Person who is not an Affiliate of such Lender and, if demanded by the Company so long as no Event of Default shall have occurred and be continuing and only with respect to any Affected Lender, upon at least five (5) Business Days' notice to such Lender and the Agent, shall, assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment or Commitments, its participations in Letters of Credit, if any, and the Note or Notes held by it); provided, however, that (i) each such assignment shall be of a constant, and not a varying, percentage of all rights and obligations under this Agreement with respect to one or more Facilities, (ii) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund with respect to a Lender, or an assignment of all of a Lender's rights and obligations under this Agreement, the amount of the Commitment of the assigning Lender being assigned pursuant to each such assignment (determined as of the date of the Assignment and Acceptance with respect to such assignment) shall in no event be less than $1,000,000 or an integral multiple of $1,000,000 in excess thereof, in each case, unless the Company and the Agent otherwise agree, (iii) each such assignment shall be to an Eligible Assignee, (iv) each such assignment made as a result of a demand by the Company pursuant to this Section 9.08(a) shall be arranged by the Company after consultation with the Agent and shall be either an assignment of all of the rights and obligations of the assigning Lender under this Agreement or an assignment of a portion of such rights and obligations made concurrently with another such assignment or other such assignments that together cover all of the rights and obligations of the assigning Lender under this Agreement, (v) no Lender shall be obligated to make any such assignment as a result of a demand by the Company pursuant to this Section 9.08(a) unless and until such Lender shall have received one or more payments from either the Borrower or one or more Eligible Assignees in an aggregate amount at least equal to the aggregate outstanding amount owing to such Lender, together with accrued interest thereon to the date of payment of such principal amount and all other amounts payable to such Lender under this Agreement, and (vi) the parties to each such assignment shall execute and deliver to the Agent, for its acceptance and recording in the Register, an Assignment and Acceptance (and the assignee, if it is not a Lender, shall deliver to the Agent an Administrative Questionnaire), together with any Note subject to such assignment and a processing and recordation fee of $3,500 payable by the parties to each such assignment; provided, however, that (x) only one such fee shall be payable in connection with simultaneous assignments to or by two or more Approved Funds with respect to a Lender and (y) in the case of each assignment made as a result of a demand by the Company, such recordation fee shall be payable by the Company except that no such recordation fee shall be payable in the case of an assignment made at the request of the Company to an Eligible Assignee that is an existing Lender. Upon such execution, delivery, acceptance and recording, from and after the effective date specified in each Assignment and Acceptance, (x) the assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, have the rights and obligations of a Lender hereunder and (y) the Lender assignor thereunder shall, to the extent that rights and obligations hereunder have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (other than its rights under Sections 2.11, 2.14 and 9.04 to the extent any claim thereunder relates to an event arising prior to such assignment) and be released from its obligations (other than its obligations under Section 9.06 to the extent any claim thereunder relates to an event arising prior to such assignment) 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).

(b) By executing and delivering an Assignment and Acceptance, the Lender assignor thereunder and the assignee thereunder confirm to and agree with each other and the other parties hereto as follows: (i) other than as provided in such Assignment and Acceptance, such assigning Lender makes no representation or warranty and assumes no responsibility with respect to any statements, warranties or representations made in or in connection with this Agreement or the execution, legality, validity, enforceability, genuineness, sufficiency or value of, or the perfection or priority of any lien or security interest created or purported to be created under or in connection with, this Agreement or any other instrument or document furnished pursuant hereto; (ii) such assigning Lender makes no representation or warranty and assumes no responsibility with respect to the financial condition of any Loan Party or the performance or observance by any Loan Party of any of its obligations under any Loan Document or any other instrument or document furnished pursuant hereto; (iii) such assignee confirms that it has received a copy of this Agreement, together with copies of the financial statements referred to in Section 5.01(h) 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; (iv) such assignee will, independently and without reliance upon the Agent, such assigning Lender or any other Lender and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in taking or not taking action under this Agreement; (v) such assignee confirms that it is an Eligible Assignee; (vi) such assignee appoints and authorizes the Agent to take such action as agent on its behalf and to exercise such powers and discretion under this Agreement and the other Loan Documents as are delegated to the Agent by the terms hereof, together with such powers and discretion as are reasonably incidental thereto; and (vii) such assignee agrees that it will perform in accordance with their terms all of the obligations that by the terms of this Agreement are required to be performed by it as a Lender.

(c) Upon its receipt of an Assignment and Acceptance executed by an assigning Lender and an assignee representing that it is an Eligible Assignee, together with any Note or Notes subject to such assignment, the Agent shall, if such Assignment and Acceptance has been completed and is in substantially the form of Exhibit C hereto, (i) accept such Assignment and Acceptance, (ii) record the information contained therein in the Register and (iii) give prompt notice thereof to the Company

(d) In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Agent, the applicable pro rata share of Letter of Credit Obligations previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all participations in Letters of Credit in accordance with its Ratable Share. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(e) The Agent shall maintain at its address referred to in Section 9.02 a copy of each Assignment and Acceptance delivered to and accepted by it and a register for the recordation of the names and addresses of the Lenders and the Commitment of, and principal amount of the Letter of Credit Obligations owing to, each Lender from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrower, the Agent and the Lenders may treat each Person whose name is recorded in the Register as a Lender hereunder for all purposes of this Agreement. The Register shall be available for inspection by Borrower or any Lender at any reasonable time and from time to time upon reasonable prior notice.

(f) Each Lender may sell participations to one or more banks or other entities (other than the Company or any of its Affiliates) in or to all or a portion of its rights and obligations under this Agreement (including, without limitation, all or a portion of its Commitment, the Letter of Credit Obligations owing to it and any Note or Notes held by it); provided, however, that (i) such Lender's obligations under this Agreement (including, without limitation, its Commitment to the Borrower hereunder) shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, (iii) such Lender shall remain the holder of any such Note for all purposes of this Agreement, (iv) the Borrower, the Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement and (v) no participant under any such participation shall have any right to approve any amendment or waiver of any provision of any Loan Document, or any consent to any departure by any Loan Party therefrom, provided, however, that any agreement between a Lender and such participant may provide that the Lender will not, without the consent of participant, agree to any such amendment, waiver or consent which would reduce the amount owing to such participant, including any fees or other amounts payable hereunder, in each case to the extent subject to such participation, or postpone any date fixed for any payment of principal of, or interest on, the Letter of Credit Obligations or any fees or other amounts payable hereunder, in each case to the extent subject to such participation.

(g) Any Lender may, in connection with any assignment or participation or proposed assignment or participation pursuant to this Section 9.08, 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, prior to any such disclosure, the assignee or participant or proposed assignee or participant shall agree to preserve the confidentiality of Borrower Information relating to the Borrower received by it from such Lender.

(h) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank or other central bank; provided, that, no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledge or assignee for such Lender as a party hereto.

(i) Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register in the United States on which it enters the name and address of each participant and the principal amounts and stated interest of each participant's interest in the Loans, Commitments 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 to any Person (including the identity of any participant or any information relating to a participant's interest in any Commitments, Letter of Credit Obligations, or its other obligations under this Agreement) except to the extent that such disclosure is necessary to establish that the Loans are in registered form under Treas. Reg. § 5f.103-1(c). The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as owner of such participation for all purposes of this Agreement.

(j) The Agent may conclusively rely on the list of Disqualified Institutions provided by the Borrower (or any supplement thereto) for all purposes of this Agreement and the other Loan Documents, including in approving or declining to approve a Person as an Eligible Assignee, executing and delivering any Assignment and Acceptance, making any recording in the Register in respect of such Assignment and Acceptance or otherwise, and shall have no liability of any kind to any Loan Party or any Affiliate thereof, any Lender or any other Person if such list of Disqualified Institutions (or any supplement thereto) is incorrect or if any Person is incorrectly identified in such list of Disqualified Institutions (or any supplement thereto) as a Person to whom no assignment is to be made.

SECTION 9.09. Confidentiality. Neither the Agent nor any Lender may disclose to any Person any confidential, proprietary or non-public information of any Loan Party furnished to the Agent or the Lenders by any Loan Party, including, without limitation (1) earnings and other financial information and forecasts, budgets, projections, plans, (including, without limitation, any confirmations of publicly disclosed advice regarding any material matter); (2) mergers, acquisitions, tender offers, joint ventures or changes in assets; (3) new products or discoveries or developments regarding any Loan Party's customers or suppliers; (4) changes in control or in management; (5) changes in auditors or auditor notifications to the Loan Party; (6) securities redemptions, splits, repurchase plans, changes in dividends, changes in rights of holders or sales of additional securities; and (7) negative news relating to such matters as physical damage to properties from significant events, loss of significant contractual relationship, material litigation, defaults under contracts or securities, bankruptcy or receivership (such information being referred to collectively herein as the "Borrower Information"), except that each of the Agent, and each of the Lenders may disclose Borrower Information (i) to its Affiliates and to its and its Affiliates' managers, administrators, partners, employees, trustees, officers, directors, agents, advisors and other representatives solely for purposes of this Agreement, any Notes and the transactions contemplated hereby (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of Borrower Information and instructed to keep such Borrower Information confidential on terms substantially no less restrictive than those provided herein), (ii) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulating authority, such as the National Association of Insurance Commissioners), provided, to the extent permitted by law and practicable under the circumstances, the Agent or such Lender shall provide the Company with prompt notice of such requested disclosure so that the Company may seek a protective order prior to the time when the Agent or such Lender is required to make such disclosure, (iii) to the extent required by applicable laws or regulations or by any subpoena or similar legal process, provided, to the extent permitted by law and practicable under the circumstances, the Agent or such Lender shall provide the Company with prompt notice of such requested disclosure so that the Company may seek a protective order prior to the time when the Agent or such Lender is required to make such disclosure, (iv) subject to this Section 9.09, to any other Lender to this Agreement which has requested such information, (v) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (vi) subject to an agreement containing provisions no less restrictive than those of this Section 9.09, to any assignee or participant or prospective assignee or participant or any pledge referred to in Section 9.08(h), (vii) to the extent such Borrower Information (A) is or becomes generally available to the public on a non-confidential basis other than as a result of a breach of this Section 9.09 by the Agent or such Lender, or (B) is or becomes legally available to the Agent or such Lender on a nonconfidential basis from a source other than a Loan Party, provided, that, the source of such information was not known by the Agent or such Lender to be bound by a confidentiality agreement with or other contractual, legal or fiduciary obligations of confidentiality to a Loan Party or any other party with respect to such information, (viii) with the consent of the Company, (ix) to any party hereto and (x) subject to the Agent's or the applicable Lender's receipt of an agreement containing provisions no less restrictive than those of this Section, to any actual or prospective party (or its managers, administrators, trustees, partners, directors, officers, employees, agents, advisors and other representatives) to any swap, derivative or other transaction under which payments are to be made by reference to the Company and its Obligations, this Agreement or payments hereunder. Any Person required to maintain the confidentiality of Borrower Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Borrower Information as such Person would accord to its own confidential information.

SECTION 9.10. Execution in Counterparts. This Agreement may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or in .pdf (or similar electronic format) shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.11. Survival of Representations and Warranties. All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Agent, and each Lender, regardless of any investigation made by the Agent or any Lender or on their behalf and notwithstanding that the Agent, or any Lender may have had notice or knowledge of any Default at the time of any Issuance of a Letter of Credit, and shall continue in full force and effect as long as any Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

SECTION 9.12. Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 9.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Bankruptcy Laws, as determined in good faith by the Agent or the Issuing Bank, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

SECTION 9.13. Jurisdiction.

(a) GOVERNING LAW. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK 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 THE 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 THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE AGENT, ANY LENDER OR ANY ISSUING BANK MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTIES OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. EACH BORROWER AND EACH OTHER LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF THE PARTIES HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE DEFENSE OF AN INCONVENIENT FORUM TO THE MAINTENANCE OF SUCH ACTION OR PROCEEDING IN ANY SUCH COURT.

(d) SERVICE OF PROCESS. EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.14. No Liability of the Issuing Bank. Each Lender and each Loan Party agree that, in paying any drawing under a Letter of Credit, Issuing Bank shall not have any responsibility to obtain any document, other than any sight draft, certificates and documents expressly required by the Letter of Credit, or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. Each Loan Party assumes all risks of the acts or omissions of any beneficiary or transferee of any Letter of Credit with respect to its use of such Letter of Credit. Neither an Issuing Bank nor any of its officers or directors shall be liable or responsible for: (a) the use that may be made of any Letter of Credit or any acts or omissions of any beneficiary or transferee in connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement thereon, even if such documents should prove to be in any or all respects invalid, insufficient, fraudulent or forged; (c) payment by Issuing Bank against presentation of documents that do not comply with the terms of a Letter of Credit, including failure of any documents to bear any reference or adequate reference to the Letter of Credit; or (d) any other circumstances whatsoever in making or failing to make payment under any Letter of Credit, except that the Borrower shall have a claim against Issuing Bank, and Issuing Bank shall be liable to the Borrower, to the extent of any direct, but not consequential, damages suffered by the Company that the Company proves were caused by such Issuing Bank's willful misconduct or gross negligence as found in a final non-appealable judgment by a court of competent jurisdiction. In furtherance and not in limitation of the foregoing, Issuing Bank may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary and Issuing Bank shall not be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason; provided, that, nothing herein shall be deemed to excuse Issuing Bank if it acts with gross negligence or willful misconduct in accepting such documents as found in a final non-appealable judgment by a court of competent jurisdiction.

SECTION 9.15. PATRIOT Act Notice. Each Lender, and the Agent (for itself and not on behalf of any Lender) hereby notifies each Loan Party that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender or the Agent, as applicable, to identify such Loan Party in accordance with the PATRIOT Act. Each Loan Party shall provide such information and take such actions as are reasonably requested by the Agent or any Lenders in order to assist the Agent and the Lenders in maintaining compliance with its ongoing obligations under applicable "know your customer" and anti-money laundering rules and regulations, including the PATRIOT Act.

SECTION 9.16. Release of Collateral; Termination of Loan Documents.

(a) (i) Upon the sale, lease, transfer or other Disposition of any item of Collateral of any Loan Party in accordance with the terms of the Loan Documents, including, without limitation, as a result of the sale, in accordance with the terms of the Loan Documents, of the Loan Party that owns such Collateral, (ii) upon a Subsidiary being designated an Immaterial Subsidiary or an Excluded Subsidiary, in accordance with the Loan Documents, (iii) at any time a Loan Party's guarantee of the obligations under the Loan Documents ceases as provided in Section 7.07, the security interests granted by the Loan Documents with respect to such items of Collateral and/or Loan Party shall immediately terminate and automatically be released (so long as in the case of Dispositions by any Loan Party pursuant to the terms of the Loan Documents (other than Dispositions of Collateral not comprising TMM Assets) and in respect of clauses (ii) and (iii) above, Agent has received a written certification by Borrower that such Disposition or other transaction, as applicable is permitted under the terms of the Loan Documents (and Agent shall be entitled to rely conclusively upon such certification without further inquiry)), and the Agent will, at the Company's expense, execute and deliver to such Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents.

(b) Upon the latest of (i) the payment in full in cash of all Obligations under the Loan Documents, (ii) the termination in full of the Commitments and the Letter of Credit Commitment and (iii) the latest date of expiration or termination of all Letters of Credit (or receipt by the Agent of an irrevocable notice from Issuing Bank that it will not seek to enforce any rights that it has or may have in accordance with Section 2.03 against the Agent or the Lenders), (x) except as otherwise specifically stated in this Agreement or the other Loan Documents, this Agreement and the other Loan Documents shall terminate and be of no further force or effect, (y) the Agent shall release or cause the release of all Collateral from the Liens of the Loan Documents and the Guarantors of all Obligations under each Guaranty, and will, at the Company's expense, execute and deliver such documents as the Company may reasonably request to evidence the release of Collateral from the assignment and security interest granted under the Collateral Documents and the obligations of the Guarantors and (z) each Lender that has requested and received a Note shall return such Note to the Company marked "cancelled" or "paid in full"; provided, however, that the Lenders' obligations under Section 9.09 shall continue until the earlier of (x) the date that is three (3) years after the termination of this Agreement and (y) the date that is three (3) months after the latest date that is the subject of the Projections delivered in accordance with Section 5.01(h)(viii), and the Lender's obligations under this Section 9.16 shall survive until satisfied.

SECTION 9.17. Judgment Currency.

(a) If for the purposes of obtaining judgment in any court it is necessary to convert a sum due hereunder in Dollars into another currency, the parties hereto agree, to the fullest extent that they may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures the Agent could purchase Dollars with such other currency at the exchange rate on the Business Day preceding that on which final judgment is given.

(b) The obligation of each Loan Party in respect of any sum due from it in any currency (the "Primary Currency") to any Lender or the Agent hereunder shall, notwithstanding any judgment in any other currency, be discharged only to the extent that on the Business Day following receipt by such Lender or the Agent (as the case may be), of any sum adjudged to be so due in such other currency, such Lender or the Agent (as the case may be) may in accordance with normal banking procedures purchase the applicable Primary Currency with such other currency; if the amount of the applicable Primary Currency so purchased is less than such sum due to such Lender or the Agent (as the case may be) in the applicable Primary Currency, each Loan Party agrees, as a separate obligation and notwithstanding any such judgment, to indemnify such Lender or the Agent (as the case may be) against such loss, and if the amount of the applicable Primary Currency so purchased exceeds such sum due to any Lender or the Agent (as the case may be) in the applicable Primary Currency, such Lender or the Agent (as the case may be) agrees to remit to such Loan Party such excess.

SECTION 9.18. No Fiduciary Duty. In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Agent, the Arranger, the Issuing Bank and the Lenders are arm's-length commercial transactions between the Loan Parties and their respective Affiliates, on the one hand, and the Agent, the Arranger, the Issuing Bank and the Lenders, on the other hand, (B) each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) the Loan Parties are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) the Agent, the Arranger, the Issuing Bank and the Lender each are and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, have not been, are not, and will not be acting as an advisor, agent or fiduciary for the Loan Parties or any of their respective Affiliates, or any other Person and (B) neither the Agent, the Arranger, the Issuing Bank nor the Lenders have any obligation to the Loan Parties or any of their respective Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; and (iii) the Agent, the Arranger, the Issuing Bank and the Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and neither the Agent, the Arranger nor the Lenders have any obligation to disclose any of such interests to the Loan Parties or their respective Affiliates. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against the Agent, the Arranger, the Issuing Bank and the Lenders with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

SECTION 9.19. Electronic Execution of Assignments and Certain Other Documents. The words "execution," "signed," "signature," and words of like import in any amendment or other modification hereof (including waivers and consents) 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 or similar foreign laws.

SECTION 9.20. Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among the parties, each party hereto (including each Secured Party) acknowledges that any liability arising under a Loan Document of any Secured Party that is an Affected Financial Institution, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of the applicable Resolution Authority, and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising under any Loan Documents which may be payable to it by any Secured Party that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under any Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of the applicable Resolution Authority.

SECTION 9.21. Reserved.

SECTION 9.22. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC a "Supported QFC"), the parties 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): 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.

[The remainder of this page intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

EASTMAN KODAK COMPANY

By: /s/ David E. Bullwinkle
Name: David E. Bullwinkle
Title: Chief Financial Officer and Senior Vice President

EASTMAN KODAK INTERNATIONAL CAPITAL COMPANY INC.
FAR EAST DEVELOPMENT LTD.
KODAK (NEAR EAST), INC.
KODAK AMERICAS, LTD.
KODAK PHILIPPINES, LTD.

By: /s/ Roger W. Byrd
Name: Roger W. Byrd
Title: Secretary

BANK OF AMERICA, N.A., as Agent, Issuing Bank and Lender

By: /s/ Matthew T. O'Keefe
Name: Matthew T. O'Keefe
Title: Senior Vice President

[*Signature Page to Letter of Credit Facility Agreement*]

SIEMENS FINANCIAL SERVICES, INC., as a Lender

By: /s/ Jeffery B. Iervese
Name: Jeffery B. Iervese
Title: Vice President

By: /s/ Sonia Vargas
Name: Sonia Vargas
Title: Senior Loan Closer

WEBSTER BUSINESS CREDIT CORPORATION, as a Lender

By: /s/ Arthur Kim
Name: Arthur Kim
Title: Duly Authorized Signatory

[*Signature Page to Letter of Credit Facility Agreement*]

[TO BE COMPLETED PRIOR TO ISSUANCE WITH: APPROPRIATE LENDER INFORMATION, THE EFFECTIVE DATE, UPON ISSUANCE TO AN INITIAL ISSUING BANK, OR THE DATE OF ASSIGNMENT, AND A PRINCIPAL AMOUNT UP TO THE LENDER'S LETTER OF CREDIT COMMITMENT]

U.S.$_____

FOR VALUE RECEIVED, the undersigned, EASTMAN KODAK COMPANY (the "Borrower"), HEREBY PROMISES TO PAY to the order of _____ (the "Lender") for the account of its Applicable Lending Office on the Termination Date (each as defined in the Credit Agreement referred to below) the principal sum of U.S.$[amount of the Lender's Letter of Credit Commitment in figures] or, if less, the aggregate principal amount of the Letter of Credit Obligations made by the Lender to the Borrower pursuant to the Letter of Credit Facility Agreement, dated as of February ___, 2021, among the Borrower, certain of its subsidiaries, the Lender and certain other lenders party thereto, and Bank of America, N.A., as Agent for the Lender and such other lenders (as amended or modified from time to time, the "Credit Agreement") outstanding on the Termination Date. Capitalized terms used, but not defined, in this Promissory Note are used with the meaning ascribed thereto in the Credit Agreement.

The Borrower promises to pay interest on the unpaid principal amount of the Letter of Credit Obligations from the date of such Letter of Credit Obligations until such principal amount is paid in full, at such interest rates, and payable at such times, as are specified in the Credit Agreement.

Both principal and interest are payable in lawful money of the United States of America to Bank of America, N.A., as Agent, at Bank of America, N.A., 900 West Trade Street, Charlotte, NC 28255 in same day funds. The Letter of Credit Obligations owing to the Lender by the Borrower pursuant to the Credit Agreement, and all payments made on account of principal thereof, shall be recorded by the Lender and, prior to any transfer hereof, endorsed on the grid attached hereto which is part of this Promissory Note.

This Promissory Note is one of the Notes referred to in, and is entitled to the benefits of, the Credit Agreement. The Credit Agreement, among other things, (i) provides for the making of the Letter of Credit Obligations by the Lender to the Borrower from time to time in an aggregate amount not to exceed at any time outstanding the U.S. dollar amount first above mentioned, the indebtedness of the Borrower resulting from such Letter of Credit Obligations being evidenced by this Promissory Note and (ii) contains provisions for acceleration of the maturity hereof upon the happening of certain stated events and also for prepayments on account of principal hereof prior to the maturity hereof upon the terms and conditions therein specified.

IN WITNESS WHEREOF, the Borrower has caused this Promissory Note to be executed by its duly authorized officer to evidence the Letter of Credit Obligations made under the Credit Agreement.

Date: _____, 20__

EASTMAN KODAK COMPANY

By _____
Title:

ALLONGE TO PROMISSORY NOTE
DATED _____, 20__
OF
EASTMAN KODAK COMPANY

LETTER OF CREDIT OBLIGATIONS AND PAYMENTS OF PRINCIPAL

Date	Amount of Letter of Credit Obligations	Amount of Principal Paid or Prepaid	Unpaid Principal Balance	Notation Made By

EXHIBIT B—FORM OF
SOLVENCY CERTIFICATE

_____, 20__

This Solvency Certificate is being executed and delivered pursuant to Section 3.01(k)(v) of the Letter of Credit Facility Agreement, dated as of February ___, 2021, among Eastman Kodak Company, a New Jersey corporation (the "Company"), certain of its subsidiaries, the Lenders and Bank of America, N.A., as administrative agent and collateral agent for the Lenders (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "Credit Agreement"); the terms defined therein being used herein as therein defined.

I, [ ], the Chief Financial Officer of the Company, in such capacity and not in an individual capacity, hereby certify as follows:

1. I am generally familiar with the businesses and assets of the Company and its subsidiaries, taken as a whole, and am duly authorized to execute this Solvency Certificate on behalf of the Company pursuant to the Credit Agreement.

2. I am familiar with the historical and current financial condition of the Company and its subsidiaries on a consolidated basis as the Chief Financial Officer of the Company. In preparing this certificate, I have made such investigations and inquiries as I deem necessary and prudent in connection with the matters set forth herein and have reviewed the terms of the Credit Agreement and the other Loan Documents.

3. As of the date hereof and after giving effect to the Closing Date Transactions, that, (i) the sum of the debt and liabilities (including subordinated and contingent liabilities) of the Company and its subsidiaries, taken as a whole, does not exceed the fair value of the present assets of the Company and its subsidiaries, taken as a whole; (ii) the present fair saleable value of the assets of the Company and its subsidiaries, taken as a whole, is greater than the total amount that will be required to pay the probable debt and liabilities (including subordinated and contingent liabilities) of the Company and its subsidiaries as they become absolute and matured, (iii) the capital of the Company and its subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Company or its subsidiaries, taken as a whole, contemplated as of the date hereof and as proposed to be conducted following the Closing Date; and (iv) the Company and its subsidiaries, taken as a whole, have not incurred, or believe that they will incur, debts or other liabilities including current obligations beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

IN WITNESS WHEREOF, the undersigned has executed this Solvency Certificate in such undersigned's capacity as Chief Financial Officer of the Company, on behalf of the Company, and not individually, as of the date first stated above.

EASTMAN KODAK COMPANY

By: _____
Name: _____
Title:

_____ __, 20__

To each of the Lenders
party to the Credit Agreement
(as defined below) and to Bank of America, N.A.,
as Agent for such Lenders

Ladies and Gentlemen:

Reference is made to the Letter of Credit Facility Agreement, dated as of February ___, 2021 (as amended or modified from time to time, the "Credit Agreement") among EASTMAN KODAK COMPANY, a New Jersey corporation (the "Company"), certain of its subsidiaries, the Lenders (as defined in the Credit Agreement), Bank of America, N.A., as issuing bank (in such capacity, "Issuing Bank"), and Bank of America, N.A., as administrative agent and collateral agent for the Lenders (in such capacity, the "Agent"). Terms defined in the Credit Agreement are used herein with the same meaning.

Section 1. Guaranty; Limitation of Liability. (a) The undersigned hereby absolutely, unconditionally and irrevocably guarantees the punctual payment when due, whether at scheduled maturity or on any date of a required prepayment or by acceleration, demand or otherwise, of all Guaranteed Obligations, and agrees to pay any and all expenses (including, without limitation, fees and expenses of counsel) incurred by the Agent or any Lender in enforcing any rights under this Guaranty Supplement, the Guaranty or any other Loan Document. Without limiting the generality of the foregoing, the undersigned's liability shall extend to all amounts that constitute part of the applicable Guaranteed Obligations and would be owed by any other Loan Party or Subsidiary of the Company, as applicable, to the Agent or any Lender under or in respect of the Loan Documents or any agreement evidencing a Secured Obligation but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving such other Loan Party or Subsidiary, as the case may be.

(b) The undersigned, and by its acceptance of this Guaranty Supplement, the Agent and each Lender, hereby confirms that it is the intention of all such Persons that this Guaranty Supplement, the Guaranty and the obligations of the undersigned hereunder and thereunder not constitute a fraudulent transfer or conveyance for purposes of Bankruptcy Law, the Uniform Fraudulent Conveyance Act, the Uniform Fraudulent Transfer Act or any similar foreign, federal or state law to the extent applicable to this Guaranty Supplement, the Guaranty and the obligations of the undersigned hereunder and thereunder. To effectuate the foregoing intention, the Agent, the Lenders and the undersigned hereby irrevocably agree that the obligations of the undersigned under this Guaranty Supplement and the Guaranty at any time shall be limited to the maximum amount as will result in the obligations of the undersigned under this Guaranty Supplement and the Guaranty not constituting a fraudulent transfer or conveyance.

(c) The undersigned hereby unconditionally and irrevocably agrees that in the event any payment shall be required to be made to the Agent or any Lender under this Guaranty Supplement, the Guaranty or any other guaranty, the undersigned will contribute, to the maximum extent permitted by applicable law, such amounts to each other Guarantor and each other guarantor so as to maximize the aggregate amount paid to the Agent and the Lenders under or in respect of the Loan Documents.

Section 2. Obligations Under the Guaranty. The undersigned hereby agrees, as of the date first above written, to be bound as a Guarantor by all of the terms and conditions of the Guaranty to the same extent as each of the other Guarantors thereunder. The undersigned further agrees, as of the date first above written, that each reference in the Guaranty to an "Additional Guarantor" or a "Guarantor" shall also mean and be a reference to the undersigned, and each reference in any other Loan Document to a "Subsidiary Guarantor" or a "Loan Party" shall also mean and be a reference to the undersigned.

Section 3. Representations and Warranties. The undersigned hereby makes, as to itself and as of the date first above written, each representation and warranty set forth in Section 4.01 of the Credit Agreement to the same extent as each other Guarantor.

Section 4. Delivery by Telecopier. Delivery of an executed counterpart of a signature page to this Guaranty Supplement by telecopier or .pdf shall be effective as delivery of an original executed counterpart of this Guaranty Supplement.

Section 5. Governing Law; Jurisdiction; Waiver of Jury Trial, Etc. (a) THIS GUARANTY SUPPLEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK.

(b) SUBMISSION TO JURISDICTION. THE UNDERSIGNED IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE NONEXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF NEW YORK 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 GUARANTY SUPPLEMENT, THE GUARANTY OR ANY OTHER LOAN DOCUMENT, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT, AND THE UNDERSIGNED 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. THE UNDERSIGNED 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 GUARANTY SUPPLEMENT, THE GUARANTY OR IN ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT THE AGENT, ANY LENDER OR ANY ISSUING BANK MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS GUARANTY SUPPLEMENT, THE GUARANTY OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWER OR ANY OTHER LOAN PARTIES OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(c) WAIVER OF VENUE. THE UNDERSIGNED 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 GUARANTY SUPPLEMENT, THE GUARANTY OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. THE UNDERSIGNED 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. THE UNDERSIGNED IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 9.02 OF THE CREDIT AGREEMENT. NOTHING IN THIS GUARANTY SUPPLEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

(e) THE UNDERSIGNED HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY SUPPLEMENT, THE GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). THE UNDERSIGNED HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT HAVE BEEN INDUCED TO ENTER INTO THIS GUARANTY SUPPLEMENT, THE GUARANTY AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Very truly yours,

[NAME OF ADDITIONAL GUARANTOR]

By_____
Title:

[on Borrower's letterhead]

To: Bank of America, N.A. as Agent

Attn: _____
Fax No.: _____

Re: Compliance Certificate dated [_____], 20[__]

Ladies and Gentlemen:

Reference is hereby made to the Letter of Credit Facility Agreement, dated as of February ___, 2021 (as amended, restated, supplemented, or modified from time to time, the "Credit Agreement"), by and among the lenders party thereto (such lenders, together with their respective successors and assigns, are referred to hereinafter each individually as a "Lender" and collectively as the "Lenders"), Bank of America, N.A., as issuing bank (in such capacity, "Issuing Bank"), Bank of America, N.A., as administrative agent and collateral agent for the Lenders (together with its successors and assigns in such capacity, "Agent"), Eastman Kodak Company (the "Borrower") and certain of its subsidiaries. Capitalized terms used herein but not specifically defined herein shall have the meanings ascribed to them in the Credit Agreement.

Pursuant to Section 5.01(h) of the Credit Agreement, the undersigned Chief Financial Officer of the Borrower hereby certifies that Borrower and its Restricted Subsidiaries are [in compliance][not in compliance] with the covenant contained in Section 5.03 of the Credit Agreement as demonstrated on Schedule I hereof.

IN WITNESS WHEREOF, this Compliance Certificate is executed by the undersigned this _____ day of _____, 20__.

EASTMAN KODAK COMPANY

By: _____
Name: _____
Title: _____

Exhibit 10.6

EXECUTION VERSION

CREDIT AGREEMENT

dated as of February 26, 2021

by and among

EASTMAN KODAK COMPANY,
as Borrower

THE LENDERS PARTY HERETO,
as Lenders,

and

ALTER DOMUS (US) LLC

as Administrative Agent

TABLE OF CONTENTS

ARTICLE VIII
THE AGENT

ARTICLE IX
MISCELLANEOUS

ANNEX

SCHEDULES

EXHIBITS

CREDIT AGREEMENT

This CREDIT AGREEMENT (this "**Agreement**") dated as of February 26, 2021, among EASTMAN KODAK COMPANY, a New Jersey corporation (the "**Borrower**"), the several banks and other financial institutions or entities from time to time parties to this Agreement (the "**Lenders**"), and Alter Domus (US) LLC, as Administrative Agent.

W I T N E S S E T H:

WHEREAS, the Borrower has requested that the Lenders extend to the Borrower a senior secured first lien term loan facilities in the aggregate principal amount of $275,000,000, consisting of (i) the Initial Term Loans in an aggregate principal amount of $225,000,000 and (ii) the Delayed Draw Term Loans in an aggregate principal amount of up to $50,000,000.

WHEREAS, the Lenders have agreed to extend such senior secured first lien term loan facilities on the terms and subject to the conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto hereby agree as follows:

ARTICLE I
DEFINITIONS

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

"**ABL Agent**" has the meaning set forth in the Intercreditor Agreement.

"**ABL Agreement**" means (a) that certain Amended and Restated Senior Secured Asset Based Revolving Credit Agreement, dated as of May 26, 2016, by and among the Borrower, the ABL Agent, the lenders identified therein and the other agents identified therein, as amended, amended and restated, modified, or supplemented from time to time to the extent permitted by this Agreement and the Intercreditor Agreement and (b) any other replacement, refinancing, restructuring, extension or renewal thereof (whether through one or more credit facilities or other debt issuances pursuant to the agreement set forth in subclause (a) or any other agreement, contract or indenture) to the extent permitted by this Agreement and the Intercreditor Agreement.

"**ABL Borrowing Base**" has the meaning set forth for "Borrowing Base" in the ABL Agreement.

"**ABL Facility**" means the asset-based revolving credit facility made available pursuant to the ABL Agreement.

"**ABL Lenders**" means the lenders under the ABL Agreement.

"**ABL Loan**" means a loan made by the ABL Lenders from time to time under the ABL Agreement.

"**ABL Loan Documents**" has the meaning set forth for "Loan Documents" (or any comparable term) in the ABL Agreement.

"**ABL/LC Agents**" has the meaning set forth in the Intercreditor Agreement.

"**ABL/LC Priority Collateral**" has the meaning set forth in the Intercreditor Agreement.

"**Acceptable Foreign Currency**" means Pounds Sterling, and Euros, and the currencies listed on Schedule 1.01(A), any other currency used in the ordinary course of business of the Borrower and its Subsidiaries for cash management purposes outside the United States and other currency as may be approved by the Administrative Agent from time to time in its sole discretion.

"**Account**" has the meaning set forth in the UCC.

"**Account Control Agreement**" means, with respect to a Deposit Account or Securities Account (in each case, other than an Excluded Account) established by a Loan Party, an agreement, in form and substance reasonably satisfactory to the Administrative Agent, establishing Control (as defined in the Security Agreement) of such Deposit Account or Securities Account by either the Administrative Agent or the ABL Agent, in accordance with the terms of the Security Agreement and the Intercreditor Agreement (it being understood and agreed that Account Control Agreements substantially in the form of the existing agreement to which the ABL Agent is a party are in form and substance reasonably acceptable to the Administrative Agent).

"**Administrative Agent**" means Alter Domus (US) LLC, in its capacity as administrative agent for the Lenders hereunder, together with its permitted successors and assigns (including assignment of its agency role hereunder to a third party) in such capacity.

"**Administrative Questionnaire**" means an Administrative Questionnaire in a form supplied by the Administrative Agent or any comparable form approved by the Administrative Agent.

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

"**Affiliate Assignment Agreement**" means an Assignment and Assumption Agreement substantially in the form of Exhibit J, with such amendments or modifications as may be agreed by the Administrative Agent.

"**Agency Fee Letter**" means the Agency Fee Letter, dated as of the Closing Date, between the Borrower and the Agent, as amended, amended and restated and modified from time to time.

"**Agent**" means the Administrative Agent.

"**Aggregate Outstandings**" means, at any time, the aggregate outstanding principal balance of the Loans of all Lenders at such time.

"**Agreement**" has the meaning set forth in the preamble hereto.

"**Aluminum Litigation**" means, collectively, (i) those certain cases pending as of the Closing Date in the United States District Court for the Southern District of New York with docket numbers 1:14-cv-06849-PAE and 1:13-md-02481-PAE and (ii) Eastman Kodak Company & Ors-v.-Glencore PLC & Ors (Claim No. CP-2018-000034), pending as of the Closing Date in the courts of the United Kingdom.

"**Applicable Law**" means, as to any Person, all statutes, rules, regulations, orders, or other requirements having the force of law and applicable to such Person, and all court orders and injunctions, and/or similar rulings and applicable to such Person, in each case of or by any Governmental Authority, or court, or tribunal which has jurisdiction over such Person, or any property of such Person.

"**Applicable Percentage**" means, with respect to any Lender at any time, the percentage (carried out to the fourth decimal place) of (a) prior to the funding of the Loans on the Closing Date, the amount of such Lender's Commitment at such time to the aggregate amount of Commitments of all Lenders at such time and (b) thereafter, the outstanding principal balance of such Lender's Loan at such time to the Aggregate Outstandings at such time. The initial Applicable Percentage of each Lender is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Acceptance pursuant to which such Lender becomes a party hereto, as applicable.

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

"**Asset Sale**" means any Disposition of Term Priority Collateral or series of related Dispositions of Term Priority Collateral (other than any such Disposition permitted by Sections 6.05(a), (b), (d)(i), (h), (i), (j), (m) and (o)); *provided* that any Disposition that yields Net Proceeds to the Borrower or any of its Restricted Subsidiaries in an amount equal to or less than $5,000,000 for any such individual Disposition and $10,000,000 in the aggregate for all such Dispositions in any fiscal year shall not constitute an Asset Sale. For the avoidance of doubt, the issuance of Equity Interests shall not constitute an Asset Sale for purposes of this definition.

"**Assignee Group**" means two or more Eligible Assignees that are Affiliates of one another or two or more Approved Funds managed or advised by the same investment advisor or investment manager or by affiliated investment advisors or investment managers.

"**Assignment and Acceptance**" means an assignment and acceptance entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, substantially in the form of Exhibit A or any other form approved by the Administrative Agent and, solely with respect to those assignments with which the consent of the Borrower is required by Section 9.04, the Borrower.

"**Attributable Indebtedness**" means, on any date, with respect to any Sale and Leaseback Transaction, the present value (discounted in accordance with GAAP at the debt rate implied in the applicable lease) of the obligations of the lessee for rental payments during the term of such lease.

"**Auction**" has the meaning set forth in Section 9.04(b).

"**Auction Manager**" means (a) the Administrative Agent or (b) any financial institution or advisor selected by Borrower and consented to by the Administrative Agent (such consent not to be unreasonably withheld or delayed) to act as an arranger in connection with any repurchases pursuant to Section 9.04(b)(v), *provided* that the Borrower shall not designate the Administrative Agent as the Auction Manager without the written consent of the Administrative Agent (it being understood that the Administrative Agent shall be under no obligation to agree to act as the Auction Manager).

"**Bankruptcy Code**" means The Bankruptcy Reform Act of 1978, as heretofore and hereafter amended, and codified as 11 U.S.C. Section 101 et seq.

"**Board**" means the Board of Governors of the Federal Reserve System of the United States of America.

"**Bona Fide Debt Fund**" means a debt fund or other investment vehicle engaged in the making, purchasing, holding or otherwise investing in commercial loans, bonds or similar extensions of credit in the ordinary course of business and whose managers have fiduciary duties to third party investors in such fund or investment vehicle.

"**Borrower**" has the meaning set forth in the preamble hereto.

"**Borrower Materials**" has the meaning set forth in Section 5.01.

"**Borrowing**" means a borrowing of Loans pursuant to Section 2.03.

"**Borrowing Request**" means a request by the Borrower for a Borrowing in accordance with Section 2.03.

"**Business Day**" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

"**Calculation Date**" has the meaning set forth in Section 2.06(c).

"**Capital Expenditures**" means, without duplication, any expenditure of money for any purchase or other acquisition of any asset which, in conformity with GAAP, would be required to be classified as a capital expenditure on the consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries; *provided* that the term "**Capital Expenditures**" shall not include (i) any additions to property, plant and equipment and other expenditures

made in connection with the replacement, substitution, restoration, repair or improvement of assets to the extent made with (w) the proceeds of equity issuances of, or capital contributions to, the Borrower, (x) Indebtedness borrowed (excluding borrowings under the ABL Agreement) by any Loan Party or any Restricted Subsidiary in connection with such capital expenditures, (y) the proceeds from any casualty insurance or condemnation or eminent domain paid on account of the loss of or damage to the assets being replaced, substituted, restored, repaired or improved, to the extent that the proceeds therefrom are utilized or committed to be utilized for capital expenditures within twelve (12) months of the receipt of such proceeds and (if so committed) are so utilized within eighteen (18) months of the receipt of such proceeds, or (z) the proceeds from any sale or other disposition of the Borrower's or any Restricted Subsidiary's assets (other than assets consisting of Accounts and the proceeds thereof), to the extent that the proceeds therefrom are utilized or committed to be utilized for capital expenditures within twelve (12) months of the receipt of such proceeds and (if so committed) are so utilized within eighteen (18) months of the receipt of such proceeds, (ii) the purchase price of equipment that is purchased substantially contemporaneously with the trade-in of existing equipment solely to the extent of the amount of such purchase price reduced by the credit granted by the seller of such equipment for the equipment being traded in at such time, (iii) expenditures that constitute operating lease expenses in accordance with GAAP, (iv) expenditures that constitute Permitted Acquisitions or other investments that consist of the purchase of a business unit, line of business or a division of a Person or all or substantially all of the assets of a Person, (v) any expenditures which are paid by a third party or which are contractually required to be, and are, reimbursed to the Loan Parties in cash by a third party (including landlords) during such period of calculation or (vi) any non-cash capitalized interest expense reflected as additions to property, plant or equipment in the consolidated balance sheet of the Borrower and the Restricted Subsidiaries.

"**Capital Lease Obligations**" means, with respect to any Person for any period, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as a capital lease on a balance sheet of such Person under GAAP and the amount of which obligations shall be the capitalized amount thereof determined in accordance with GAAP. Notwithstanding the foregoing or any other provision contained in this Agreement or in any Loan Document, for purposes of this definition, GAAP shall mean GAAP as in effect prior to giving effect to the adoption of ASU No. 2016-02 "Leases (Topic 842)" and ASU No. 2018-11 "Leases (Topic 842)".

"**Captive Insurance Subsidiary**" means any Subsidiary that is subject to regulation as an insurance company.

"**Cash and Cash Equivalents**" means:

(a) Dollars and Acceptable Foreign Currencies;

(b) securities issued or directly and fully guaranteed or insured by the United States of America or any agency or instrumentality of the United States of America (*provided* that the full faith and credit of the United States of America is pledged in support of those securities) having maturities of not more than twenty-four (24) months from the date of acquisition;

(c) obligations issued or fully guaranteed by any state of the United States of America or any political subdivision of any such state or province or any instrumentality thereof maturing within one year from the date of acquisition and having a rating of either "A" or better from S&P, A2 or better from Moody's;

(d) certificates of deposit and eurodollar time deposits with maturities of one year or less from the date of acquisition, banker's acceptances with maturities not exceeding one year and overnight bank deposits, in each case, with any Lender or with any United States commercial bank having capital and surplus in excess of $250,000,000;

(e) repurchase obligations with a term of not more than seven (7) days for underlying securities of the types described in clauses (b), (c), and (d) above entered into with any financial institution meeting the qualifications specified in clause (d) above;

(f) commercial paper rated at least "P-2" by Moody's or at least "A-2" by S&P, in each case, maturing within one year after the date of acquisition;

(g) money market funds that either are (x) SEC.270.2a-7 compliant, (y) enhanced cash funds having a weighted average maturity of not greater than 120 days or (z) principally investing in assets of the types described in clauses (a) through (f) above; and

(h) offshore overnight interest bearing deposits in foreign branches of the Administrative Agent, any Lender or an Affiliate of a Lender, or

(i) instruments equivalent to those referred to in clauses (a) through (h) above of comparable tenor to those referred to above, denominated in any Acceptable Foreign Currency and used in the ordinary course of business of the Borrower and its Subsidiaries for cash management purposes in any jurisdiction outside the United States of America to the extent reasonably required or advisable in connection with any business conducted by the Borrower or any Subsidiary.

"**Cash Control Implementation Date**" has the meaning set forth in Section 5.12(b).

"**Cash Option**" has the meaning set forth in Section 2.08(a).

"**Cash/PIK Election Notice**" means a written notice provided by the Borrower to the Administrative Agent, substantially in the form attached hereto as Exhibit B, or such other form approved by the Administrative Agent.

"**Cash/PIK Option**" has the meaning set forth in Section 2.08(a).

"**Change in Control**" means, at any time, any "person" or "group" (as such terms are used in Sections 13(d) and 14(d) of the Securities and Exchange Act of 1934 (the "**Exchange Act**")), other than a Permitted Holder, is or becomes the beneficial owner (as defined in Rules 13d-3 and 13d-5 under the Exchange Act, except that a person or group shall be deemed to have "beneficial ownership" of all shares that any such person or group has the right to acquire, whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of voting stock of the Borrower representing more than 35% of the voting power of all voting stock of the Borrower; *provided* that the acquisition of the Borrower's voting stock by one or more parent companies shall not constitute a Change in Control so long as no "person" or "group" other than a Permitted Holder is the beneficial owner of shares of such parent companies representing more than 35% of the voting power of all voting stock of such parent companies.

"**Change in Control Election Date**" has the meaning set forth in Section 2.06(b)(v).

"**Change in Control Notice**" has the meaning set forth in Section 2.06(b)(v).

"**Change in Law**" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any party hereto (or, for purposes of Section 2.09(b), by any lending office of such Lender or by such Lender's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement. Notwithstanding the foregoing, (x) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines and directives promulgated thereunder 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 introduced or adopted after the Closing Date, regardless of the date enacted or adopted.

"**Charges**" has the meaning set forth in Section 9.13.

"**Closing Date**" means the date on which each of the conditions set forth in Section 4.01 were satisfied (or waived in accordance with Section 9.02), which date is February 26, 2021.

"**Closing Date Unrestricted Subsidiaries**" means each of Kodak Realty, Inc., KP Services (Jersey) Limited and Kodak PE Tech, LLC.

"**Code**" means the Internal Revenue Code of 1986, as amended from time to time.

"**Collateral**" means all the "**Collateral**" as defined in any Security Document.

"**Commitments**" means the Initial Term Loan Commitment and/or the Delayed Draw Term Loan Commitment, as applicable, as may be modified in connection with any Assignment and Acceptance made in accordance with Section 9.04. As of the Closing Date, the aggregate principal amount of the Commitments is $275,000,000.

"**Common Stock Purchase Agreement**" means that certain Securities Purchase Agreement, dated as of the date hereof, by the Borrower and the purchasers party thereto, with respect to the purchase of shares of common stock of the Borrower by such purchasers, as amended, restated, supplemented or otherwise modified from time to time.

"**Competitors**" means those Persons who are directly or indirectly engaged in the same or similar line of business as the Borrower or its Subsidiaries.

"**Compliance Certificate**" means a certificate duly executed by a Responsible Officer substantially in the form of Exhibit M.

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

"**Consolidated Current Assets**" means, at any date of determination, all amounts (other than Cash and Cash Equivalents) that would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries at such date.

"**Consolidated Current Liabilities**" means, at any date of determination, all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and its Restricted Subsidiaries at such date, but excluding (a) the current portion of, and any accrued interest payments or expenses with respect to, any Funded Debt or Capital Lease Obligations, in each case, of the Borrower and its Restricted Subsidiaries, (b) liabilities (including accruals and reserves) in respect of any costs, charges, expenses or payment obligations related to Pension Agreements and (c) without duplication of clause (a) above, all Indebtedness consisting of ABL Loans (including letter of credit commitment fees and unused line fees) to the extent otherwise included therein.

"**Consolidated EBITDA**" means, at any date of determination, an amount equal to Consolidated Net Income for the most recently completed Measurement Period, *plus* the following to the extent reducing Consolidated Net Income (without duplication):

(a) (i) Consolidated Interest Charges,

(ii) provision for taxes based on income, profits or capital gains, including foreign, federal, state, franchise and similar taxes and foreign withholding taxes (including penalties and interest related to such taxes or arising from tax examinations) of such Person paid or accrued during such period,

(iii) accretion, depreciation and amortization expense (excluding amortization of a prepaid cash item that was paid and not expensed in a prior period, other than in respect of licenses provided to the Borrower or a Restricted Subsidiary in connection with the settlement of litigation),

(iv) any non-cash charges (other than (1) amortization of a prepaid cash item that was paid and not expensed in a prior period and (2) write down of current assets) including: (a) write-downs of property, plant and equipment and other assets, (b) impairment of intangible assets, (c) losses resulting from cumulative effect of changes in accounting principles, (d) net foreign currency reevaluation of intercompany indebtedness and remeasurement losses or gains related to the balance sheet of the Borrower and its Restricted Subsidiaries, (e) losses on sales of accounts receivable, (f) provisions for asset retirement obligations, (g) provisions for environmental restoration and remedial action, (h) net non-cash mark-to-market charges relating to hedging arrangements, (i) unrealized losses from Hedging Agreements and unrealized losses from foreign currency transactions, and (j) commercial capital expenses not included in depreciation expenses for such period; *provided* that if such non-cash charges represent an accrual or reserve for potential cash items in any future period, the cash payment in respect thereof in such future period shall be subtracted from Consolidated EBITDA to such extent,

(v) fees, costs, charges, commissions, operating losses, write-downs and expenses (including (i) fees, costs and expenses related to legal, financial, restructuring and other advisors, auditors and accountants, (ii) printer costs and expenses, (iii) SEC and other filing fees and (iv) underwriting, arrangement, syndication, issuance backstop and placement premiums, discounts, fees, costs and expenses) paid, reimbursed or incurred during such period in connection with the negotiation, execution and ongoing performance of the Loan Documents, the ABL Loan Documents, the Convertible Note, the Borrower's Series B Preferred Stock and Series C Preferred Stock, and, in each case, any transaction (including any financing, acquisition or disposition, whether or not consummated) or litigation related thereto or contemplated by any of the foregoing, in each case, regardless of whether initially incurred by the Borrower or paid by the Borrower to reimburse others for such fees, costs and expenses,

(vi) any extraordinary expenses, charges or losses,

(vii) any non-recurring, infrequent or unusual expenses, charges or losses in an amount not to exceed for any four Fiscal Quarter period, the greater of (A) 5% of Consolidated EBITDA for such period (calculated after giving effect to any amounts added to Consolidated EBITDA pursuant to this clause (vii) and clauses (xi) and (xii) and Section 1.08) and (B) $10,000,000,

(viii) fees, costs and expenses (including fees, costs and expenses related to (i) legal, financial and other advisors, auditors and accountants, (ii) printer costs and expenses, (iii) SEC and other filing fees and (iv) underwriting, arrangement, syndication, backstop and placement premiums, discounts, fees, charges and expenses) of the Borrower and its Restricted Subsidiaries, incurred as a result of Permitted Acquisitions, Investments, Dispositions, issuance of Equity Interests or issuance, waiver, refinancing or amendment of Indebtedness, in each case to the extent permitted hereunder, whether or not consummated, other than any fees paid, or costs or expenses reimbursed to any Restricted Subsidiary of the Borrower other than from a Person that is Borrower or any of its Restricted Subsidiaries,

(ix) deferred or amortized financing fees (and any write-offs thereof) for such period,

(x) any cash expenses or losses funded during such period with payments from assets of the Kodak Retirement Income Plan as in effect on January 19, 2012,

(xi) business optimization expenses, and restructuring charges and reserves for such period; *provided* that, with respect to each such business optimization expense or restructuring charge or reserve pursuant to this subclause (xi), the Borrower shall have delivered to the Administrative Agent an officer's certificate specifying and quantifying such expense, charge or reserve and stating that such expense, charge or reserve is a business optimization expense or restructuring charge or reserve.

(xii) the amount of cost savings and synergies projected by the Borrower in good faith to be realized as a result of specified actions taken or expected to be taken (which cost savings or synergies shall be subject only to certification by a Responsible Officer of the Borrower and shall be calculated on a Pro Forma Basis as though such cost savings or synergies had been realized on the first day of the relevant period), net of the amount of actual benefits realized during such period from such actions; *provided* that

(A) such cost savings or synergies are reasonably identifiable and factually supportable, and (B) such actions have been taken or are to be taken or expected to be taken within twelve (12) months after the date of determination; *provided further that* aggregate amounts added pursuant to this subclause for any period shall not in the aggregate exceed the greater of (x) $10,000,000 or (y) 5% of the Consolidated EBITDA (calculated without giving effect to this clause or to Section 1.08(c)),

(xiii) any expenses, charges or losses that are covered by indemnification or other reimbursement provisions or insurance in any agreement, to the extent such indemnification or insurance coverage has not been disclaimed or denied and is reasonably expected to be paid within 180 days of any claim made therefor (*provided* that if such expenses are not reimbursed within such 180 day period, for purposes of calculating Consolidated EBITDA for any fiscal period in which an addback pursuant to this clause (xiii) has been taken, Consolidated EBITDA shall be re-calculated going forward excluding the addback pursuant to this clause (xiii) for such period),

(xiv) any proceeds from business interruption, casualty or liability insurance received by such Person during such period, to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income, and

(xv) non-cash expenses, charges and accruals for and reserves in respect of any charges, costs or expenses related to Pension Agreements, *minus*,

(b) without duplication and to the extent included in Consolidated Net Income for such period, the sum of (i) interest income (except to the extent deducted in determining Consolidated Interest Charges), (ii) income, profits or capital gains tax credits, (iii) other non-cash gains increasing Consolidated Net Income for such period (excluding any such non-cash gain to the extent it represents a reversal of an accrual or reserve for potential cash loss that was deducted and not added back to Consolidated EBITDA in any prior period) (*provided* that any cash received with respect to any non-cash items of income (other than extraordinary gains) for any prior period shall be added to the computation of Consolidated EBITDA), (iv) (A) any unusual or non-recurring income or gains not to exceed amounts that can be added back to Consolidated EBITDA pursuant to subclause (a)(vii) or (B) extraordinary income or gains, in each case, including, whether or not otherwise includable as a separate item in the statement of such Consolidated Net Income for such period, gains on the sale of assets outside of the ordinary course of business, (v) any other non-cash income arising from the cumulative effect of changes in accounting principles, (vi) provision for environmental restoration and remedial actions for continuing operations added back pursuant to clause (a)(iv) of this definition to the extent actually paid in cash, (vii) income and gains in respect of Pension Agreements and (viii) cash payments in respect of Pension Agreements, made in the period for which Consolidated EBITDA is being calculated.

Notwithstanding anything herein to the contrary, for purposes of calculating Consolidated EBITDA for any period of four Fiscal Quarters ending prior to December 31, 2021, Consolidated EBITDA for (i) the Fiscal Quarter ended June 30, 2020, shall be deemed to be negative $(1,000,000), (ii) the Fiscal Quarter ended September 30, 2020 shall be deemed to be $17,000,000 and (iii) the Fiscal Quarter ended December 31, 2020 shall be deemed to be $20,000,000.

"**Consolidated Interest Charges**" means, for any Measurement Period, all interest, premium payments, debt discount, fees, charges and related expenses in connection with borrowed money (including capitalized interest) or in connection with the deferred purchase price of assets, in each case to the extent treated as interest in accordance with GAAP, including 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, but excluding (x) any interest paid, directly or indirectly, to any Loan Party by the Borrower and its Restricted Subsidiaries, (y) any non-cash or deferred interest and financing costs (including any legal and accounting costs, fees on account of any financings, any non-cash accretion or accrual of discounted liabilities not constituting Indebtedness, all as determined on a consolidated basis in accordance with GAAP) and (z) amortization or write-off of deferred financing fees, debt issuance costs, commissions, fees and expenses.

"**Consolidated Net Income**" means, as of any date of determination, the net income of the Borrower and its Restricted Subsidiaries for the most recently completed Measurement Period, all as determined on a consolidated basis in accordance with GAAP; *provided,* however, that there shall be excluded:

(a) the net income (or loss) of any Person that is not a Restricted Subsidiary, except to the extent of the amount of dividends, distributions or other payments actually paid in cash (or to the extent converted into cash) to the Borrower or any of its wholly owned Restricted Subsidiaries during such period,

(b) the income (or loss) of any Person (other than a Subsidiary of the Borrower) in which the Borrower or any of its Subsidiaries has an ownership interest, except to the extent that any such income is actually received by the Borrower or any Restricted Subsidiary in the form of dividends or similar distributions,

(c) the income (or loss) of any Person during such Measurement Period and accrued prior to the date it becomes a Restricted Subsidiary of the Borrower or any of the Borrower's Restricted Subsidiaries or is merged into or consolidated with the Borrower or any of its Restricted Subsidiaries or that Person's assets are acquired by the Borrower or any of its Restricted Subsidiaries (but only the portion attributable to such Person or assets prior to the dates it became or is merged or consolidated with the Borrower or any Restricted Subsidiary or the assets were so acquired),

(d) any after-tax effect of gains or losses attributable to Dispositions or other dispositions or transfers of assets, in each case other than in the ordinary course of business, and discontinued operations or disposal of discontinued operations, as determined in good faith by the Borrower,

(e) effects of adjustments (including the effects of such adjustments pushed down to the Borrower and its Restricted Subsidiaries) in such Person's consolidated financial statements (including to property, equipment, inventory and other assets) pursuant to GAAP resulting from the application of purchase accounting in relation to the Loan Transactions or any consummated acquisition or the amortization or write-off of any amounts thereof (including the impact on net income (or loss) arising from mark-to-market adjustments with respect to earn-outs), net of taxes,

(f) (i) any non-cash compensation expense recorded from grants or periodic remeasurement of stock appreciation or similar rights, stock options, restricted stock or other rights and any cash charges associated with the rollover, acceleration, or payout of capital stock by management of the Borrower in connection with the Loan Transactions and (ii) any costs or expenses incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement or any stock subscription agreement, to the extent that such costs or expenses are funded with cash proceeds contributed to the common equity capital of the Borrower,

(g) any after-tax effect of income (or loss) from the early extinguishment of obligations under Hedging Agreements or other derivative instruments, or Indebtedness,

(h) the undistributed earnings of any Subsidiary of the Borrower to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary is not at the time permitted by the terms of any Contractual Obligation or law applicable to such Subsidiary,

(i) accruals and reserves and gains, losses or charges with respect to, or relating to, the UK Pension Settlement Agreement and the completion and implementation of the transactions contemplated thereby and in relation thereto, and

(j) accruals and reserves that are established or adjusted within eighteen (18) months of the Closing Date that are so required to be established or adjusted as a result of the Loan Transactions in accordance with GAAP or changes as a result of a modification of accounting policies.

"**Consolidated Working Capital**" means at any date, the excess of Consolidated Current Assets on such date *less* Consolidated Current Liabilities on such date.

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

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a Person, whether through the ability to exercise voting power or by contract.

"**Controlling**" and "**Controlled**" have meanings correlative thereto.

"**Controlled Account**" means any Controlled DDA Account or Controlled Lock Box Account.

"**Controlled DDA Accounts**" has the meaning set forth in Section 5.12(b).

"**Controlled Lock Box Accounts**" has the meaning set forth in Section 5.12(b).

"**Convertible Note**" means that certain Convertible Promissory Note, dated as of the date hereof, by the Borrower and the holders party thereto, as amended, restated, supplemented or otherwise modified from time to time.

"**Convertible Note Purchase Agreement**" means that certain Securities Purchase Agreement, dated as of the date hereof, by the Borrower and the holders party thereto, with respect to the purchase of the Convertible Note, as amended, restated, supplemented or otherwise modified from time to time.

"**Convertible Note Transaction Documents**" has the meaning set forth for "Transaction Documents" (or any comparable term) in the Convertible Note Purchase Agreement.

"**Credit Party**" or "**Credit Parties**" means (a) individually, (i) each Lender, (ii) the Administrative Agent, (iii) any other Person (including, if applicable, Affiliates of Lenders) to whom Obligations are owing and (iv) the successors and permitted assigns of each of the foregoing and (b) collectively, all of the foregoing.

"**Currency and Commodity Hedging Agreement**" means any foreign currency exchange agreement, commodity price protection agreement or other currency exchange rate or commodity price hedging arrangement.

"**DDAs**" means any checking, savings or other demand deposit account maintained by a Loan Party.

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

"**Defaulting Lender**" means, at any time, a Lender as to which the Administrative Agent has notified the Borrower that a Lender Insolvency Event has occurred and is continuing with respect to such Lender. Any determination that a Lender is a Defaulting Lender will be made by the Administrative Agent in its sole discretion acting in good faith. The Administrative Agent will promptly send to all parties hereto a copy of any notice to the Borrower provided for in this definition.

"**Delayed Draw Funding Date**" has the meaning set forth in Section 2.2.

"**Delayed Draw Term Loan Commitment**" means, with respect to each Lender, the commitment of such Lender to make the Delayed Draw Term Loan on the Delayed Draw Funding Date at any time during the Delayed Draw Term Commitment Period. The principal amount of each Lender's Delayed Draw Term Loan Commitment as of the Closing Date is set forth opposite such Lender's name on Annex B hereto. As of the Closing Date, the aggregate principal amount of the Delayed Draw Term Loan Commitments is $50,000,000.

"**Delayed Draw Term Commitment Period**" means the period from the Closing Date to and including the earliest to occur of (a) February 26, 2023, (b) the Delayed Draw Funding Date pursuant to Section 2.2, and (c) the date on which the Obligations hereunder shall be accelerated in accordance with the provisions of this Agreement.

"**Delayed Draw Term Loan**" means the term loan made by the Lenders to the Borrower pursuant to Section 2.2.

"**Deposit Account**" has the meaning set forth in the Security Agreement.

"**Designated Non-Cash Consideration**" shall mean the fair market value of non-cash consideration received by the Borrower or any Restricted Subsidiary in connection with a Disposition made pursuant to Section 6.05(c) that is so designated as Designated Non-Cash Consideration on the date received pursuant to a certificate of a Responsible Officer of Borrower, setting forth the basis of such valuation.

"**Disbursement Accounts**" means the deposit accounts (other than Excluded Accounts) used by the Loan Parties for disbursements and payments (other than payroll) in the ordinary course of business; provided that in no event shall the aggregate amount on deposit in the Disbursement Accounts exceed the estimated amount expected for disbursements and payments by such Loan Parties and any fees in respect of such amount.

"**Disposition**" or "**Dispose**" means the sale, transfer, license, lease, assignment, conveyance, division, Sale and Leaseback Transaction or other disposition (including by merger, allocation of assets, division, consolidation or amalgamation), whether in one transaction or in a series of related transactions, of any property (including any Equity Interests) by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable.

"**Disqualified Institution**" means (a) those Persons identified to the Administrative Agent and the Lenders in writing on the Closing Date and (b) Competitors and their Affiliates that are not a Bona Fide Debt Fund identified to the Administrative Agent and the Lenders in writing (it being understood that the Borrower shall be permitted to supplement the list of Competitors and Affiliates in writing after the date hereof to the extent such supplemented Person becomes a Competitor (or an Affiliate of a Competitor) so long as such supplemented Person is not a Bona Fide Debt Fund). Any supplement shall be made available to the Lenders and shall become effective three (3) Business Days after delivery to the Administrative Agent. Notwithstanding anything herein to the contrary, in no event shall a supplement apply retroactively to disqualify any parties that have previously acquired an assignment or participation interest in the Loans that is otherwise permitted hereunder, but upon the effectiveness of such designation, any such party may not acquire any additional Loans or participations or other interest in Loans.

"**Disqualified Stock**" shall mean any Equity Interest that, by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable), or upon the happening of any event, (a) except as set forth in the proviso hereto, matures (excluding any maturity as the result of an optional redemption by the issuer thereof) or is mandatorily redeemable, pursuant to a sinking fund obligation or otherwise, or is redeemable at the option of the holder thereof, in whole or in part, or requires the payment of any cash dividend or any other scheduled payment constituting a return of capital, in each case at any time on or prior to the 91st day after the Maturity Date, or (b) is convertible into or exchangeable (unless at the sole option of the issuer thereof) for (i) debt securities or (ii) any Equity Interest referred to in clause (a) above, in each case at any time prior to the 91st day after of the Maturity Date; *provided* that (i) only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock; (ii) if such Equity Interests are issued to any plan for the benefit of employees of the Borrower or any Restricted Subsidiary or by any such plan to such employees, such Equity Interests shall not constitute Disqualified Stock solely because they may be required to be repurchased by the Borrower or any Restricted Subsidiary in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability; and (iii) such Equity Interest may by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) become mandatorily redeemable or redeemable at the option of the holder thereof upon the occurrence of a change in control or Disposition subject to payment in full in cash of all Obligations (other than contingent indemnification obligations not then due and owing).

"**Dollars**" and the symbol "**$**" mean the lawful currency of the United States.

"**Domestic Subsidiary**" means any Subsidiary of the Borrower that is not a Foreign Subsidiary.

"**ECF Prepayment**" has the meaning set forth in Section 2.06(b)(vi).

"**ECF Prepayment Date**" has the meaning set forth in Section 2.06(b)(vi).

"**Eligible Assignee**" means (a) a Lender or any Affiliate of a Lender, (b) an Approved Fund, and (c) any other Person approved by the Administrative Agent (such approval not to be unreasonably withheld, delayed or conditioned); *provided* that notwithstanding the foregoing, "**Eligible Assignee**" shall not include (i) a Disqualified Institution without the prior written consent of the Borrower, (ii) a natural person or (iii) a Loan Party or any of the Loan Parties' Affiliates or Subsidiaries.

"**Environmental Laws**" means all laws (statutory or common), rules, regulations, codes, ordinances, orders, decisions, decrees, judgments, injunctions, permits, or binding agreements issued, promulgated or entered into by or with any Governmental Authority, relating to the pollution or protection of the environment (including indoor air quality) or to human health and safety as it relates to Hazardous Material handling or exposure or to the preservation or reclamation of natural resources, including those relating to the management, Release or threatened Release of or exposure to any Hazardous Material.

"**Environmental Liability**" means any liability, obligation, damage, loss, claim, action, suit, judgment, order, fine, penalty, fee, expense or cost, contingent or otherwise (including any liability for costs of Remedial Actions, or natural resource damages, administrative oversight costs, and indemnities), of or related to the Borrower or any Subsidiary (including any predecessor for whom the Borrower or any Subsidiary bears liability contractually or by operation of law) arising under or relating to any Environmental Law, including those resulting from or based upon (a) any compliance or noncompliance with any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal or presence of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the Release or threatened Release of any Hazardous Materials into the environment (including as related to indoor air quality) or (e) any of the foregoing for which liability is assumed or imposed by any contract or agreement.

"**Equity Interests**" means, as to any Person, all of the authorized shares of capital stock of (or other ownership or profit interests in) such Person, including all classes of common and preferred capital stock, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and all of the other ownership or profit interests in such Person (including partnership, membership or trust interests therein), rights to receive distributions of cash and other property, and to receive allocations of items of income, gain, loss, deduction and credit and similar items from such Person, whether voting or nonvoting, whether or not such interests include rights entitling the holder thereof to exercise control over such Person, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination; *provided* that notwithstanding the foregoing, no Indebtedness shall constitute Equity Interests.

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

"**ERISA Affiliate**" means (a) any entity, whether or not incorporated, that is under common control with the Borrower and any Restricted Subsidiary within the meaning of Section 4001(a)(14) of ERISA; (b) any corporation which is a member of a controlled group of corporations within the meaning of Section 414(b) of the Code of which the Borrower or any Restricted Subsidiary is a member; (c) any trade or business (whether or not incorporated) which is a member of a group of trades or businesses under common control within the meaning of Section 414(c) of the Code of which the Borrower or any Restricted Subsidiary is a member; and (d) with respect to the Borrower or an Restricted Subsidiary, any member of an affiliated service group within the meaning of Section 414(m) or (o) of the Code of which that Borrower or Restricted Subsidiary, any corporation described in clause (b) above or any trade or business described in clause (c) above is a member. Any former ERISA Affiliate of the Borrower or a Restricted Subsidiary shall continue to be considered an ERISA Affiliate of the Borrower or the Restricted Subsidiary within the meaning of this definition with respect to the period such entity was an ERISA Affiliate of the Borrower or a Restricted Subsidiary and with respect to liabilities arising after such period for which the Borrower or Restricted Subsidiary could be liable under the Code or ERISA.

"**ERISA Event**" means (a) the failure of any Plan to comply with any material provisions of ERISA and/or the Code (and applicable regulations under either) or with the material terms of such Plan; (b) the existence with respect to any Plan of a non-exempt Prohibited Transaction; (c) any Reportable Event; (d) the failure of the Borrower or any Restricted Subsidiary or ERISA Affiliate to make by its due date a required installment under Section 430(j) of the Code with respect to any Pension Plan or any failure by any Pension Plan to satisfy the minimum funding standards (within the meaning of Section 412 of the Code or Section 302 of ERISA) applicable to such Pension Plan, whether or not waived in accordance with Section 412(c) of the Code or Section 302(c) of ERISA; (e) a determination that any Pension Plan is, or is expected to be, in "at risk" status (within the meaning of Section 430 of the Code or Section 303 of ERISA); (f) the filing pursuant to Section 412 of the Code or Section 302 of ERISA of an application for a waiver of the minimum funding standard with respect to any Pension Plan; (g) the occurrence of any event or condition which constitutes grounds under ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan or the incurrence by the Borrower or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Pension Plan, including but not limited to the imposition of any Lien in favor of the PBGC or any Pension Plan; (h) the receipt by the Borrower, any Restricted Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Pension Plan or to appoint a trustee to administer any Pension Plan under Section 4042 of ERISA; (i) the failure by the Borrower, a Restricted Subsidiary or any of their ERISA Affiliates to make any required contribution to a Multiemployer Plan pursuant to Sections 431 or 432 of the Code; (j) the incurrence by the Borrower, a Restricted Subsidiary or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal (within the meaning of Sections 4203 and 4205 of ERISA) from any Pension Plan or Multiemployer Plan; (k) the receipt by the Borrower, any Restricted Subsidiary or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Borrower, any Restricted Subsidiary or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, Insolvent, in Reorganization, in "endangered" or "critical" status (within the meaning of Sections 431 or 432 of the Code or Sections 304 or 305 of ERISA), or terminated (within the meaning of Section 4041A of ERISA) or that it intends to terminate or has terminated under Section 4041A or 4042 of ERISA; (l) the failure by the Borrower, any Restricted Subsidiary or any of their ERISA Affiliates to pay when due (after expiration of any applicable grace period) any installment payment with respect to Withdrawal Liability under Section 4201 of ERISA; (m) the withdrawal by the Borrower, any Restricted Subsidiary or any of their respective ERISA Affiliates from any Pension Plan with two or more contributing sponsors or the termination of any such Pension Plan resulting in liability to the Borrower or any of their respective Affiliates pursuant to Section 4063 or 4064 of ERISA; (n) the imposition of liability on the Borrower or any of their respective ERISA Affiliates pursuant to Section 4062(e) or 4069 of ERISA or by reason of the application of Section 4212(c) of ERISA; (o) the occurrence of an act or omission which could give rise to the imposition on the Borrower, any Restricted Subsidiary or any of their respective ERISA Affiliates of fines, penalties, taxes or related charges under Chapter 43 of the Code or under Section 409, Section 502(c), (i) or (l), or Section 4071 of ERISA in respect of any Plan; (p) the assertion of a material claim (other than routine claims for benefits) against any Plan other than a Multiemployer Plan or the assets thereof, or against the Borrower, any Restricted Subsidiary or any of their respective ERISA Affiliates in connection with any Plan; (q) receipt from the IRS of notice of the failure of any Pension Plan (or any other Plan intended to be qualified under Section 401(a) of the Code) to qualify under Section 401(a) of the Code, or the failure of any trust forming part of any Pension Plan (or any other Plan) to qualify for exemption from taxation under Section 501(a) of the Code; or (r) the imposition of a Lien pursuant to Section 430(k) of the Code or pursuant to ERISA with respect to any Pension Plan.

"**Euro**" means the lawful single currency of participating member states of the European Monetary Union.

"**Event of Default**" has the meaning set forth in Section 7.01.

"**Excess Cash Flow**" shall mean, for any fiscal year of the Borrower, the excess, if any, of (a) the sum, without duplication, of (i) Consolidated Net Income for such fiscal year, (ii) the amount of all non-cash charges (including depreciation and amortization) deducted in arriving at such Consolidated Net Income (excluding any non-cash charge to the extent it represents an accrual or reserve for a potential cash charge in any future period provided that the payment thereof in such future period shall be added to Excess Cash Flow in such future period), (iii) decreases in Consolidated Working Capital for such fiscal year, (iv) the aggregate net amount of non-cash loss on the Disposition

of property by the Borrower and its Restricted Subsidiaries during such fiscal year (other than sales of inventory in the ordinary course of business), to the extent deducted in arriving at such Consolidated Net Income, and (v) expenses, charges and accruals for and reserves in respect of any charges, costs or expenses related to Pension Agreements, to the extent deducted in arriving at such Consolidated Net Income; over (b) the sum, without duplication, of (i) the amount of all non-cash credits included in arriving at such Consolidated Net Income, (ii) the aggregate amount actually paid by the Borrower and its Restricted Subsidiaries in cash during such fiscal year on account of Capital Expenditures (excluding the principal amount of Indebtedness incurred in connection with such expenditures (except under the ABL Agreement) or amounts reinvested pursuant to Section 2.06(b)(vii)), (iii) the aggregate amount of all prepayments of ABL Loans during such fiscal year to the extent accompanying permanent optional reductions of the commitments in respect thereof, (iv) the aggregate amount of all regularly scheduled principal payments of Funded Debt (including the Loans) and Capital Lease Obligations of the Borrower and its Restricted Subsidiaries made during such fiscal year (other than in respect of any revolving credit facility to the extent there is not an equivalent permanent reduction in commitments thereunder), (v) increases in Consolidated Working Capital for such fiscal year, (vi) the aggregate net amount of non-cash gain on the Disposition of property by the Borrower and its Restricted Subsidiaries during such fiscal year (other than sales of inventory in the ordinary course of business), to the extent included in arriving at such Consolidated Net Income, (vii) the aggregate amount of cash payments made by the Borrower or any Restricted Subsidiary during such period pursuant to Section 6.08(a)(iv) using Internally Generated Cash, (viii) the aggregate amount of Investments made in cash by the Borrower or any Restricted Subsidiary pursuant to Section 6.04 (other than Investments in any Restricted Subsidiary and any Investments made pursuant to Section 6.04(a) or Section 6.04(l)) during such period using Internally Generated Cash, (ix) the aggregate amount of cash fees, costs and expenses relating to the Loan Transactions, to the extent not expensed and deducted in calculating Consolidated Net Income, (x) losses, charges and expenses related to internal software development that are capitalized but could have been expensed under alternative accounting policies in accordance with GAAP, plus (xi) Net Proceeds to the extent constituting Consolidated Net Income and to the extent the Borrower has used or intends to use such Net Proceeds to either prepay the Loans or reinvest in assets used or usable in its business, in each case, pursuant to and in compliance with Section 2.06(b), (xii) to the extent included in arriving at Consolidated Net Income, net realized gains (or minus net realized losses) on swap agreements or other derivative instruments, (xiii) cash indemnity payments received pursuant to indemnification provisions in, any Permitted Acquisition or any other Investment permitted under this Agreement, in each case that resulted in an increase to Consolidated Net Income (up to the amount of such increase), (xiv) cash payments made by the Borrower and its Restricted Subsidiaries during such Excess Cash Flow period in respect of long term liabilities of Borrower and such Restricted Subsidiaries (other than Indebtedness) to the extent funded from Internally Generated Cash, (xv) without duplication of amounts deducted in arriving at such Consolidated Net Income or deducted from Excess Cash Flow in prior Excess Cash Flow Periods, to the extent so elected by Borrower pursuant to a certificate of a Responsible Officer of the Borrower delivered to Administrative Agent, the aggregate consideration required to be paid in cash by the Borrower or any of its Restricted Subsidiaries in respect of Capital Expenditures permitted to be made hereunder, pursuant to binding contracts entered into prior to or during such Excess Cash Flow Period, which payments are required to be made during the first subsequent Excess Cash Flow Period, (xvi) income and gains in respect of Pension Agreements, (xvii) cash payments in respect of Pension Agreements made in the period for which Excess Cash Flow is being calculated, (xviii) FPD Earn-Out Payments and (xx) cash payments received by the Borrower or a Restricted Subsidiary in connection with the Aluminum Litigation.

"**Excess Cash Flow Period**" means each fiscal year of the Borrower, beginning with the fiscal year ending December 31, 2021, for which financial statements have been delivered in accordance with Section 5.01(a).

"**Excluded Accounts**" means any and all of the (a) payroll, employee benefits, healthcare, escrow, fiduciary, defeasance, redemption, trust, tax and other similar accounts, (b) zero balance accounts from which balances are swept daily to a Controlled Account, (c) other accounts prohibited by Applicable Law from being pledged to, or having a security interest therein granted to, a third party, and (d) other accounts of the Loan Parties (other than DDAs and other accounts into which customer or other third party payments in respect of the Collateral are scheduled to be or regularly made) with aggregate balances for all such accounts under this clause (e) of less than $5,000,000. Notwithstanding anything to the contrary herein, no Deposit Account or Securities Account shall constitute an Excluded Account for purposes of this Agreement or any other Loan Document to the extent such Deposit Account or Securities Account constitutes ABL/LC Priority Collateral.

"**Excluded Subsidiary**" means (a) any Immaterial Subsidiary, (b) any direct or indirect Domestic Subsidiary of a direct or indirect Foreign Subsidiary, (c) any Captive Insurance Subsidiary, (d) any Domestic Subsidiary that has no material assets other than Equity Interests in one or more Subsidiaries that are "controlled foreign corporations" ("**CFC's**") within the meaning of Section 957 of the Code (a "**Qualified CFC Holding Company**"), (e) any Foreign Subsidiary, (f) any direct or indirect Subsidiary of a CFC or Qualified CFC Holding Company, (g) any Unrestricted Subsidiary, (h) any Subsidiary that is prohibited by Applicable Law from Guaranteeing the Obligations and (i) any other Subsidiary to the extent the Administrative Agent and the Borrower agree that the provision of a Guarantee by such Subsidiary of the Obligations would result in a material adverse tax consequence; *provided* that, notwithstanding the foregoing, any Subsidiary that provides a guarantee in respect of the ABL Loan Documents or the Supplemental Letter of Credit Loan Documents shall not be an Excluded Subsidiary hereunder.

"**Excluded Taxes**" means any of the following Taxes imposed on or with respect to a Credit Party or required to be withheld or deducted from a payment to a Credit Party, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Credit Party being organized under the laws of, or having its principal office or, in the case of any Lender, its applicable lending office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. Federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower under Section 2.12(b)) or (ii) such Lender changes its lending office, except in each case to the extent that, pursuant to Section 2.10, amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender acquired the applicable interest in a Loan or Commitment or to such Lender immediately before it changed its lending office, (c) Taxes attributable to such Credit Party's failure to comply with Section 2.10(f) and (d) any U.S. Federal withholding Taxes imposed under FATCA.

"**Executive Order**" has the meaning set forth in Section 3.17(a).

"**Extended Loan**" has the meaning set forth in Section 2.13(a).

"**Extension**" has the meaning set forth in Section 2.13(a).

"**Extension Offer**" has the meaning set forth in Section 2.13(a).

"**Extraordinary Receipts**" means any cash received by the Borrower or the Restricted Subsidiaries not in the ordinary course of business (other than any proceeds described in Section 2.06(b)(i) or (ii), or any cash payments received by the Borrower or a Restricted Subsidiary in connection with the Aluminum Litigation or the FPD Earn-Out Payments), including cash payments received by the Borrower or a Restricted Subsidiary in respect of (a) pension plan reversions, (b) proceeds of insurance (other than business interruption insurance, or in respect of a Recovery Event or, in the case of proceeds of casualty or liability insurance, to the extent such proceeds are (i) promptly payable to a Person that is not the Borrower or any Restricted Subsidiary in accordance with Applicable Law or Contractual Obligations entered into in the ordinary course of business or (ii) received by the Borrower or any Restricted Subsidiary as reimbursement for any out-of-pocket costs incurred or made by such Person prior to the receipt thereof directly related to the event resulting from the payment of such proceeds), (c) judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (d) condemnation awards (and payments in lieu thereof) and (e) indemnity payments (other than to the extent such indemnity payments are (i) promptly payable to a Person that is not an Affiliate of the Borrower or any Restricted Subsidiary or (ii) received by the Borrower or any Restricted Subsidiary as reimbursement for any costs previously incurred or any payment previously made by such Person).

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

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

"**Fee Letter**" means the Fee Letter, dated as of the Closing Date between the Borrower, the Initial Lenders and the Administrative Agent, as amended, amended and restated or modified from time to time.

"**Financial Officer**" of any Person (other than a natural person) means the chief financial officer, president, chief executive officer, treasurer or controller or any other officer of such Person designated or authorized by any of the foregoing.

"**Financial Statements**" has the meaning set forth in Section 5.01(b).

"**Fiscal Month**" means each calendar month.

"**Fiscal Quarter**" means each three-month period of the Borrower ending on March 31, June 30, September 30 or December 31 of any year.

"**Foreign Assets Control Regulations**" has the meaning set forth in Section 3.17(a).

"**Foreign Benefit Arrangement**" means any employee benefit arrangement mandated by non-US law that is maintained or contributed to by the Borrower, any Restricted Subsidiary, any ERISA Affiliate or any other entity related to the Borrower on a controlled group basis.

"**Foreign Plan**" means each employee benefit plan (within the meaning of Section 3(3) of ERISA, whether or not subject to ERISA) that is not subject to US law and is maintained or contributed to by the Borrower, any Restricted Subsidiary, or any ERISA Affiliate or any other entity related to a Restricted Subsidiary on a controlled group basis.

"**Foreign Plan Event**" means, with respect to any Foreign Benefit Arrangement or Foreign Plan, (a) except for the failure to make or, if applicable, accrue in accordance with normal accounting practices, any employer or employee contributions required by applicable law or by the terms of such Foreign Benefit Arrangement or Foreign Plan; (b) the failure to register or loss of good standing with applicable regulatory authorities of any such Foreign Benefit Arrangement or Foreign Plan required to be registered; or (c) the failure of any Foreign Benefit Arrangement or Foreign Plan to comply with any material provisions of applicable law and regulations or with the material terms of such Foreign Benefit Arrangement or Foreign Plan.

"**Foreign Subsidiary**" means any Subsidiary organized under the laws of a jurisdiction other than the United States of America or any State thereof or the District of Columbia.

"**FPD Asset Purchase Agreement**" means that certain Stock and Asset Purchase Agreement by and between Eastman Kodak Company, as seller, and MIR Bidco SA, a *société anonyme* incorporated in Belgium with incorporation number BE 0705.932.821, as purchaser, dated as of November 11, 2018.

"**FPD Asset Sale**" means the sale of assets constituting the Borrower's "flexographic packaging division" in one transaction or a series of transactions, including any related transactions and payment of fees and expenses in connection therewith.

"**FPD Asset Sale Documents**" means the FPD Asset Purchase Agreement and all other agreements, instruments and other documents related thereto, including the FPD Earn-Out Agreement.

"**FPD Earn-Out Agreement**" means the Earn-Out Agreement by and between Eastman Kodak Company and MIR Bidco SA, dated as of November 11, 2018.

"**FPD Earn-Out Payments**" means all earn-out payments received by the Borrower pursuant to the terms of the FPD Earn-Out Agreement.

"**Fund**" shall mean any person that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"**Funded Debt**" means, as to any Person, all Indebtedness of such Person that matures more than one year from the date of its creation or matures within one year from such date but is renewable or extendible, at the option of such Person, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including all current maturities and current sinking fund payments in respect of such Indebtedness whether or not required to be paid within one year from the date of its creation and, in the case of the Borrower, Indebtedness in respect of the Loans.

"**GAAP**" means generally accepted accounting principles in the United States of America, as in effect from time to time.

"**German Security Agreement**" means any Security Document which is governed by German law.

"**Governmental Authority**" means the government of the United States of America, any other nation or any political subdivision thereof, whether state, local or other, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"**Guarantee**" of or by any Person (the "**guarantor**") means any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness of any other Person (the "**primary obligor**") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (a) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or to purchase (or to advance or supply funds for the purchase of) any security for the payment thereof, (b) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof, (c) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (d) as an account party in respect of any letter of credit or letter of guaranty issued to support such Indebtedness or obligation; *provided* that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business or customary and reasonable indemnity obligations in effect on the Closing Date or entered into in connection with any contractual arrangement, including, but not limited to, any acquisition, Capital Expenditure, investment or disposition of assets permitted under this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee by a person shall be deemed to be an amount equal to the stated amount or determinable amount of the primary obligation in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof (assuming such person is required to perform thereunder) as determined by such person in good faith.

"**Guarantors**" means, collectively, each of the Loan Parties identified as a "Guarantor" under the Security Agreement, in such capacity.

"**Hazardous Materials**" means all explosive, radioactive, hazardous or toxic substances or materials, and all wastes, pollutants or contaminants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, lead, polychlorinated biphenyls, toxic mold, radon gas, infectious or medical wastes, and all other substances or materials of any nature regulated pursuant to any Environmental Law due to their hazardous, toxic or deleterious properties or characteristics.

"**Hedging Agreement**" means any Currency and Commodity Hedging Agreement or Interest Rate Hedging Agreement.

"**HSR Act**" has the meaning set forth in Section 5.17(a).

"**Immaterial Foreign Subsidiary**" means each Restricted Subsidiary that is a Foreign Subsidiary designated in writing by the Borrower to the Administrative Agent as an Immaterial Foreign Subsidiary; *provided* that an Immaterial Foreign Subsidiary shall not at the time of designation have net sales for any Fiscal Quarter or total assets as of the last day of any Fiscal Quarter in an amount that is equal to or greater than 5.0% of the net sales or total assets, as applicable, of the Borrower and its Restricted Subsidiaries for, or as of the last day of, such Fiscal Quarter determined as of the date of the most recent financial statements required to be delivered pursuant to Section 5.01(a) or 5.01(b), as the case may be; *provided* that, if for any subsequent Fiscal Quarter the conditions above would not be met if the Borrower were designating such Subsidiary as an Immaterial Foreign Subsidiary at such time, the Borrower will promptly designate in writing to the Administrative Agent the Foreign Subsidiaries which will cease to be treated as "Immaterial Foreign Subsidiaries" in order to comply with the foregoing conditions.

"**Immaterial Subsidiary**" means each Restricted Subsidiary designated in writing by the Borrower to the Administrative Agent as an Immaterial Subsidiary; *provided* that Immaterial Subsidiaries, when taken together with all other Immaterial Subsidiaries and all Unrestricted Subsidiaries, at the time of designation shall not have net sales for any Fiscal Quarter or total assets as of the last day of any Fiscal Quarter in an amount that is equal to or greater than 5.0% of the net sales or total assets, as applicable, of the Borrower and its Restricted Subsidiaries for, or as of the last day of, such Fiscal Quarter determined as of the date of the most recent financial statements required to be delivered pursuant to Section 5.01(a) or 5.01(b), as the case may be; *provided* that if for any subsequent Fiscal Quarter the conditions above would not be met if the Borrower were designating such Subsidiary as an Immaterial Subsidiary at such time, the Borrower will promptly designate in writing to the Administrative Agent the Subsidiaries which will cease to be treated as "Immaterial Subsidiaries" in order to comply with the foregoing conditions. Any Restricted Subsidiary that is a Guarantor shall not be deemed an Immaterial Subsidiary and shall be excluded from the calculations above.

"**Indebtedness**" of any Person means, without duplication, (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (d) all obligations of such Person in respect of the deferred purchase price of property or services (excluding (i) current accounts payable incurred in the ordinary course of business and accrued expenses and (ii) any earn-out obligations, except to the extent not paid after becoming due and payable or such obligations appear as a liability on the balance sheet of such Person in accordance with GAAP), (e) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, but only to the extent of such Lien, and only to the extent of the lesser of the fair market value of the property secured by the Lien and the amount of Indebtedness, (f) all Guarantees by such Person of Indebtedness set forth in subclauses (a)-(e) and (g)-(k), (g) all Capital Lease Obligations of such Person, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (j) the obligations of such Person in respect of any Hedging Agreement, and (k) all Disqualified Stock of such Person. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor (but only for the portion so liable). For purposes of determining Indebtedness, (x) the "principal amount" of the obligations of any Person in respect of any Hedging Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if such Hedging Agreement were terminated at such time and (y) in no event shall obligations under any Hedging Agreement be deemed "Indebtedness" for calculating any financial ratio (or component thereof).

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

"**Indemnitee**" has the meaning set forth in Section 9.03(b).

"**Information**" has the meaning set forth in Section 9.12.

"**Initial Lenders**" means the Lenders on the Closing Date and any of their Affiliates or Related Parties that become Lenders hereunder at any time thereafter.

"**Initial Term Loan**" means a term loan made by a Lender pursuant to Section 2.01 on the Closing Date.

"**Initial Term Loan Commitment**" means, with respect to each Lender, the "Initial Term Loan Commitment" of such Lender set forth opposite such Lender's name on Annex B hereto. As of the Closing Date, the aggregate principal amount of the Initial Term Loan Commitments is $225,000,000.

"**Insolvent**" means with respect to any Multiemployer Plan, the condition that such plan is insolvent within the meaning of Section 4245 of ERISA.

"**Intellectual Property**" means all intellectual property and proprietary rights of any kind worldwide, including with respect to: (a) issued patents and, patent applications (including divisionals, continuations, continuations-in-part, extensions, reexaminations and reissues thereof), patent disclosures, inventions and invention disclosures (whether or not patentable or reduced to practice), (b) trademarks, service marks, trade dress, trade names, corporate names, logos and slogans (and all translations, transliterations, and combinations of the foregoing) and Internet domain names, together with all goodwill associated with each of the foregoing, (c) copyrights and copyrightable works, including all original works of authorship, (d) computer programs and applications, architectures, libraries, firmware and middleware, including any and all software implementations of algorithms, models and methodologies, whether in source code or object code, (e) trade secrets and other confidential proprietary information (including confidential proprietary customer lists, data, customer records, reports, technical information, business information, process technology, and know-how) and (f) all registrations and applications for any of the foregoing. For the avoidance of doubt, "Intellectual Property" includes any such intellectual property or proprietary rights that are received under license.

"**Intercreditor Agreement**" means that certain Intercreditor Agreement, dated as of February 26, 2021 by and among the Administrative Agent, the ABL Agent, the Supplemental Letter of Credit Facility Agent and the Loan Parties, as may be further amended, amended and restated, acceded to, supplemented, modified, replaced, restructured, extended, renewed or refinanced and in effect from time to time.

"**Interest Payment Date**" means the first Business Day of each Fiscal Quarter and the Maturity Date.

"**Interest Rate**" has the meaning set forth in Section 2.08(a).

"**Interest Rate Hedging Agreement**" means any interest rate protection agreement or other interest rate hedging arrangement.

"**Internally Generated Cash**" means, with respect to any period, any cash of the Borrower or any Restricted Subsidiary generated during such period, excluding (i) any Net Proceeds received from Indebtedness (other than any draws under the ABL Facility or any borrowing under any other revolving line of credit) and (ii) any Net Proceeds of issuance of Equity Interests or a capital contribution to the Borrower or any Subsidiary.

"**Investment**" shall have the meaning set forth in Section 6.04.

"**IRS**" means the United States Internal Revenue Service.

"**KLIM**" means Kennedy Lewis Investment Management LLC and its Affiliates and/or certain funds, accounts or clients managed, advised or sub-advised by Kennedy Lewis Investment Management LLC or its Affiliates, as the context may require, other than, in each case, any operating or portfolio company of the foregoing.

"**Lease**" means any agreement pursuant to which a Loan Party is entitled to the use or occupancy of any real property for any period of time.

"**Lender**" shall have the meaning set forth in the preamble hereto.

"**Lender Insolvency Event**" means that (a) a Lender or its Parent Company is determined or adjudicated to be insolvent by a Governmental Authority, or is generally unable to pay its debts as they become due, or admits in writing its inability to pay its debts as they become due, or makes a general assignment for the benefit of its creditors, or (b) such Lender or its Parent Company is the subject of a bankruptcy, insolvency, reorganization, liquidation or similar proceeding, or a receiver, trustee, conservator, intervenor or sequestrator or the like has been appointed for such Lender or its Parent Company, or such Lender or its Parent Company has taken any action in furtherance of or indicating its consent to or acquiescence in any such proceeding or appointment; *provided* that a Lender Insolvency Event shall not be deemed to have occurred solely by virtue of the ownership or acquisition of any Equity Interest in any Lender or its Parent Company by a Governmental Authority or an instrumentality thereof.

"**Lender Presentation**" means the lender presentation in respect of the Borrower dated December 17, 2020.

"**Lien**" means, with respect to any asset (other than securities), (a) any mortgage, deed of trust, lien, pledge, hypothecation, charge or security interest in, on or of such asset, or any other encumbrance on such asset, and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any lease having substantially the same economic effect as any of the foregoing) relating to such asset; *provided* that in no event shall an operating lease be deemed to constitute a Lien solely as a result of a change in GAAP after the Closing Date.

"**Loan Account**" has the meaning set forth in Section 2.04(a).

"**Loan Documents**" means this Agreement, the Agency Fee Letter, the Fee Letter, the Security Documents, the Intercompany Subordination Agreement, the Perfection Certificate, each promissory note delivered pursuant to Section 2.05(e), each Assignment and Acceptance, the Solvency Certificate, each Compliance Certificate, the Intercreditor Agreement, each subordination or intercreditor agreement, and any other document, instrument or agreement now or hereafter executed and delivered by a Loan Party in connection herewith, and any amendment, waiver, supplement or other modification to any of the foregoing.

"**Loan Parties**" means the Borrower and each Domestic Subsidiary initially as listed on Annex A, and each Domestic Subsidiary made a party hereto pursuant to Section 5.10.

"**Loan Transactions**" means the execution, delivery and performance by the Borrower of this Agreement and the execution, delivery and performance by each Loan Party of the Loan Documents to which it is to be a party, the borrowing of Loans and the use of the proceeds thereof, including the payment of fees and expenses in connection with the foregoing.

"**Loans**" means the Initial Term Loans, the Delayed Draw Term Loans, any other loans made hereunder, and the amount of any PIK Interest added to the principal amount of Loans pursuant to Section 2.08 or otherwise.

"**Lock Box**" has the meaning set forth in Section 5.12(a).

"**Lock Box Agreement**" means, with respect to any Lock Box established by a Loan Party, an agreement, in form and substance reasonably satisfactory to the Administrative Agent, establishing Control (as defined in the Security Agreement) of such Lock Box by the ABL Agent or the Administrative Agent, in accordance with the Security Agreement and the Intercreditor Agreement.

"**Margin Stock**" shall have the meaning set forth in Regulation U.

"**Material Adverse Effect**" means a material adverse effect on (a) the business, assets, operations, or financial condition of the Borrower and its Subsidiaries taken as a whole, (b) the ability of the Loan Parties (taken as a whole) to perform their payment obligations under the Loan Documents to which they are a party or (c) the rights of the Lenders or the Administrative Agent under any Loan Document.

"**Material First-Tier Foreign Subsidiary**" means any Foreign Subsidiary or Qualified CFC Holding Company that is owned directly by or on behalf of the Borrower or any Guarantor and is not an Immaterial Foreign Subsidiary.

"**Material Indebtedness**" means Indebtedness (other than the Loans), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and its Restricted Subsidiaries in an aggregate principal amount exceeding $25,000,000 (or its equivalent); *provided* that, notwithstanding the foregoing, Indebtedness incurred pursuant to the ABL Agreement or any refinancing thereof shall be deemed to be Material Indebtedness.

"**Material Subsidiary**" means any Restricted Subsidiary other than an Immaterial Subsidiary or an Immaterial Foreign Subsidiary, *provided* that, if all Material Subsidiaries taken together shall have net sales for any Fiscal Quarter or total assets as of the last day of any Fiscal Quarter in an amount that is equal to or less than 95% of the net sales or total assets, as applicable, of the Borrower and its Restricted Subsidiaries for, or as of the last day of, such Fiscal Quarter determined as of the date of the most recent financial statements required to be delivered pursuant to Section 5.01(a) or 5.01(b), as the case may be, the Borrower will promptly (but in any event within 10 Business Days or such longer period as the Administrative Agent may approve) designate in writing to the Administrative Agent the Subsidiaries which will cease to be "Immaterial Subsidiaries" or "Immaterial Foreign Subsidiaries" in order to comply with the foregoing conditions.

"**Maturity Date**" means February 26, 2026 (or in the case of any Extended Loans, the maturity date related to such Extended Loans as such date may be extended pursuant to Section 2.16); *provided* that, to the extent that the Maturity Date does not fall on a Business Day, then the Maturity Date shall be the immediately preceding Business Day.

"**Maximum Rate**" has the meaning set forth in Section 9.13.

"**Measurement Period**" means, at any date of determination, the most recently completed four Fiscal Quarters for which Financial Statements have been delivered or are required to be delivered (or, with respect to determinations to be made prior to the delivery of the first set of Financial Statements, the most recently completed four Fiscal Quarters ended at least thirty (30) days prior to the Closing Date).

"**Moody's**" means Moody's Investors Service, Inc. and its successors.

"**Multiemployer Plan**" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Borrower, a Restricted Subsidiary or an ERISA Affiliate contributes or is obligated to contribute.

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

"**Net Proceeds**" means, with respect to any event (a) the cash proceeds actually received in respect of such event including (i) any cash received in respect of any non-cash proceeds, but only as and when received, (ii) in the case of a casualty, insurance proceeds, and (iii) in the case of a condemnation or similar event, condemnation awards and similar payments, in each case net of (b) the sum of (i) all costs, fees and out-of- pocket fees, commissions, charges and expenses (including fees, costs and expenses related to appraisals, surveys, brokerage, finder, underwriting, arranging, legal, investment banking, placement, printing, auditor, accounting, title, environmental (including remedial expenses), title exceptions and encumbrances, and finder's fees, success fees or similar fees and commissions) paid or payable by the Borrower and the Restricted Subsidiaries to third parties (other than Affiliates) in connection with such event, (ii) in the case of a Disposition of an asset (including pursuant to a casualty or a condemnation or similar proceeding), the amount of all payments required to be made (or required to be escrowed) by the Borrower and the Restricted Subsidiaries as a result of such event to repay (or establish an escrow, trust, defeasance, discharge or redemption account or similar arrangement for the repayment of) Indebtedness (other than the Obligations) secured by a Lien prior to the Lien of the Administrative Agent on such asset (*provided* that if any amounts in such accounts or subject to such agreements are released to the Borrower and its Restricted Subsidiaries,

such amounts shall constitute Net Proceeds upon release), (iii) the amount of all taxes (including transfer tax and recording tax) paid (or reasonably estimated to be payable) by the Borrower and the Restricted Subsidiaries, and the amount of any reserves established by the Borrower and the Restricted Subsidiaries to fund contingent liabilities reasonably estimated to be payable that are directly attributable to such event (as determined reasonably and in good faith by the chief financial officer or other Financial Officer of the Borrower), (iv) in respect of any casualty or condemnation, any amounts paid to the Borrower or any Restricted Subsidiary related to the casualty or condemnation or Recovery Event, and (v) all other amounts deposited in trust or escrow or paid for the benefit of any third party or to which any third party may be entitled in connection with such event; *provided* that any such amounts returned to the Borrower or any Restricted Subsidiary shall constitute Net Proceeds when actually received.

"**Non-Consenting Lender**" has the meaning set forth in Section 9.02(c).

"**Non-U.S. Lender**" means a Lender that is not a U.S. Person.

"**Obligations**" has the meaning set forth in the Security Agreement.

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

"**Other Taxes**" means all present or future stamp, court, or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, any Loan Document, except any such Taxes that are Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to Section 2.15).

"**Parent Company**" means, with respect to a Lender, the bank holding company (as defined in Federal Reserve Board Regulation Y), if any, of such Lender, and/or any Person owning, beneficially or of record, directly or indirectly, a majority of the economic or voting Equity Interests of such Lender.

"**Participant**" has the meaning set forth in Section 9.04(d); *provided* that in no circumstance shall a Disqualified Institution be a Participant.

"**Participant Register**" has the meaning set forth in Section 9.04(e).

"**PBGC**" means the Pension Benefit Guaranty Corporation referred to and defined in Section 4002 of ERISA and any successor entity performing similar functions.

"**Pension Agreements**" means defined benefit pension plans and defined benefit postretirement plans as defined by Accounting Standards Codification 715, *Compensation—Retirement Benefits*.

"**Pension Plan**" means any employee benefit plan (including a Multiple Employer Plan, but not including a Multiemployer Plan) which is subject to Title IV of ERISA, Section 412 of the Code or Section 302 of ERISA (a) which is or was sponsored, maintained or contributed to by, or required to be contributed to by, the Borrower, any Restricted Subsidiary or any of their respective ERISA Affiliates or (b) with respect to which has the Borrower, any Restricted Subsidiary or any of their respective ERISA Affiliates has any actual or contingent liability.

"**Perfection Certificate**" means the Perfection Certificate to be executed and delivered by the Borrower pursuant to Section 4.1, together with supplements and updates to such Perfection Certificate delivered from time to time.

"**Permitted Acquisition**" has the meaning set forth in Section 6.04(h).

"**Permitted Encumbrances**" means:

(a) liens imposed by law for Taxes, assessments and governmental charges or claims that are not yet due or that are being contested in good faith by appropriate proceedings, provided that adequate reserves with respect thereto are maintained on the books of the Borrower or its Subsidiaries, as the case may be, in conformity with GAAP;

(b) carriers', landlord's, warehousemen's, mechanics', materialmen's, brokers', suppliers' and repairmen's liens, statutory liens of banks and rights of setoff and other Liens, in each case, imposed by law (other than obligations imposed pursuant to Section 303(k) or 4068 of ERISA or Section 430(k) of the Code), arising in the ordinary course of business and securing obligations that are not overdue by more than thirty (30) days or are being contested in good faith by appropriate proceedings and as to which adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor;

(c) pledges or deposits made in the ordinary course of business in compliance with workers' compensation, unemployment insurance, healthcare and other social security laws or regulations;

(d) (i) liens, pledges and deposits to secure the performance of bids, tenders, trade contracts or leases, (ii) deposits to secure public or statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature or deposits as security for contested Taxes or import duties or for the payment of rent, in each case in the ordinary course of business and (iii) utility deposits made in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under Section 7.01(k);

(f) leases or subleases granted to others in the ordinary course of business, survey exceptions, minor encumbrances, easements or reservations of, or rights of others for, licenses, rights-of-way, sewers, electric lines, gas lines, water, cable, television, telegraph and telephone lines and other similar purposes, zoning restrictions, or other restrictions as to the use of real properties or Liens incidental, to the conduct of the business or to the ownership of its properties which were not incurred in connection with Indebtedness and which do not in the aggregate materially adversely affect the value of said properties or materially impair their use in the operation of the business of the Borrower or the Restricted Subsidiaries;

(g) encumbrances on assets disposed or to be disposed in a Disposition permitted by Section 6.05 or created by an agreement(s) providing for such permitted Disposition;

(h) any (i) reversionary interest or title of lessor or sublessor under any Lease, (ii) Lien, easement, restriction or encumbrance to which the interest or title of such lessor or sublessor may be subject, (iii) subordination of the interest of the lessee or sublessees under such Lease to any Lien, restriction or encumbrance referred to in the preceding clause (ii), (iv) lease or sublease of real property granted to others in the ordinary course of business, (v) license or sublicense, release, immunity or covenant not to sue with respect to Intellectual Property granted to others in the ordinary course of business or in connection with the settlement of any litigation, threatened litigation or other dispute, or exclusive license otherwise expressly permitted hereunder, or (vi) license, sublicense, release, immunity or covenant not to sue encumbering Intellectual Property acquired by the Borrower or any of its Restricted Subsidiaries; and

(i) Liens arising from filing Uniform Commercial Code financing statements relating solely to the leased asset or consignments or operating leases entered into by the Borrower in the ordinary course of business.

"Permitted Holders" means any person or group of persons which includes any of Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited, Deseret Mutual Pension Trust, George Karfunkel, Renee Karfunkel, George Karfunkel Family LLC, Congregation Chemdas Yisroel, Chesed Foundation of America, Marneu Holding Company, Moses Marx, Phillippe Katz, K.F. Investors LLC, United Equities Commodities Company, Momar Corporation, 111 John Realty Corporation and any Lender and any Affiliate of any of the foregoing.

"**Permitted Receivables Documents**" means all documents and agreements evidencing, relating to or otherwise governing a Permitted Receivables Financing.

"**Permitted Receivables Financing**" means one or more transactions by the Borrower or any of its Restricted Subsidiaries pursuant to which the Borrower or such Restricted Subsidiary may sell, convey or otherwise transfer to one or more Special Purpose Receivables Subsidiaries or to any other person, or may grant a security interest in, any Receivables Assets (whether now existing or arising in the future) of the Borrower or such Restricted Subsidiary, and any assets related thereto including all contracts and all guarantees or other obligations in respect of such Receivables Assets, the proceeds of such Receivables Assets and other assets which are customarily transferred, or in respect of which security interests are customarily granted, in connection with sales, factoring or securitizations involving Receivables Assets; provided that (a) recourse to the Borrower and its Restricted Subsidiaries (other than the Special Purpose Receivables Subsidiary) in connection with such transactions shall be limited to the extent customary for similar transactions in the applicable jurisdictions (including, to the extent applicable, in a manner consistent with the delivery of a "true sale"/"absolute transfer" opinion with respect to any transfer by the Borrower or any Restricted Subsidiary (other than a Special Purpose Receivables Subsidiary)) and (b) the aggregate Receivables Net Investment shall not exceed $25,000,000 at any time.

"**Permitted Refinancings**" means any refinancings, restructurings, refundings, renewals, extensions or replacements of Indebtedness from time to time or at any time, in whole or in part, at the same time or at different times (any such refinancing, restructuring, refunding, renewal, extension or replacement Indebtedness, the "**Refinancing Indebtedness**" and the Indebtedness being so refinanced, restructured, refunded, renewed, extended or replaced, the "**Refinanced Indebtedness**") permitted hereunder; *provided* that (a) principal amount (or accreted value, if applicable) of such Refinancing Indebtedness does not exceed the principal amount (or accreted value, if applicable) of the Refinanced Indebtedness (plus unpaid accrued interest and premium thereon and discounts, fees, commissions and expenses in connection therewith), (b) the Weighted Average Life to Maturity of such Refinancing Indebtedness is not shorter than the Weighted Average Life to Maturity of the Refinanced Indebtedness and the maturity of such Refinancing Indebtedness is not earlier than the Refinanced Indebtedness, (c) if the Refinanced Indebtedness is contractually subordinated in right of payment to the Obligations, such Refinancing Indebtedness is contractually subordinated in right of payment to the Obligations on terms at least as favorable to the Lenders, in all material respects, as those contained in the documentation governing the Refinanced Indebtedness, taken as a whole, (d) no Refinancing Indebtedness shall have additional obligors than the Refinanced Indebtedness (unless to the extent otherwise permitted hereunder), (e) such Refinancing Indebtedness shall be unsecured if the Refinanced Indebtedness is unsecured or secured to the extent otherwise permitted hereunder, (f) if such Indebtedness was secured, such Refinancing Indebtedness is not secured by any additional property or collateral other than (i) property or collateral securing the Refinanced Indebtedness, (ii) after-acquired property that is affixed or incorporated into the property covered by the Lien securing such Refinancing Indebtedness or other improvements to such property and (iii) proceeds and products thereof, (g) if any Liens securing the Refinanced Indebtedness are secured by the Collateral on a second priority (or other junior priority) basis to the Liens securing the Obligations, the Liens securing the Refinancing Indebtedness shall be secured by the Collateral on a second priority (or other junior priority) basis to the Liens securing the Obligations on terms that are at least as favorable to the Secured Parties as those contained in the documentation governing the Refinanced Indebtedness, taken as a whole, (h) the terms and conditions (including, if applicable, as to collateral) of any such Refinancing Indebtedness are either (i) customary for similar debt financings in light of then-prevailing market conditions (it being understood that such Indebtedness shall not include any financial maintenance covenants and that any negative covenants shall be incurrence-based prior to the latest Maturity Date) or (ii) not materially less favorable to the Loan Parties, taken as a whole, than the terms and conditions of the Indebtedness being refinanced, restructured, refunded, renewed, extended or replaced (*provided* that a certificate of a Responsible Officer of the Borrower delivered to the Administrative Agent in good faith at least five (5) Business Days prior to the incurrence of such Refinancing Indebtedness, together with a reasonably detailed description of the material terms and conditions of such Refinancing Indebtedness or drafts of the documentation relating thereto, stating that the Borrower has determined in good faith that such terms and conditions satisfy the requirement set out in this clause (h), shall be conclusive evidence that such terms and conditions satisfy such requirement unless the Administrative Agent provides notice to the Borrower of its objection during such five (5) Business Day period (including a reasonable description of the basis upon which it objects)) and (i) such Refinancing Indebtedness shall satisfy the Required Conditions if the Refinanced Indebtedness is required to satisfy such conditions under this Agreement.

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

"**PIK Interest**" has the meaning set forth in Section 2.08(a).

"**Plan**" means any employee benefit plan as defined in Section 3(3) of ERISA, including any employee welfare benefit plan (as defined in Section 3(1) of ERISA), any employee pension benefit plan (as defined in Section 3(2) of ERISA but excluding any Multiemployer Plan), and any plan which is both an employee welfare benefit plan and an employee pension benefit plan, and in respect of which the Borrower, any Restricted Subsidiary or any ERISA Affiliate is (or, if such Plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA, Affiliate or in respect of which the Borrower, any Restricted Subsidiary or any ERISA Affiliate has had any actual or contingent liability.

"**Platform**" has the meaning set forth in Section 5.01(j).

"**Prepayment Premium**" has the meaning set forth in Section 2.06(c).

"**Pro Forma Basis**" means, with respect to compliance with any test or covenant, the determination or calculation of such test or covenant (including in connection with Specified Transactions) in accordance with Section 1.08.

"**Prohibited Transaction**" means as defined in Section 406 of ERISA and Section 4975(c) of the Code.

"**Public Lender**" has the meaning set forth in Section 5.01(j).

"**Qualified Preferred Stock**" means, with respect to any Person, any preferred capital stock or preferred equity interest that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) or upon the happening of any event (other than solely at the direction of the issuer) does not (a) except as set forth in the proviso hereto, mature or becomes mandatorily redeemable prior to the Maturity Date, pursuant to a sinking fund obligation or otherwise; (b) become convertible or exchangeable at the option of the holder thereof for Indebtedness or preferred stock that is not Qualified Preferred Stock, prior to the Maturity Date; or (c) except as set forth in the proviso hereto, become redeemable at the option of the holder thereof, in whole or in part, prior to the Maturity Date, *provided* that such preferred capital stock or preferred equity interest, may by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) become mandatorily redeemable or redeemable at the option of the holder thereof upon the occurrence of a change in control or Disposition subject to all Obligations (other than contingent indemnification obligations not then due and owing) having been paid in full in cash.

"**Receivables Assets**" means accounts receivable (including any bills of exchange) and related assets and property from time to time originated, acquired or otherwise owned by the Borrower or any Subsidiary.

"**Receivables Net Investment**" means the aggregate cash amount paid by the lenders or purchasers under any Permitted Receivables Financing in connection with their purchase of, or the making of loans secured by, Receivables Assets or interests therein, as the same may be reduced from time to time by collections with respect to such Receivables Assets or otherwise in accordance with the terms of the Permitted Receivables Documents; *provided*, however, that, if all or any part of such Receivables Net Investment shall have been reduced by application of any distribution and thereafter such distribution is rescinded or must otherwise be returned for any reason, such Receivables Net Investment shall be increased by the amount of such distribution, all as though such distribution had not been made.

"**Recovery Event**" means any payment in respect of any property or casualty insurance claim or any condemnation proceeding.

"**Refinanced Indebtedness**" has the meaning set forth in the term Permitted Refinancing.

"**Refinancing Indebtedness**" has the meaning set forth in the term Permitted Refinancing.

"**Register**" has the meaning set forth in Section 9.04(c).

"**Related Business**" means any business which is the same as or related, ancillary or complementary to, or a reasonable extension or expansion of, any of the businesses of the Borrower and its Restricted Subsidiaries on the Closing Date.

"**Related Parties**" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"**Release**" means any release, spill, emission, leaking, pumping, pouring, injection escaping, deposit, disposal, discharge, dispersal, dumping, leaching or migration of any Hazardous Material into the indoor or outdoor environment (including the abandonment or disposal of any barrels, containers or other closed receptacles containing any Hazardous Materials), including the migration of any Hazardous Material through the air, soil, surface water or groundwater.

"**Remedial Action**" means (a) all actions taken under any Environmental Law to (i) clean up, remove, remediate, contain, treat, monitor, assess or evaluate Hazardous Materials present in, or threatened to be Released into, the environment, (ii) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities or (b) any response actions authorized by 42 U.S.C. 9601 et. seq. or analogous state law.

"**Reorganization**" means with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"**Report**" has the meaning set forth in Section 8.12.

"Reportable Event" means any of the events set forth in Section 4043(c) of ERISA or the regulations issued thereunder, with respect to a Pension Plan, other than those events as to which notice is waived pursuant to 29 C.F.R. Section 4043 as in effect on the date hereof (no matter how such notice requirement may be changed in the future).

"**Required Conditions**" means that any applicable Indebtedness or preferred stock, as the case may be, (a) does not have any scheduled amortization payments, mandatory redemptions or sinking fund obligations or mandatory prepayments (including cash flow sweeps) on or prior to the date that is 91 days after the Maturity Date (other than, in the case of Indebtedness (and, for the avoidance of doubt, excluding preferred stock), customary offers to purchase upon a change of control, asset sale or event of loss, customary acceleration rights after an event of default and payments required to prevent any such Indebtedness from being treated as an "applicable high yield discount obligation" within the meaning of Section 163(i) of the Code, or any successor provision thereto or, in the case of preferred stock, redemption rights in connection with a fundamental change and similar provisions), (b) does not mature prior to the date that is 91 days after the Maturity Date, (c) does not have financial maintenance covenants (unless such covenants apply only after the maturity of the Loans or are added for the benefit of the Lenders pursuant to a conforming amendment (which amendment shall not require the consent of the Lenders)), (d) does not have a definition of "Change in Control" (or any other defined term having a similar purpose) that is more restrictive than the definition of Change in Control set forth herein (unless such definition applies only after the maturity of the Loans or this Agreement is amended to conform the provisions of this Agreement with such more restrictive definition (which amendment shall not require the consent of the Lenders)) and (e) in the case of Indebtedness (and, for the avoidance of doubt, excluding preferred stock), does not otherwise have covenants or events of default that are, taken as a whole, materially more favorable to the holders of such Indebtedness than those set forth in this Agreement, as reasonably determined by the Borrower (unless such covenants or events of default apply only after the maturity of the Loans or this Agreement is amended to conform the provisions of this Agreement with such more restrictive covenants or events of default (which amendment shall not require the consent of the Lenders)).

"**Required Lenders**" means, at any time, Lenders having Loans (and, prior to the making of the Loans pursuant to Section 2.01, Commitments), representing greater than fifty percent (50%) of the sum of all Loans outstanding (and, prior to the making of the Loans pursuant to Section 2.01, Commitments) at such time *provided*,

however, that if any Lender shall be a Defaulting Lender at such time, there shall be excluded from the determination of Required Lenders at such time the aggregate principal amount of the Loans owing to such Lender (in its capacity as a Lender) and outstanding at such time (from both the numerator and the denominator).

"**Responsible Officer**" of any Person means the chief executive officer, president, chief financial officer, general counsel and any executive vice president (or any substantially similar office to any of the foregoing) or Financial Officer of such Person and any other officer or similar official thereof responsible for the administration of the obligations of such Person in respect of this Agreement.

"**Restricted Payment**" means any dividend or other distribution (whether in cash, securities or other property) on account of any Equity Interests in 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, acquisition, cancellation or termination of any Equity Interests in the Borrower or any Restricted Subsidiary (other than any option, warrant or other right that constitutes Indebtedness).

"**Restricted Subsidiary**" means any Subsidiary other than an Unrestricted Subsidiary. Unless otherwise specified, any references herein to a "Restricted Subsidiary" shall refer to a Restricted Subsidiary of the Borrower.

"**S&P**" means Standard & Poor's Financial Services LLC, and its successors.

"**Sale and Leaseback Transaction**" means any direct or indirect arrangement with any Person or Persons, whereby the Borrower or any Subsidiary sells or transfers any property, real or personal, used or useful in its business, whether now owned or hereafter acquired, and thereafter rents or leases such property or other property to use for substantially the same purposes as the property sold or transferred.

"**Secured Indebtedness**" means, at any date, the aggregate principal amount of Indebtedness for borrowed money of the Borrower and its Restricted Subsidiaries at such date secured by a Lien on any of the assets of the Borrower or any of its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP.

"**Secured Parties**" means any of the Administrative Agent and the Lenders.

"**Securities Account**" has the meaning set forth in the Security Agreement.

"**Security Agreement**" means the Guarantee and Collateral Agreement to be executed and delivered by the Loan Parties, dated as of the Closing Date, substantially in the form of Exhibit C, as such agreement may be amended, restated, supplemented and modified from time to time.

"**Security Documents**" means the Security Agreement, each Security Agreement Supplement (as defined in the Security Agreement), each Intellectual Property Security Agreement (as defined in the Security Agreement), each IP Security Agreement Supplement (as defined in the Security Agreement), each Account Control Agreement, each Lockbox Agreement, all financing statements, filings, documents, agreements other instrument executed, made or delivered pursuant to any of the foregoing.

"**Series B Preferred Stock**" means the Borrower's 4.00% Series B Convertible Preferred Stock, no par value, issued on the Closing Date.

"**Series C Preferred Stock**" means the Borrower's 5.00% Series C Convertible Preferred Stock, no par value, issued in part on the Closing Date and in part within 45 days after the Closing Date (or such later date as permitted pursuant to Section 5.17(a).

"**Solvency Certificate" means a certificate in the form of Exhibit K from a Financial Officer of the Borrower certifying that the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.**

"**Solvent**" means, with respect to the Borrower, on a particular date, that on such date (a) the sum of the debt and liabilities (including subordinated and contingent liabilities) of the Borrower and its Subsidiaries, taken as a whole, does not exceed the fair value of the present assets of the Borrower and its Subsidiaries, taken as a whole; (b) the present fair saleable value of the assets of the Borrower and its Subsidiaries, taken as a whole, is greater than the total amount that will be required to pay the probable debt and liabilities (including subordinated and contingent liabilities) of the Borrower and its Subsidiaries as they become absolute and matured, (c) the capital of the Borrower and its Subsidiaries, taken as a whole, is not unreasonably small to engage in the business of the Borrower and its Subsidiaries, taken as a whole, on the date hereof and as contemplated to be engaged following the Closing Date; and (d) the Borrower and its Subsidiaries, taken as a whole, have not incurred, or believe that they will incur, debts or other liabilities including current obligations beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

"**Special Purpose Receivables Subsidiary**" means a subsidiary of the Borrower established in connection with a Permitted Receivables Financing for the acquisition of Receivables Assets or interests therein, and which is organized in a manner intended to reduce the likelihood that it would be substantively consolidated with the Borrower or any of the Subsidiaries (other than Special Purpose Receivables Subsidiaries) in the event the Borrower or any such Subsidiary becomes subject to a proceeding the under the Bankruptcy Code or a similar foreign debtor relief law.

"**Specified Event of Default**" means an Event of Default (after giving effect to any applicable grace periods) under Section 7.01(a), (b), (h), (i) or (j).

"**Specified Prepayment**" has the meaning set forth in Section 2.06(c).

"**Specified Public Filings**" means the quarterly report on Form 10-Q of the Borrower for each of the fiscal quarters ended on March 31, 2020, June 30, 2020 and September 30, 2020.

"**Specified Transaction**" means (a) any incurrence or repayment of Indebtedness (other than for working capital purposes) or Investment that results in a Person becoming a Subsidiary, (b) any Permitted Acquisition, (c) any Disposition that results in a Subsidiary ceasing to be a Subsidiary of the Borrower, (d) any Disposition having an aggregate consideration in excess of $5,000,000 (other than Dispositions in the ordinary course of business) or (e) 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 Subsidiary, in each case whether by merger, consolidation, amalgamation or otherwise or (f) any designation of any Unrestricted Subsidiary as a Restricted Subsidiary in accordance with Section 5.13.

"**SPV**" has the meaning set forth in Section 9.04(i).

"**Subordinated Indebtedness**" means any Indebtedness of the Loan Parties that is subordinated in right of payment to the Obligations on subordination terms reasonably satisfactory to the Required Lenders.

"**Subsidiary**" means, with respect to any Person (the "**parent**") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than fifty percent (50%) of the ordinary voting power to elect a majority of the board of directors or other managers thereof or, in the case of a partnership, more than fifty percent (50%) of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent. Unless otherwise specified, "**Subsidiary**" shall mean a Subsidiary of the Borrower. For the avoidance of doubt, a variable interest entity shall not constitute a Subsidiary.

"**Supplemental Letter of Credit Facility Agreement**" means (a) that certain Credit Agreement, dated as of Closing Date, by and among the Borrower, the Supplemental Letter of Credit Facility Agent, the lenders identified therein and the other agents identified therein, as amended, amended and restated, modified, or supplemented from time to time to the extent permitted by this Agreement and the Intercreditor Agreement and (b) any other replacement, refinancing, restructuring, extension or renewal thereof (whether through one or more credit facilities or other debt issuances pursuant to the agreement set forth in subclause (a) or any other agreement, contract or indenture) to the extent permitted by this Agreement and the Intercreditor Agreement.

"**Supplemental Letter of Credit Agent**" means the "LC Agent" as defined in the Intercreditor Agreement.

"**Supplemental Letter of Credit Facility**" means the letter of credit facility made available pursuant to the Supplemental Letter of Credit Facility Agreement.

"**Supplemental Letter of Credit Loan Documents**" has the meaning set forth for "Loan Documents" (or any comparable term) in the Supplemental Letter of Credit Facility Agreement.

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

"**Term Priority Collateral**" has the meaning set forth in the Intercreditor Agreement.

"**Termination Date**" means the earlier to occur of (a) the Maturity Date and (b) the acceleration of the Loans pursuant to Section 7.02.

"**Total Assets**" means, as of any date of determination, the aggregate amount of assets reflected on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries most recently delivered by the Borrower pursuant to Section 5.01 on or prior to such date of determination.

"**Trading With the Enemy Act**" has the meaning set forth in Section 3.17.

"**Treasury Rate**" means, as of any date of prepayment, the yield to maturity as of such prepayment date of United States Treasury securities with a constant maturity (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two (2) Business Days prior to the prepayment date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from the prepayment date to the thirty (30) month anniversary of the Closing Date; provided, that if the period from the prepayment date to such date is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.

"**UK Pension Settlement Agreement**" means (a) the Stock and Asset Purchase Agreement, among the Borrower, Qualex Inc., Kodak (Near East) Inc. and KPP Trustees Limited; (b) the Settlement Agreement, among the Borrower, Kodak Limited, KPP Trustees Limited, Kodak International Finance Limited and Kodak Polychrome Graphics Finance UK Limited, each dated April 26, 2013; and (c) any related contract, agreement, deed and undertaking described in either of the foregoing to the extent entered into in conjunction with the consummation of the transactions and agreements contemplated therein; provided that the documents set forth in clauses (a) – (c) may be modified or amended from time to time.

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

"**Unrestricted Subsidiary**" means the Closing Date Unrestricted Subsidiaries and their Subsidiaries as of the Closing Date.

"**USA PATRIOT Act**" means 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)).

"**U.S. Liquidity**" means, on any date of determination, the sum of the aggregate amount of Cash and Cash Equivalents owned by the Loan Parties free and clear of all Liens (other than Liens created under the Security Documents, the ABL Loan Documents and the Supplemental Letter of Credit Loan Documents) on such date.

"**U.S. Person**" means a "United States person" within the meaning of Section 7701(a)(30) of the Code.

"**U.S. Tax Compliance Certificate**" has the meaning set forth in Section 2.15(f).

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

"**Withdrawal Liability**" means liability to a Multiemployer Plan as a result of a complete or partial withdrawal by the Borrower, a Restricted Subsidiary or any ERISA Affiliate after the Closing Date from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

Section 1.02. *Divisions*. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.03. *Terms Generally*. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation". The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented, modified, restated, replaced, refinanced, extended, renewed or restructured (subject to any restrictions on such supplements, amendments, modifications, replacements, refinancings, extensions, renewals, restatements or restructurings set forth herein), (b) any reference herein to any Person shall be construed to include such Person's successors and permitted assigns, (c) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement, (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 "aware" of any Loan Party or a Subsidiary of the Borrower means the actual knowledge of a Financial Officer or Responsible Officer (provided that the foregoing shall not include any knowledge of a legal officer of a Loan Party or a Subsidiary to the extent such information is, in such legal officer's sole good faith judgment, subject to attorney client or similar privilege and is not known to any other Financial Officer or Responsible Officer), (g) references to any Applicable Law shall include all statutory and regulatory provisions consolidating, amending, replacing, supplementing or interpreting such Applicable Law (including by succession of comparable successor laws), (h) 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" and (i) unless otherwise stated herein, all provisions herein within the discretion or to the satisfaction of a party shall be deemed to include a standard of reasonableness, good faith and fair dealing.

Section 1.04. *Accounting Terms; GAAP*. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that (a) if the Borrower notifies the Administrative Agent that the Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing 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 affirmatively withdrawn by the Borrower (or, in the case of a request for an amendment under this Section 1.04 by the Required Lenders, the Administrative Agent) or such provision amended in accordance herewith and (b) 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, without giving effect to (i) any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification having a similar result or effect) to value any Indebtedness or other liabilities of the Borrower or any Subsidiary at "**fair value**", as defined therein and (ii) any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification 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.

Section 1.05. *Rounding*. Any financial ratios 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. *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 1.07. *Timing of Payment or Performance*. 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 or performance shall extend to the immediately succeeding Business Day.

Section 1.08. *Pro Forma Calculations*. Notwithstanding anything to the contrary herein, to the extent that compliance with any test or covenant hereunder may be determined on a Pro Forma Basis, the determination or calculation of such test (and the related defined terms used therein) shall be calculated as follows:

(a) Specified Transactions (and the incurrence or repayment of any Indebtedness in connection therewith) that have been made (i) during the applicable Measurement Period and (ii) subsequent to such Measurement 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 had occurred on the first day of the applicable Measurement Period. If since the beginning of any applicable Measurement 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 Measurement Period shall have made any Specified Transaction that would have required adjustment pursuant to this Section 1.08, then the applicable test or covenant shall be calculated to give *pro forma* effect thereto in accordance with this Section 1.08.

(b) Whenever *pro forma* effect is to be given to a Specified Transaction, the *pro forma* calculations shall be made in good faith by a Financial Officer of the Borrower and include, for the avoidance of doubt, the amount of cost savings, operating expense reductions, other operating improvements and synergies actually realized as of the date of such *pro forma* calculation (calculated on a *pro forma* basis as though such cost savings, operating expense reductions, other operating improvements and synergies had been realized on the first day of such period as if such cost savings, operating expense reductions, other operating improvements and synergies were realized during the entirety of such period) relating to such Specified Transaction, net of the amount of actual benefits realized during such period from such actions.

(c) 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 (other than Indebtedness incurred or repaid under any revolving credit facility in the ordinary course of business for working capital purposes), (i) during the applicable Measurement Period and (ii) subsequent to the end of the applicable Measurement Period and prior to or simultaneously with the event for which the calculation of any such test or covenant (and the related defined terms used therein) is made, then such test or covenant (and the related defined terms used therein), 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 first day of the applicable Measurement Period.

Section 1.09. *Certifications*. All certifications to be made hereunder or under any other Loan Document by an officer or representative of a Loan Party shall be made by such person in his or her capacity solely as an officer or a representative of such Loan Party, on such Loan Party's behalf and not in such Person's individual capacity.

ARTICLE II
THE CREDITS

Section 2.01. *Initial Term Loan Commitments*. Subject to the terms and conditions set forth herein, each Lender severally agrees to make an Initial Term Loan denominated in Dollars to the Borrower on the Closing Date, in a principal amount up to the Initial Term Loan Commitment of such Lender. The Initial Term Loan Commitment of each such Lender will terminate in full upon the making of such Loan by such Lender on the Closing Date. The failure of any such Lender to make any such Initial Term Loan required to be made by it shall not relieve any other such Lender of its obligations hereunder, *provided* that the Initial Term Loan Commitments of such Lenders are several and no such Lender shall be responsible for any other such Lender's failure to make such Initial Term Loans as required.

Section 2.02. *Delayed Draw Term Loan Commitments.* Subject to the terms and conditions set forth herein, each Lender severally agrees to make a Delayed Draw Term Loan denominated in Dollars to the Borrower at any time during the Delayed Draw Term Commitment Period (the "**Delayed Draw Funding Date**") in the aggregate principal amount equal to such Lender's Delayed Draw Term Loan Commitment. The Delayed Draw Term Loan Commitment of each such Lender will terminate upon the making of the Delayed Draw Term Loan by such Lender on the Delayed Draw Funding Date. The failure of any such Lender to make any such Delayed Draw Term Loan required to be made by it shall not relieve any other such Delayed Draw Term Lender of its obligations hereunder, *provided* that the Delayed Draw Term Loan Commitments of such Lenders are several and no such Lender shall be responsible for any other such Lender's failure to make such Delayed Draw Term Loans as required.

Section 2.03. *Requests for Borrowings*. To request a Borrowing, the Borrower shall notify the Administrative Agent of such request in a writing (delivered by hand, telecopy or e-mail) substantially in the form attached hereto as Exhibit G or such other writings approved by the Administrative Agent and, in each case, signed by the Borrower, not later than 1:00 p.m. (or such later time as the Administrative Agent may consent to in its reasonable discretion), (x) three (3) Business Days before the date of the proposed Borrowing of the Initial Term Loan and (y) eleven (11) Business Days before the Delayed Draw Funding Date. Each such Borrowing Request shall be irrevocable and shall specify the following information:

(i) the aggregate principal amount of such Borrowing; *provided* that each Borrowing of Delayed Draw Term Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof.;

(ii) the date of such Borrowing, which shall be a Business Day; and

(iii) the location and number of the Borrower's account to which funds are to be disbursed, which shall comply with the requirements of Section 2.04.

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

Section 2.04. *Funding of Borrowings.*

(a) Each Lender shall make each Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 2:00 p.m., to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Lenders. Upon receipt of all requested funds, the Administrative Agent will make each such Loan available to the Borrower by promptly wiring the amounts so received, in like funds, to an account of the Borrower designated by the Borrower in the applicable Borrowing Request (the "**Loan Account**").

(b) Unless the Administrative Agent shall have received notice from a Lender prior to the proposed date of any Loan to be made by such Lender on the occasion of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's share of such Borrowing, the Administrative Agent may assume that such Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the Borrower a corresponding amount. In such event, if a Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then such Lender and the Borrower jointly and severally agree to pay to the Administrative Agent forthwith on written demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of any Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the Borrower, the Interest Rate payable in cash in accordance with Section 2.08.

Section 2.05. *Repayment of Loans; Evidence of Debt.*

(a) The Borrower hereby unconditionally promises to pay to the Administrative Agent for the account of each Lender the aggregate principal amount of all Loans outstanding on the Termination Date.

(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, 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 shall record (i) the amount of each Loan made hereunder, (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 for the account of the respective Lenders and each respective Lender's share thereof.

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section 2.05 shall be prima facie evidence of the existence and amounts of the obligations recorded therein; *provided* that (x) the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrower to repay its Loans in accordance with the terms of this Agreement and (y) in the event of any conflict between the accounts maintained by the Administrative Agent pursuant to Section 2.05(c) and any Lender's records pursuant to Section 2.05(b), the accounts maintained by the Administrative Agent pursuant to Section 2.05(c) shall govern and control.

(e) Any Lender may request that Loans made by it to the Borrower be evidenced by a promissory note. In such event, the Borrower shall promptly prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) substantially in the form attached hereto as Exhibit I. Thereafter, unless otherwise agreed by the applicable Lender, the Loans evidenced by such promissory note and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

Section 2.06. *Prepayment of Loans*.

(a) Voluntary. The Borrower may, upon prior written notice from the Borrower to the Administrative Agent, at any time or from time to time, voluntarily prepay Loans in whole or in part, together with any applicable Prepayment Premium. Prepayments of Loans pursuant to this Section 2.06(a) shall be applied as directed by the Borrower.

(b) Mandatory.

(i) Subject to clause (vii) below, not later than the fifth Business Day following receipt by the Borrower or any Subsidiary of any Net Proceeds in connection with any Asset Sale, the Borrower shall apply 100% of the Net Proceeds received with respect thereto to prepay outstanding Loans in accordance with Section 2.06(b)(viii).

(ii) Subject to clause (vii) below, not later than the fifth Business Day following receipt by the Borrower or any Subsidiary of any Net Proceeds in connection with any Recovery Event, the Borrower shall apply 100% of the Net Proceeds received with respect thereto to prepay outstanding Loans in accordance with Section 2.06(b)(viii); *provided* that no prepayment pursuant to this clause (ii) shall be required if the Net Proceeds received in connection with any such Recovery Event are less than $5,000,000 individually and $10,000,000 in the aggregate of all such Recovery Events in any fiscal year.

(iii) Not later than the fifth Business Day following receipt of Net Proceeds by the Borrower or any Subsidiary from the issuance or incurrence of Indebtedness (other than any cash proceeds from the issuance of Indebtedness permitted pursuant to Section 6.01), the Borrower shall apply 100% of the Net Proceeds received with respect thereto to prepay outstanding Loans in accordance with Section 2.06(b)(viii).

(iv) Not later than the fifth Business Day following receipt of Net Proceeds by the Borrower or any Subsidiary of any Extraordinary Receipts, the Borrower shall apply 100% of the Net Proceeds received with respect thereto to prepay outstanding Loans in accordance with Section 2.06(b)(viii); *provided* that no prepayment pursuant to this clause (iv) shall be required if the Net Proceeds received in connection with any such Extraordinary Receipts are less than $5,000,000 individually and $10,000,000 in the aggregate of all such Extraordinary Receipts in any fiscal year.

(v) Upon the occurrence of a Change in Control, each Lender shall have the right to require the Borrower to prepay such Lender's Loans at a price in cash equal to the aggregate principal amount of the Loans outstanding, plus the Prepayment Premium that would have been payable if the Borrower had voluntarily prepaid such Loans on the date of such prepayment. The Borrower shall deliver to the Administrative Agent written notice of the occurrence of any Change in Control (each such notice, a "**Change in Control Notice**"), in each case, within two Business Days thereof. Each Lender that intends to exercise its right to require the Borrower to prepay such Lender's Loans pursuant to this Section 2.06(b)(v) shall provide written notice thereof to the Administrative Agent no later than 5:00 p.m., within ten Business Days of the receipt of any Change in Control Notice delivered pursuant to the foregoing clause (b) (such date, the "**Change in Control Election Date**"). For the avoidance of doubt, any Lender that fails to timely notify the Administrative Agent in accordance with the preceding sentence shall be deemed to have irrevocably waived the right described in this Section 2.06(b)(v). The Borrower shall make any prepayment pursuant to this Section 2.06(b)(v) within three Business Days of the Change in Control Election Date. The foregoing shall not limit the Borrower's right to make a voluntary prepayment in accordance with Section 2.06(a) in connection with such Change in Control.

(vi) For each fiscal year of the Borrower (commencing with the fiscal year ending on December 31, 2021), not later than the tenth Business Day following the date of the most recent Financial Statements delivered or required to be delivered pursuant to Section 5.01(a) (for any such fiscal year, the "**ECF Prepayment Date**"), the Borrower shall prepay outstanding Loans in an aggregate principal amount equal to (x) 100% of Excess Cash Flow for such fiscal year *minus* (y) optional prepayments of Loans under Section 2.06(a) during such fiscal year (the "**ECF Prepayment**"); *provided* that no prepayment shall be required pursuant to this Section 2.06(b)(vi) to the extent that after giving effect to such prepayment U.S. Liquidity would be less than $85,000,000 at the time of making such prepayment; *provided* that (i) the Borrower shall make the maximum portion of any such ECF Prepayment when due to the extent such payment shall not cause the Borrower to violate the foregoing clause and (ii) the Borrower shall make additional portions of such ECF Prepayment within five (5) Business Days from delivery of financial statements pursuant to Section 5.01(a) or Section 5.01(b) thereafter to the extent that making such payment shall not cause the Borrower to violate the foregoing clause.

(vii) Notwithstanding the foregoing, the Borrower shall not be required to apply any Net Proceeds that are the subject of clauses (i) or (ii) above to prepay the Loans to the extent reinvested by the Borrower or any of its Restricted Subsidiaries in assets of a kind then used or usable in the business of the Borrower and its Restricted Subsidiaries within 12 months of receipt of such Net Proceeds (or, if the Borrower or any Restricted Subsidiary has contractually committed within 12 months following receipt of such Net Proceeds to reinvest such Net Proceeds, within 18 months from the date of the receipt of such Net Proceeds); *provided* that (a) no Event of Default shall have occurred and shall be continuing at the time of the earlier of the (x) application of such proceeds and (y) entry into the contractual commitment to apply such Net Proceeds; and (b) any such Net Proceeds not actually reinvested in accordance with the foregoing shall be promptly applied by the Borrower to prepay the Loans; *provided further* that (i) to the extent such Net Proceeds are attributable to an Asset Sale or Recovery Event of Term Priority Collateral, such Net Proceeds may not be reinvested in cash or Cash Equivalents, accounts receivable, stock inventory, marketable securities, prepaid liabilities or other current assets not constituting Term Priority Collateral (other than in connection with an acquisition of a line of business or operating entity engaged in a Related Business) (it being understood that the Borrower and its Restricted Subsidiaries may hold such Net Proceeds in cash, Cash Equivalents or marketable securities pending reinvestment during the time periods described above, so long as the Borrower shall provide, concurrently with the delivery of the financial statements pursuant to Section 5.01(a) or Section 5.01(b), a written notice of such Net Proceeds, identifying in reasonable detail such Net Proceeds in the form of cash, Cash Equivalents or marketable securities, as applicable) and (ii) notwithstanding anything to the contrary herein, the aggregate amount of Net Proceeds of Asset Sales and Recovery Events that may be reinvested pursuant to this clause (vii) shall not exceed $20,000,000 in any fiscal year (unless the aggregate principal amount of the Loans that has been prepaid or repaid (including with the Net Proceeds of Asset Sales or Recovery Events) is at least $100,000,000, in which case the limitation set forth in this sub-clause (ii) shall not apply).

(viii) Prepayments of outstanding Loans pursuant to this Section 2.06(b) shall be applied in such manner as the Borrower may specify.

(c) Prepayment Premium. In the event that, prior to February 26, 2025, the Borrower prepays all or any portion of the then outstanding Loans pursuant to Section 2.06(a), Section 2.06(b)(iii) or Section 2.06(b)(v) (such date of prepayment a "**Calculation Date**"), such prepayment shall include a premium (the "**Prepayment Premium**"), to be paid to the Administrative Agent for the benefit of the Lenders, equal to, (i) in the case of any prepayment made prior to August 26 2023, the present value at such Calculation Date of (x) all required remaining scheduled interest payments due on such Loans (determined by excluding any interest that would accrue with respect to any portion of the principal amount of such Loans representing any payment of PIK Interest prior to such Calculation Date) being repaid through August 26, 2023 (excluding accrued and unpaid interest to, but excluding, the Calculation Date) (provided that any interest that would otherwise have accrued from the period commencing after the Interest Payment Date occurring immediately prior to August 26, 2023 and ending on and including August 26, 2023 shall be deemed for purposes of this definition to be a required remaining scheduled interest payment that would have otherwise been due on August 26, 2023) based upon the Interest Rate plus (y) the Prepayment Premium that would be payable if such Loans were voluntarily prepaid on August 26 2023, computed using a discount rate equal to the Treasury Rate as of the Calculation Date plus 50 basis points, (ii) in the case of any prepayment made on or after August 26, 2023 but prior to February 26, 2024, the principal amount of the Loans so prepaid (determined by excluding any principal amount of such Loans representing any payment of PIK Interest prior to such Calculation Date) multiplied by six percent (6.0%), (iii) in the case of any prepayment made on or after February 26, 2024 but prior to February 26, 2025, the principal amount of the Loans so prepaid (determined by excluding any principal amount of such Loans representing any payment of PIK Interest prior to such Calculation Date) multiplied by four percent (4.0%) and (iv) zero percent (0%) thereafter. Notwithstanding anything herein to the contrary, at any time after the Closing Date, the Borrower may prepay the Loans in an aggregate principal amount of up to $50,000,000 (the "**Specified Prepayment**") using the Net Proceeds of any issuance of common stock (which, for the avoidance of doubt, shall exclude any conversion of Indebtedness to Equity Interests) of the Borrower at par plus a prepayment premium equal to six percent (6.0%) of the principal amount of the Loans so prepaid, without any other Prepayment Premium.

(d) The Borrower shall notify the Administrative Agent in writing of any prepayment under Section 2.06(a) or (b), not later than 11:00 a.m. (or such later time as the Administrative Agent may consent to in its reasonable discretion), one Business Day prior to the date of prepayment. Subject to Section 2.06(e), such notice shall be irrevocable and shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Promptly following receipt of any such notice, the Administrative Agent shall advise the relevant Lenders of the contents thereof. Each partial prepayment of any Borrowing under Section 2.06(a) shall be in an aggregate principal amount that is an integral multiple of $1,000,000 and not less than $3,000,000. Prepayments under Section 2.06(a) and 2.06(b) shall be accompanied by accrued interest to the extent required by Section 2.08.

(e) Each prepayment shall be applied to the applicable Loans of the applicable Lenders in accordance with their respective Applicable Percentages.

(f) Any prepayment of Loans hereunder to be made with the proceeds from the incurrence of any Indebtedness or the closing of another transaction may state that such prepayment is conditioned on the effectiveness of other debt facilities or instruments or the closing of such other transaction, and no Default or Event of Default shall occur if such prepayment is not made because such condition is not satisfied.

(g) Notwithstanding any other provisions of this Section 2.06, (A) with respect to the Net Proceeds described in 2.06(b)(i) or (b)(ii), to the extent that applicable law would effectively (1) prohibit the repatriation to the United States of America of any Net Proceeds received by any Subsidiary that is not a Domestic Subsidiary or (2) impose material adverse tax consequences on the Borrower and its Subsidiaries if such Net Proceeds were so repatriated (taking into account any foreign tax credit or benefit actually realized in connection with any such repatriation), as determined by the Borrower in good faith, then, in each case, the Borrower and its Subsidiaries shall not be required to prepay such amounts as required under Section 2.06(b)(i) or (b)(ii) until such prohibition or material adverse tax consequence no longer exists, provided that the Borrower and its Subsidiaries shall take commercially reasonable actions to permit repatriation of the proceeds subject to such prepayments in order to effect such prepayments without violating law or incurring material adverse tax consequences, and (B) with respect only to any ECF Prepayment described in Section 2.06(b)(vi), to the extent that applicable law would effectively prohibit the repatriation to the United States of America of any proceeds received by any Subsidiary that is not a Domestic Subsidiary or result in material adverse tax consequences on the Borrower and its Subsidiaries if such proceeds were so repatriated, as determined by the Borrower in good faith, the Borrower and its Subsidiaries shall not be required to prepay such amounts as required under Section 2.06(b)(vi) until such prohibition or material adverse tax consequence no longer exists, provided that the Borrower and its Subsidiaries shall take commercially reasonable actions to permit repatriation of the proceeds subject to such prepayments in order to effect such prepayments without violating law or incurring material adverse tax consequences.

Section 2.07. *Fees*.

(a) The Borrower shall pay to the Administrative Agent, for its own account, the fees and other charges earned, due and payable in the amounts and at the times set forth in the Agency Fee Letter. All fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for the respective accounts of the Administrative Agent and other Lenders as provided herein. Once due, all fees shall be fully earned and shall not be refundable under any circumstances.

(b) The Borrower shall pay to the Administrative Agent, for the account of each Lender, the fees and other charges earned, due and payable in the amounts and at the times set forth in the Fee Letter. All fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for the respective accounts of the Lenders as provided herein. Once due, all fees shall be fully earned and shall not be refundable under any circumstances.

Section 2.08. *Interest*.

(a) The aggregate principal amount of the Loans outstanding from time to time shall bear interest at a rate per annum equal to 12.50% (the "**Interest Rate**"). The Borrower shall, by delivering a Cash/PIK Election Notice to the Administrative Agent no later than 11:00 a.m. five (5) Business Days prior to the Interest Payment Date, elect

whether interest payments for such Interest Payment Date shall be paid in cash (the "**Cash Option**") or paid partially in cash and paid partially in kind and capitalized (the "**Cash/PIK Option**"); *provided* that if the Borrower fails to deliver a Cash/PIK Election Notice within the time frame set forth above, the Borrower shall be deemed to have elected the Cash/PIK Option for the applicable Interest Payment Date. If the Borrower elects the Cash Option for any interest period, the Borrower shall pay all interest payments payable on such Interest Payment Date in cash on such Interest Payment Date. If the Borrower elects (or is deemed to have elected) the Cash/PIK Option for any interest period, the Borrower shall pay on the applicable Interest Payment Date (x) interest at a rate per annum equal to 8.50% in cash, and (y) interest at a rate per annum equal to 4.00% in kind (the "**PIK Interest**"), which PIK Interest shall be automatically capitalized on the applicable Interest Payment Date by adding such amount to the outstanding principal amount of such Loan. For the avoidance of doubt, following such increase in the principal amount of the outstanding Loans upon a payment of the PIK Interest on such Interest Payment Date, the Loans shall bear interest on such increased principal amount from and after the date of such Interest Payment Date, and all references herein or in any other Loan Document to the principal amount of the Loans shall include all interest accrued and capitalized as a result of any payment of the PIK Interest except as otherwise specified.

(b) Notwithstanding the foregoing, upon the occurrence and during the continuation of a Specified Event of Default, any overdue amounts shall bear interest, after as well as before judgment, payable in cash, at a rate per annum equal to two percent (2.0%) plus the Interest Rate (the "**Default Rate**"); *provided* that the Default Rate shall apply to all such outstanding amounts (whether stated at maturity, by acceleration or otherwise) automatically and without any action by any Person upon the occurrence and during the continuance of any Event of Default arising under Section 7.01(h) or (i).

(c) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan; *provided* that (i) interest accrued pursuant to paragraph (b) of this Section 2.08 shall be payable on demand and (ii) in the event of any repayment or prepayment of any Loan of any Lender, accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment.

(d) All interest hereunder shall be computed on the basis of a year of 360 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

Section 2.09. *Increased Costs.*

(a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender;

(ii) impose on any Lender any other condition (other than Taxes) affecting this Agreement or any Loans made by such Lender; or

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

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

(b) If any Lender determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender to a level below that which

such Lender or such Lender's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's holding company with respect to capital adequacy or liquidity), then from time to time the Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's holding company for any such reduction suffered. A Lender may only submit a request for compensation in connection with the Changes in Law described in clauses (a) and (b) of this Section 2.11 if such Lender imposes such increased costs on borrowers similarly situated to the Borrower under syndicated credit facilities comparable to the Loans.

(c) A certificate of a Lender setting forth in reasonable detail the amount or amounts necessary to compensate such Lender or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section 2.11(b) shall be delivered to the Borrower and shall be conclusive absent manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within ten (10) days after receipt thereof.

(d) Failure or delay on the part of any Lender or the Administrative Agent to demand compensation pursuant to this Section 2.11 shall not constitute a waiver of such Lender's or the Administrative Agent's right to demand such compensation; *provided* that the Borrower shall not be required to compensate a Lender or the Administrative Agent pursuant to this Section 2.11 for any increased costs or reductions incurred more than 120 days prior to the date that such Lender or the Administrative Agent notifies the Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Administrative Agent's intention to claim compensation therefor; *provided further* that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 120-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 2.10. *Taxes*.

(a) Any and all payments by or on account of any obligation of any Loan Party under any Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law (as determined in the good faith discretion of an applicable withholding agent) requires the deduction or withholding of any Tax from any such payment by a withholding agent, then the applicable withholding agent shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, then the sum payable by the applicable Loan Party shall be increased as necessary so that, after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.10), the amounts received with respect to this agreement equal the sum which would have been received had no such deduction or withholding been made.

(b) In addition, the Loan Parties shall timely pay to the relevant Governmental Authority in accordance with applicable law, or at the option of the Administrative Agent timely reimburse it for, Other Taxes.

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

(d) Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Taxes attributable to such Lender (but only to the extent that any Loan Party has not already indemnified the Administrative Agent for such Taxes and without limiting the obligation of the Loan Parties to do so) and (ii) any Taxes attributable to such Lender's failure to comply with the provisions of Section 9.04(e) relating to the maintenance of a Participant Register, in either case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive

absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Administrative Agent under this paragraph (d).

(e) As soon as practicable after any payment of Taxes by any Loan Party to a Governmental Authority pursuant to this Section 2.10, such Loan Party shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(f) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrower and the Administrative Agent, at the time or times reasonably requested by the Borrower or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrower or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or the Administrative Agent, shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower or the Administrative Agent as will enable the Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.10 (f)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing,

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

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

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

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

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

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

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

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

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

(g) If any party determines, in its sole discretion exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified pursuant to this Section 2.10 (including by the payment of additional amounts pursuant to this Section 2.10), it shall pay to the indemnifying party an amount equal to such refund (but only to the extent of indemnity payments made under this Section with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) of such indemnified party and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund). Such indemnifying party, upon the request of such indemnified party, shall repay to such indemnified party the amount paid over pursuant to this paragraph (g) (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) in the event that such indemnified party is required to repay such refund to such Governmental Authority. Notwithstanding anything to the contrary in this paragraph (g), in no event will the indemnified party be required to pay any amount to an indemnifying party pursuant to this paragraph (g) the payment of which would place the indemnified party in a less favorable net after-Tax position than the indemnified party would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. This paragraph shall not be construed to require any indemnified party to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to the indemnifying party or any other Person.

(h) Without prejudice to the survival of any other agreement contained herein, the agreements and obligations contained in this Section 2.10 shall survive the resignation or replacement of the Administrative Agent or any assignment of rights by, or the replacement of, a Lender, the termination of the Commitments and the repayment, satisfaction or discharge of all obligations under the Loan Documents.

(i) Nothing contained in this Section 2.10 shall require the Administrative Agent or any Lender to make available any of its tax returns (or any other information that it deems, in its sole discretion, to be confidential or proprietary).

(j) For purposes of this Section 2.10, the term "Applicable Law" includes FATCA.

Section 2.11. *Payments Generally; Pro Rata Treatment; Sharing of Setoffs*.

(a) The Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or of amounts payable under Sections 2.09 or 2.10, or otherwise) prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 p.m.), on the date when due, in immediately available funds, without setoff or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the account of the Administrative Agent as may be specified in writing from time to time by the Administrative Agent as its funding office by written notice to the Borrower and the Lenders, except that payments pursuant to Sections 2.09, 2.10 and 9.03 shall be made directly to the Persons entitled thereto and payments pursuant to other Loan Documents or as otherwise expressly provided herein shall be made to the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. Amounts prepaid or repaid on account of the Loans may not be reborrowed. All payments under each Loan Document shall be made in Dollars and in immediately available funds.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, interest and fees then due hereunder in respect of Obligations, then such funds shall be applied in the order and manner set forth in Section 7.03.

(c) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans; *provided* that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph 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 or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). The Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Borrower any rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of the Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received prior written notice from the Borrower prior to the date on which any payment by the Borrower is due to the Administrative Agent for the account of any of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the applicable Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of such Lenders severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Sections 2.04(a), 2.10(d), 2.11(d) or 9.03(c), then the Administrative Agent may, in its discretion and notwithstanding any contrary provision hereof, (i) apply any amounts thereafter received by the Administrative Agent for the account of such Lender for the benefit of the Administrative Agent to satisfy such Lender's obligations to it under such Section until all such unsatisfied obligations are fully paid, and/or (ii) hold any such amounts in a segregated account as cash collateral for, and application to, any future funding obligations of such Lender under any such Section, in the case of each of clauses (i) and (ii) above, in any order as determined by the Administrative Agent in its reasonable discretion.

Section 2.12. *Mitigation Obligations; Replacement of Lenders*.

(a) If any Lender requests compensation under Section 2.09, or if the Borrower is required to pay any additional amount or indemnification payment to any Lender, the Administrative Agent, or any Governmental Authority for the account of any Lender pursuant to Section 2.10, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the reasonable judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.09 or Section 2.10, as the case may be, in the future and (ii) would not subject such Lender to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to such Lender. The Borrower hereby agrees to pay all reasonable out-of-pocket costs and expenses incurred by any Lender in connection with any such designation or assignment promptly following written demand (including documentation reasonably supporting such request) from such Lender.

(b) If any Lender (a) shall have become a Defaulting Lender or (b) requests compensation under Section 2.09, or if the Borrower is required to pay any additional amount or indemnification payment to any Lender, the Administrative Agent, or to any Governmental Authority for the account of any Lender pursuant to Section 2.10, then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that (i) the Borrower shall have received the prior written consent of the Administrative Agent to the extent required under Section 9.04(b)(iii), for such assignment, which consent shall not be unreasonably withheld or delayed, (ii) such Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts) and (iii) in the case of any such assignment resulting from a claim for compensation under Section 2.09 or payments required to be made pursuant to Section 2.10, such assignment will result in a reduction in such compensation or payments. A Lender shall not be required to make any such assignment and delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrower to require such assignment and delegation cease to apply. Each party hereto agrees that an assignment required pursuant to this Section 2.12(b) may be effected pursuant to an Assignment and Acceptance executed solely by the Borrower, the Administrative Agent and the assignee, and that the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective.

Section 2.13. *Extensions of 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 whose Loans have a like maturity date, in each case on a pro rata basis (based on the Aggregate Outstandings with a like maturity date) and on the same terms to each such Lender, the Borrower is hereby permitted with the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) to consummate from time to time transactions with individual Lenders that accept the terms contained in such Extension Offers to extend the maturity date of each such Lender's Loans, and otherwise modify the terms of such Loans pursuant to the terms of the relevant Extension Offer (including by increasing the interest rate or fees payable in respect of such Loans and/or modifying the amortization schedule in respect of such Lender's Loans) (each, an "**Extension,**" and each group of Loans in each case as so

extended, as well as the original Loans in each case not so extended, being a "**tranche**"; any Extended Loans shall constitute a separate tranche of Loans from the tranche of Loans from which they were converted), so long as the following terms are satisfied or waived in accordance with Section 9.02:

(i) except as to amortization payments, interest margins, rate floors, upfront fees, funding discounts, original issue discounts and premiums and final maturity (which shall be set forth in the relevant Extension Offer), the Loans of any Lender that agrees to extend such Loans pursuant to an Extension Offer (an "**Extended Loan**"), shall be Loans with the same terms as the original Loans; *provided* that the Extended Loan may provide for other covenants and terms that apply to any period after the latest maturity date then in effect with respect to the Loans (and may add a financial maintenance covenant prior to the latest maturity date then in effect with respect to the Loans if such financial maintenance covenant is applicable to both the Loans and the Extended Loan); and *provided further* that at no time shall there be Loans hereunder (including Extended Loans and any original Loans) which have more than three different maturity dates;

(ii) if the aggregate principal amount of Loans in respect of those Lenders who shall have accepted the relevant Extension Offer shall exceed the maximum aggregate principal amount of Loan offered to be extended by the Borrower pursuant to such Extension Offer, then the Loans of such 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 Lenders, as the case may be, have accepted such Extension Offer; and

(iii) all documentation in respect of such Extension shall be consistent with the foregoing.

(b) With respect to all Extensions consummated by the Borrower pursuant to this Section 2.13, (i) such Extensions shall not constitute voluntary or mandatory payments or prepayments for purposes of Section 2.06 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 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 Loans be tendered. The Lenders hereby consent to the transactions contemplated by this Section 2.13 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended 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 Sections 2.06 and 2.10) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Section 2.13.

(c) No consents shall be required to effectuate any Extension, other than (i) the consent of each Lender agreeing to such Extension with respect to its Loans (or a portion thereof) and (ii) the consent of the Administrative Agent (as set forth in clause (a) above). All Extended Loans and all obligations in respect thereof shall be Obligations under this Agreement and the other Loan Documents that are secured by the Collateral on a pari passu basis with all other applicable Obligations under this Agreement and the other Loan Documents. The Lenders hereby irrevocably authorize the Administrative Agent to enter into amendments to this Agreement and the other Loan Documents with the Borrower as may be necessary or advisable in order to establish new tranches in respect of Loans so extended and such technical amendments as may be necessary or appropriate in the reasonable opinion of the Administrative Agent and the Borrower in connection with the establishment of such new tranches, in each case on terms consistent with this Section 2.15. All such amendments entered into with the Borrower by the Administrative Agent hereunder shall be binding and conclusive on the Lenders.

(d) In connection with any Extension Offer, the Borrower shall provide the Administrative Agent at least five (5) Business Days' (or such shorter period as may be agreed by the Administrative Agent in its reasonable discretion) prior written notice thereof, and shall agree to such procedures (including those regarding timing, rounding and other adjustments and to ensure reasonable administrative management of the credit facilities hereunder after such Extension), 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 2.13.

Section 2.14. [Reserved].

Section 2.15. *Defaulting Lenders*. Anything contained herein to the contrary notwithstanding, in the event that (i) any Lender shall become a Defaulting Lender and (ii) such Defaulting Lender shall fail to cure the default as a result of which it has become a Defaulting Lender within five Business Days after the Borrower's request that it cure such default, the Borrower shall have the right (but not the obligation) to repay such Defaulting Lender in an amount equal to the principal of, and all accrued interest on, all outstanding Loans owing to such Lender, together with all other amounts due and payable (other than any prepayment premium) to such Lender under the Loan Documents.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Until the Commitments have expired or been terminated and the principal of and interest on each Loan, all fees and other Obligations (other than contingent indemnification obligations not then due and owing) payable hereunder shall have been paid in full, the Borrower represents and warrants to the Lenders as of the Closing Date:

Section 3.01. *Organization; Powers*. (a) Each of the Borrower and the Restricted Subsidiaries is duly organized, validly existing and in good standing (as applicable) under the laws of the jurisdiction of its organization, except as to any Restricted Subsidiary other than the Borrower where such failure to be so organized, existing or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (b) (i) each Restricted Subsidiary has all requisite power and authority to carry on its business as now conducted, except to the extent that the failure to have any such power would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect and (ii) the Borrower has all requisite power and authority to carry on its business as now conducted in all material respects and (c) except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required.

Section 3.02. *Authorization; Enforceability*. The Loan Transactions to be entered into by each Loan Party are within such Loan Party's corporate, limited liability or partnership powers, as applicable, and have been duly authorized by all necessary corporate, limited liability or partnership action, as applicable, and, if required, equityholder action. This Agreement has been duly executed and delivered by the Borrower and constitutes, and each other Loan Document to which any Loan Party is to be a party, when executed and delivered by such Loan Party, will constitute, a legal, valid and binding obligation of each such Loan Party (as the case may be), enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

Section 3.03. *Governmental Approvals; No Conflicts*. The Loan Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority with competent jurisdiction over the Borrower or any Restricted Subsidiary, except (i) such as have been obtained or made and are in full force and effect, (ii) any consent or approval of, registration or filings necessary to perfect Liens created under the Loan Documents (or release existing Liens) and (iii) immaterial consents, approvals, registrations or filings, (b) will not violate any Applicable Law or regulation or the charter, by-laws or other organizational documents of the Borrower or any of the Restricted Subsidiaries or any order of any Governmental Authority applicable to the Borrower or any Restricted Subsidiary, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of the Restricted Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of the Restricted Subsidiaries, except with respect to any default, conflict, breach or contravention or payment, to the extent that such violation, conflict, breach, contravention or payment would not reasonably be expected to have a Material Adverse Effect and (d) will not result in the creation or imposition of any Lien on any asset of the Borrower or any of the Restricted Subsidiaries, except Liens created under the Loan Documents and Liens permitted under the Loan Documents.

Section 3.04. *Financial Condition; No Material Adverse Effect*.

(a) The Borrower has heretofore furnished to the Administrative Agent the financial statements required under Section 4.01(f)(1) and (2), which financial statements present fairly, in all material respects, the consolidated financial position and results of operations and cash flows of the Borrower and its consolidated Subsidiaries as of such dates and for such periods in accordance with GAAP, subject to year-end audit adjustments and the absence of footnotes in the case of the statements referred to in Section 4.01(f)(2). As of the Closing Date, neither the Borrower nor any of its Restricted Subsidiaries has any material Guarantees, contingent liabilities and liabilities for taxes, or any long term leases or unusual forward or long term commitments, including any interest rate or foreign currency swap or exchange transaction or other obligation in respect of derivatives, that are not reflected in the most recent financial statements referred to in this paragraph.

(b) Since September 30, 2020, there has been no change, development or event that, individually or in the aggregate, has had or would reasonably be expected to have a Material Adverse Effect; *provided* that, the impacts of the COVID-19 pandemic on the business, assets, operations, or financial condition of the Borrower and its Subsidiaries taken as a whole that (A) have already occurred and were disclosed (I) in writing to the Lenders in the Lender Presentation or (II) the Specified Public Filings and (B) that were reasonably foreseeable (in consequence and duration) in light of any event, development or circumstance described in the foregoing clause (A) (*provided* that any such additional impacts described in this clause (B) are similar to the previously disclosed impacts described in the foregoing clause (A)), will in each case be disregarded for purposes of this Section 3.04(b).

Section 3.05. *Properties*.

(a) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, each of the Borrower and its Restricted Subsidiaries has good title to, or valid leasehold interests in or rights to use, all its real and personal property (excluding, for the avoidance of doubt, Intellectual Property, which is the subject of Section 3.05(b)(i)) material to its business taken as a whole, except for Liens permitted by Section 6.02 or other Liens reasonably acceptable to the Required Lenders.

(b) Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect, (i) each of the Borrower and its Subsidiaries exclusively owns, or is validly licensed under written and enforceable licenses, or otherwise has a right to use, all Intellectual Property used or held for use in connection with its business as currently conducted and proposed to be conducted, and (ii) Borrower's and its Subsidiaries' conduct of their respective businesses does not infringe, misappropriate or violate any Intellectual Property rights of any other Person.

Section 3.06. *Litigation and Environmental Matters*.

(a) Except as described on Schedule 3.06, there are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending and unstayed against or, to the knowledge of the Borrower, threatened against or relating to the Borrower or any of the Subsidiaries (i) that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve any of the Loan Documents or the Loan Transactions.

(b) Except for matters that, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect, neither the Borrower nor any of its Restricted Subsidiaries (i) has failed to comply with any Environmental Law or to obtain, maintain or comply with any permit, license or other approval required under any Environmental Law, (ii) is or has become subject to, or to the knowledge of the Borrower is threatened with, any Environmental Liability or (iii) has received written notice of any claim with respect to any Environmental Liability or written notice of violation with respect to any Environmental Law.

Section 3.07. *Compliance with Laws and Agreements*. Each of the Borrower and its Restricted Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 3.08. *Investment Company Status*. Neither the Borrower nor any of its Restricted Subsidiaries is (or is required to be) an "investment company" as defined in the Investment Company Act of 1940.

Section 3.09. *Taxes*. Each of the Borrower and its Restricted Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) any Taxes that are being contested in good faith by appropriate proceedings and for which the Borrower or such Restricted Subsidiary, as applicable, has set aside on its books adequate reserves in accordance with GAAP or (b) in each case, to the extent that the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

Section 3.10. *Employee Benefit Plans*. Except as could not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (a) each of the Borrower, each Restricted Subsidiary and each of their respective ERISA Affiliates (and in the case of a Pension Plan or a Multiemployer Plan, each of their respective ERISA Affiliates) are in compliance with all applicable provisions and requirements of ERISA and the Code and other federal and state laws and the regulations and published interpretations thereunder with respect to each Plan and Pension Plan and have performed all their obligations under each Plan and Pension Plan; (b) no ERISA Event or Foreign Plan Event has occurred or is reasonably expected to occur; (c) each Plan or Pension Plan which is intended to qualify under Section 401(a) of the Code has received a favorable determination letter from the IRS covering such plan's most recently completed five-year remedial amendment cycle in accordance with Revenue Procedure 2007-44, I.R.B. 2007-28, indicating that such Plan or Pension Plan is so qualified and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code or an application for such a determination is currently pending before the Internal Revenue Service and, to the knowledge of Borrower, nothing has occurred subsequent to the issuance of the most recent determination letter which would cause such Plan or Pension Plan to lose its qualified status; (d) no liability to the PBGC (other than required premium payments), any Plan or Pension Plan or any trust established under Title IV of ERISA has been or is expected to be incurred by the Borrower, any Restricted Subsidiary or any of their ERISA Affiliates; (e) no ERISA Event has occurred and neither the Borrower, a Restricted Subsidiary nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event; (f) each of the Borrower's and the Restricted Subsidiaries' ERISA Affiliates have complied with the requirements of Section 515 of ERISA with respect to each Multiemployer Plan and are not in "default" (as defined in Section 4219(c)(5) of ERISA) with respect to payments to a Multiemployer Plan; (g) all amounts required by applicable law with respect to, or by the terms of, any retiree welfare benefit arrangement maintained by the Borrower, any Restricted Subsidiary or any ERISA Affiliate or to which the Borrower, any Restricted Subsidiary or any ERISA Affiliate has an obligation to contribute have been accrued in accordance with ASC Topic 715-60; (h) as of the most recent valuation date for each Multiemployer Plan for which the actuarial report is available, neither the Borrower, any Restricted Subsidiary, nor any of their respective ERISA Affiliates has any potential liability for a complete withdrawal from such Multiemployer Plan (within the meaning of Section 4203 of ERISA), when aggregated with such potential liability for a complete withdrawal from all Multiemployer Plans, based on information available pursuant to Section 4221(e) of ERISA; (i) there has been no Prohibited Transaction or violation of the fiduciary responsibility rules with respect to any Plan or Pension Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect; (j) neither the Borrower, any Restricted Subsidiary nor any ERISA Affiliate maintains or contributes to, or has any unsatisfied obligation to contribute to, or liability under, any active or terminated Pension Plan other than (i) on the Closing Date, those listed on Schedule 3.10 hereto and (ii) thereafter, Pension Plans not otherwise prohibited by this Agreement; (k) the present value of all accumulated benefit obligations under each Pension Plan, did not, as of the close of its most recent plan year, exceed the fair market value of the assets of such Pension Plan allocable to such accrued benefits (determined in both cases using the applicable assumptions under Section 430 of the Code and the Treasury Regulations promulgated thereunder) and (l) the present value of all accumulated benefit obligations of all underfunded Pension Plans did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of all such underfunded Pension Plans (determined in both cases using the applicable assumptions under Section 430 of the Code and the Treasury Regulations promulgated thereunder).

Section 3.11. *Disclosure*. None of the reports, financial statements, certificates or other written information (other than projections, pro forma financial information, estimates, budgets, other forward-looking information and information of a general economic or industry nature) furnished by or on behalf of any Loan Party to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or thereunder (giving effect to all supplements thereto and other public filings with the U.S. Securities and Exchange Commission) in connection with the Loan Documents contains, taken as a whole, any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading; provided that, with respect to

projected financial information, the Borrower represents only that such information was prepared in good faith based upon assumptions by the Borrower believed to be reasonable at the time such projected financial information was furnished, it being understood that such projections are not to be viewed as facts or as a guarantee of performance or achievement of any particular results and that actual results may vary from projected results (many of which factors are beyond the control of the Borrower and its Subsidiaries and their respective officers, representatives and advisors) and that such variances may be material and that no assurance can be given that the projected results will be realized.

Section 3.12. *Subsidiaries*. Schedule 3.12 sets forth the name of, and the ownership interest of the Borrower (or the Subsidiary of the Borrower that is the direct parent of such other Subsidiary of the Borrower) in, each Subsidiary of the Borrower, in each case as of the Closing Date.

Section 3.13. *Use of Proceeds*. The proceeds of the Loans shall be used to refinance the Series A Preferred Stock of the Borrower and/or for general corporate purposes and working capital needs of the Borrower and its subsidiaries.

Section 3.14. *Labor Matters*. As of the Closing Date and except as set forth on Schedule 3.14, there are no strikes, lockouts or slowdowns against the Borrower or any Restricted Subsidiary pending or, to the knowledge of the Borrower, threatened. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) the Borrower and its Restricted Subsidiaries are in compliance with the Fair Labor Standards Act or any other applicable Federal, state, local or foreign law dealing with hours worked by or payments made to employees or any similar matters (including but not limited to the appropriate classification of employees as exempt or non-exempt), (b) the Borrower and its Restricted Subsidiaries have properly classified all individuals engaged as contractors as such under all applicable Federal, state, local or foreign law, (c) the Borrower and its Restricted Subsidiaries are in compliance with the Worker Adjustment and Retraining Notification Act and all other state, local or foreign laws relating to plant closings or mass layoffs and (d) all payments due from the Borrower or any Restricted Subsidiary, or for which any claim may be made against the Borrower or any Restricted Subsidiary, on account of wages and employee health and welfare insurance and other benefits, have been paid or accrued as a liability on the books of the Borrower or such Subsidiary. Neither the Borrower nor any Subsidiary is subject to any claims arising out of any employment matter, whether pending as of the Closing Date or to its knowledge threatened, which would, individually or in the aggregate, be reasonably expected to have a Material Adverse Effect. Except as does not, or would not reasonably be expected to, have a Material Adverse Effect, the consummation of the Loan Transactions 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 the Borrower or any Restricted Subsidiary is bound.

Section 3.15. *Security Documents*.

(a) The Security Agreement creates in favor of the Administrative Agent, for the benefit of the Secured Parties referred to therein, a legal, valid, continuing and enforceable security interest in the Collateral (as defined in the Security Agreement) in accordance with and subject to the terms thereof, the enforceability of which is 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, and the Pledged Collateral (as defined in the Security Agreement), (together with stock powers or other appropriate instruments of transfer executed in blank form), have been delivered to the Administrative Agent. The financing statements, releases and other filings set forth on Schedule 3.15(a) are in appropriate form and have been or will be filed on the Closing Date in the offices reasonably acceptable to the Administrative Agent and the Required Lenders. Upon such filings (and payment of applicable fees) and/or the obtaining of "control," the Administrative Agent will have a perfected Lien on, and security interest in, to and under all right, title and interest of the grantors thereunder in all such Collateral (as defined in the Security Agreement) to the extent that it may be perfected by filing, recording or registering a financing statement or analogous document (including the proceeds of such Collateral subject to the limitations relating to such proceeds in the UCC) or by obtaining control, under the UCC (in effect on the date this representation is made) in each case prior and superior in right to any other Person (other than, in the case of (i) the ABL/LC Priority Collateral, the ABL/LC Agents, as applicable, subject to the Intercreditor Agreement and (ii) Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law).

(b) When the Security Agreement (or a short form thereof) is filed in the United States Patent and Trademark Office and the United States Copyright Office and when financing statements, releases and other filings set forth on Schedule 3.15(b) in appropriate form are filed (which filings shall occur on or prior to the Closing Date) in the offices reasonably acceptable to the Administrative Agent and the Required Lenders, (and the applicable fees are paid), the Security Agreement shall constitute a fully perfected Lien on, and security interest in, all right, title and interest of the applicable Loan Parties in the Intellectual Property constituting Collateral in accordance with and subject to the terms thereof to the extent a security interest may be perfected by filing, recording or registering a security agreement, financing statement or analogous document in the United States Patent and Trademark Office or the United States Copyright Office, as applicable, in each case prior and superior in right to any other Person (other than Permitted Encumbrances, to the extent any such Permitted Encumbrances would have priority over the Liens in favor of the Administrative Agent pursuant to any applicable law) (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on patents, patent applications, registered trademarks, trademark applications and copyrights (whether or not registered) acquired by the Loan Parties after the date hereof). Notwithstanding the foregoing, nothing in this Agreement shall require any Loan Party to make any filings or take any other actions to record or perfect the Administrative Agent's Lien on and security interest in any Intellectual Property outside the United States (or to reimburse Agent or any Lender for the same).

Section 3.16. *Federal Reserve Regulations*.

(a) No Loan Party is engaged principally, or as one of its important activities, in the business of extending credit for the purpose of buying or carrying Margin Stock.

(b) No part of the proceeds of any Loan will be used to buy or carry Margin Stock or to extend credit to others for the purpose of buying or carrying Margin Stock in violation of the Regulations of the Board, including Regulation U or X.

Section 3.17. *Anti-Terrorism Laws*.

(a) Neither the advance of the Loans to the Borrower nor the use of the proceeds of any thereof will violate the Trading With the Enemy Act (50 U.S.C. Section 1 et seq., as amended) (the "**Trading With the Enemy Act**") or any of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) (the "**Foreign Assets Control Regulations**") or any enabling legislation or executive order relating thereto (which for the avoidance of doubt shall include, but shall not be limited to (i) Executive Order 13224 of September 21, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)) (the "**Executive Order**") and (ii) the USA PATRIOT Act). Furthermore, neither the Borrower nor any Subsidiary (x) is a "blocked person" as described in the Executive Order, the Trading With the Enemy Act or the Foreign Assets Control Regulations or (y) knowingly engages in any dealings or transactions, or be otherwise associated, with any such "blocked person" or in any manner violative of any such order.

(b) Each Loan Party is in compliance, in all material respects, with the USA PATRIOT Act. No part of the proceeds of the Loans will be knowingly used by the Borrower, 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 3.18. *Senior Indebtedness*. The Obligations are secured by a Lien in favor of the Administrative Agent for the benefit of the Secured Parties that shall rank at least senior in priority of payment to all Subordinated Indebtedness and all senior unsecured Indebtedness of Borrower and each of its Restricted Subsidiaries and constitute "Senior Term Loan Obligations" and "First Priority Obligations" with respect to the Term Priority Collateral (each as defined under the Intercreditor Agreement) under the Intercreditor Agreement and "Senior Indebtedness", "Designated Senior Indebtedness", "Guarantor Senior Indebtedness" or any comparable term for all Indebtedness that is subordinated in right of payment to the Obligations (if applicable).

Section 3.19. *Solvency*.

(a) On the Closing Date, after giving effect to the consummation of the Loan Transactions, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

(b) On each Delayed Draw Funding Date, after giving effect to the consummation of the borrowing of Delayed Draw Term Loans on such Delayed Draw Funding Date, the Borrower and its Subsidiaries, on a consolidated basis, are Solvent.

Section 3.20. *No Default*. After giving effect to the consummation of the Loan Transactions, neither the Borrower nor any Restricted Subsidiary will be in default under any indenture, agreement or other instrument binding upon the Borrower or any of the Restricted Subsidiaries or its assets, except with respect to any default to the extent that such default would not reasonably be expected to have a Material Adverse Effect. No Default or Event of Default has occurred and is continuing.

ARTICLE IV
CONDITIONS

Section 4.01. *Closing Date*. The agreement of each Lender to make the extension of credit requested to be made by it on the Closing Date is subject to the satisfaction (or waiver in accordance with Section 9.02 or as otherwise set forth below), prior to or concurrently with the making of such extension of credit on the Closing Date of the following conditions precedent.

(a) The Administrative Agent shall have received (1) from each party hereto either a counterpart of this Agreement signed on behalf of such party or written evidence reasonably satisfactory to the Administrative Agent (which may include telecopy or PDF electronic transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (2) each of the following: (A) the Security Agreement, duly executed and delivered by each grantor named therein, (B) each other Security Document, executed and delivered by the applicable Loan Party, (C) the Intercreditor Agreement, duly executed and delivered by the Loan Parties, the ABL Agent and the Supplemental Letter of Credit Facility Agent, (D) the Intercompany Subordination Agreement, duly executed and delivered by the Borrower and its Restricted Subsidiaries party thereto, and (E) each of the other Loan Documents required to be delivered prior to the Closing Date by the applicable Loan Party thereto.

(b) The Administrative Agent shall have received a written opinion (addressed to the Administrative Agent and the Lenders and dated the Closing Date and in form and substance reasonably acceptable to the Administrative Agent and the Required Lenders) of (1) Sullivan & Cromwell LLP, special counsel for the Borrower, covering certain matters relating to the Loan Documents as the Administrative Agent or the Required Lenders shall reasonably request and (2) Day Pitney LLP, special New Jersey counsel to the Loan Parties.

(c) The Administrative Agent shall have received a true and complete copy of each Loan Party's organizational documents, an incumbency certificate for each Person authorized to execute Loan Documents on behalf of a Loan Party and who will execute any Loan Documents on behalf of such Loan Party, resolutions authorizing the due execution, delivery and performance of the Loan Documents and the Loan Transactions and a good standing certificate from each Loan Party's jurisdiction of organization (where such concept or a similar concept exists), all in form and substance reasonably acceptable to the Required Lenders, the Administrative Agent and its counsel.

(d) The Administrative Agent shall have received a customary certificate, dated the Closing Date and signed by a Responsible Officer of the Borrower, confirming compliance with the conditions set forth in this Section 4.01.

(e) The Administrative Agent shall have received the Solvency Certificate, dated as of the Closing Date, after giving effect to the Loan Transactions (including any Loans to be made on the Closing Date).

(f) The Administrative Agent shall have received (1) the audited consolidated financial statements of the Borrower for the three most recent fiscal years ended at least 90 days prior to the Closing Date, and (2) unaudited interim consolidated financial statements of the Borrower for each Fiscal Quarter ended subsequent to the date of the latest financial statements delivered pursuant to the preceding clause (1) and at least 60 days prior to the Closing Date.

(g) The Administrative Agent shall have received UCC searches conducted in the jurisdictions in which the Borrower and the other Loan Parties are incorporated or such other jurisdictions as the Required Lenders may reasonably require, reflecting the absence of Liens on any of the Collateral other than Liens expressly permitted by Section 6.02 hereof or Liens which will be terminated on the Closing Date or post-closing as agreed by the Required Lenders in their sole discretion.

(h) The Administrative Agent shall be reasonably satisfied that (i) all Uniform Commercial Code financing statements required by law or reasonably requested by the Required Lenders to be filed, registered or recorded to create or perfect the Liens intended to be created under the Loan Documents and all such documents and instruments shall be filed, registered or recorded on or immediately following the Closing Date and (ii) Liens creating a first-priority security interest (subject to certain Liens expressly permitted by Section 6.02 hereof) in the Term Priority Collateral and a second-priority security interest (subject to certain Liens expressly permitted by Section 6.02 hereof) in the ABL/LC Priority Collateral in favor of the Administrative Agent for the benefit of the Secured Parties shall have been perfected to the extent required pursuant to the Loan Documents.

(i) The Administrative Agent and the Lenders shall have received, as applicable (i) all fees, required to be paid hereunder or under any other Loan Document and payable on or prior to the Closing Date, and (ii) to the extent invoiced at least three Business Days prior to the Closing Date, reimbursement or payment of all reasonable out-of-pocket expenses (including reasonable fees, charges and disbursements of counsel) required to be reimbursed or paid by any Loan Party hereunder or under any other Loan Document.

(j) The Borrower shall be in compliance with all applicable requirements of Regulations U, T and X of the Board of Governors of the Federal Reserve System.

(k) The Administrative Agent shall have received evidence that all general liability and property insurance required to be maintained pursuant to Section 5.07 of this Agreement and Section 10 of the Security Agreement has been obtained and is in effect.

(l) The Lenders and the Administrative Agent shall have received, to the extent requested, all documentation and other information required by regulatory authorities 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.

(m) The Administrative Agent shall have received a duly executed copy of the ABL Agreement and the ABL Loan Documents, in each case, in form and substance reasonably acceptable to KLIM.

(n) The Administrative Agent shall have received a duly executed copy of the Supplemental Letter of Credit Agreement and the Supplemental Letter of Credit Loan Documents, in each case, in form and substance reasonably acceptable to KLIM.

(o) The Administrative Agent shall have received evidence reasonably acceptable to KLIM that (i) $100,000,000 in face amount of Series A Preferred Stock have been exchanged for newly issued Series B Preferred Stock with a redemption date that is at least 91 days after the Maturity Date on terms and conditions satisfactory to KLIM, (ii) the Borrower shall have received net cash proceeds in an amount equal to or greater than $75,000,000 from the issuance of the Series C Preferred Stock on terms and conditions reasonably satisfactory to KLIM and (iii) any remaining Series A Preferred Stock not converted as set forth in clause (i) above shall have been redeemed on the Closing Date.

(p) The Administrative Agent shall have received (i) a duly executed copy of the Convertible Note, in form and substance reasonably satisfactory to KLIM, and (ii) evidence, in form and substance reasonably satisfactory to KLIM, that substantially simultaneously on the Closing Date, the transactions contemplated in the Convertible Note shall have been consummated in accordance with the terms thereof.

(q) The Administrative Agent shall have received (i) a duly executed copy of the Common Stock Purchase Agreement, in form and substance reasonably satisfactory to KLIM, and (ii) evidence, in form and substance reasonably satisfactory to KLIM, that substantially simultaneously on the Closing Date, the transactions contemplated in the Common Stock Purchase Agreement shall have been consummated in accordance with the terms thereof.

Section 4.02. *Condition to Each Borrowing*. The agreement of each Lender to make the extension of credit requested to be made by it on any date (including the Closing Date) is subject to the satisfaction (or waiver in accordance with Section 9.02 or as otherwise set forth below) of the following conditions precedent.

(a) The representations and warranties of each Loan Party set forth in the Loan Documents shall be true and correct in all material respects (or in all respects, if qualified by materiality) on and as of the Closing Date (unless a representation or warranty is made as of a specific date or for a specified period, in which case such representation or warranty shall be true and correct in all material respects as of such specified date or for such specified period).

(b) The Administrative Agent shall have received a duly executed Borrowing Request, including a funds flow memorandum; and

(c) At the time of and immediately after giving effect to the Borrowing requested to be made on such date, no Default or Event of Default shall have occurred and be continuing.

Each Borrowing by the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such extension of credit that the conditions contained in this Section 5.02 have been satisfied (or waiver in accordance with Section 9.02).

ARTICLE V
AFFIRMATIVE COVENANTS

Until the Commitments have expired or been terminated and the principal of and interest on each Loan and all fees and other Obligations payable hereunder shall have been paid in full (other than contingent indemnification obligations not then due and payable), the Borrower covenants and agrees with the Lenders that:

Section 5.01. *Financial Statements and Other Information*. The Borrower will furnish to the Administrative Agent and each Lender (through the Administrative Agent) each of the following together with all supporting documentation as the Administrative Agent or the Required Lenders may reasonably require:

(a) as promptly as practicable and in no event later than ninety (90) days after the end of each fiscal year of the Borrower beginning with the fiscal year ended December 31, 2020, the audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year of the Borrower and its consolidated Subsidiaries, setting forth in each case in comparative form the figures for the previous fiscal year, accompanied by an opinion of Ernst & Young LLP or other independent public accountants of recognized national standing (without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit or other material qualification or exception, except for any such qualification or exception with respect to (i) any indebtedness maturing within 364 days after the date of such financial statements, (ii) changes in accounting principles or practices reflecting changes in GAAP and required or approved by the Borrower's independent public accountants or (iii) prospective or actual financial covenant breaches; *provided* that, for avoidance of doubt, any "explanatory paragraph," "emphasis-of-matter paragraph" or like statement shall not constitute a "going concern" or like qualification or exception for purposes of this clause (a)) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP;

(b) within forty-five (45) days after the end of each of the first three Fiscal Quarters of each fiscal year of the Borrower beginning with the Fiscal Quarter ended March 31, 2021, the consolidated balance sheet and related statements of operations, stockholders' equity and cash flows of the Borrower and its consolidated Subsidiaries as of the end of and for such Fiscal Quarter and then elapsed portion of the fiscal year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous fiscal year, all certified by one of its Financial Officers as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject to normal year-end audit adjustments and the absence of footnotes (the financial statements required to be delivered pursuant to Section 5.01(a) and this Section 5.01(b), "**Financial Statements**");

(c) concurrently with any delivery of Financial Statements, the related consolidating financial statements (which may be in footnote form only) reflecting the adjustments necessary to eliminate the accounts of Unrestricted Subsidiaries (if any) from such Financial Statements;

(d) [reserved];

(e) (x) concurrently with any delivery of Financial Statements pursuant to Section 5.01(a) or (b), a Compliance Certificate (i) containing all information and reasonably detailed calculations necessary for determining compliance by the Borrower and its Subsidiaries with Section 6.13 and Section 6.14 as of the last day of the Fiscal Quarter or fiscal year of the Borrower, as the case may be, (ii) certifying as to whether a Default or an Event of Default has occurred during the period covered by the Financial Statements and is continuing and, if a Default or Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (iii) solely in the case of the Compliance Certificate delivered on an annual basis with the Financial Statements delivered pursuant to Section 5.01(a), confirming to the Administrative Agent that there has been no change to the information set forth on the Perfection Certificate since the Closing Date or the date of the most recent report delivered pursuant to this clause (e), as applicable, and/or deliver to the Administrative Agent an updated Perfection Certificate identifying such changes as of the date of such delivery (including, without limitation, (1) a description of any change in the jurisdiction of organization of any Loan Party and (2) a list of any registered or pending Intellectual Property (as defined in the Security Agreement) acquired by any Loan Party), (iv) certifying as to any new Subsidiary, as of the date of delivery of such Compliance Certificate or a confirmation that there is no change in such information since the later of the Closing Date or the date of the last such list, in each case since the date of the most recent report delivered pursuant to this clause (e), and (v) if applicable, a written report in reasonable detail of any Net Proceeds of Term Priority Collateral held by the Borrower or any of its Restricted Subsidiaries prior to any reinvestment thereof pursuant to Section 2.06(b)(vii);

(f) commencing with the fiscal year ending December 31, 2021, within five Business Days following the delivery of Financial Statements pursuant to Section 5.01(a), a certificate of a Financial Officer setting forth a reasonably detailed calculation of Excess Cash Flow for the applicable fiscal year;

(g) within ninety (90) days after the beginning of each fiscal year of the Borrower and commencing after the Closing Date, a reasonably detailed consolidated budget of the Borrower and its consolidated Subsidiaries for such fiscal year (including a projected consolidated balance sheet and related statements of projected operations and cash flow forecast as of the end of and for each Fiscal Month during such fiscal year and setting forth the assumptions used for purposes of preparing such budget); it being understood that the projections are made on the basis of the Borrower's then current good faith views and assumptions believed to be reasonable when made with respect to future events, and assumptions that the Borrower believes to be reasonable as of the date thereof and further being understood that projections, including the projections, are subject to significant uncertainties and contingencies, many of which are beyond the Borrower's control, inherently unreliable and that actual performance may differ materially from the projections and no assurance is given by the delivery of such projections or otherwise that the projections will be realized;

(h) promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of the Securities and Exchange Commission, or with any national securities exchange, or distributed by the Borrower to its stockholders generally, as the case may be;

(i) within five Business Days after the same are sent, copies of all financial and collateral reporting (including supporting information) provided by the Borrower or its Restricted Subsidiaries to the lenders or agents under the ABL Loan Documents, unless otherwise agreed in writing with the Administrative Agent;

(j) promptly following the effectiveness thereof, copies of any amendment, supplement, waiver or other modification with respect to any ABL Loan Document; and

(k) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of the Borrower or any Subsidiary, or compliance with the terms of any Loan Document, as the Administrative Agent or any Lender may reasonably request.

Notwithstanding the foregoing or any provision of the Loan Documents, in no event shall Borrower or any of its Subsidiaries be required to provide any such information (1) which constitutes non-financial trade secrets or non-financial proprietary information, (2) in respect of which disclosure to Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by law or contractual confidentiality obligation owed to a third party, which obligation (x) was entered into in the ordinary course of business, (y) was entered into for a bona fide purpose and (z) has a reasonable relationship as determined by the Borrower in their reasonable discretion to the event, condition or other matter that is the basis therefor or (3) is subject to attorney client or similar privilege or constitutes attorney work-product.

Documents required to be delivered pursuant to Section 5.01(a), Section 5.01(b), Section 5.01(d) or Section 5.01(g) (to the extent any such documents are included in materials otherwise filed with the Securities and Exchange Commission) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (1) on which such documents are posted, or the Administrative Agent is provided a link thereto on the website address listed on Schedule 5.01; (2) on which such documents are posted on the Borrower's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); or (3) on which such documents are filed for public availability with the Securities and Exchange Commission; *provided* that, with respect to each of clauses (1) through (3) above, the Borrower shall notify the Administrative Agent and each Lender (by telecopier or email) of the posting of any such documents and provide to the Administrative Agent by email electronic versions (i.e., soft copies) of such documents (which notice shall be deemed delivered upon filing with the Securities and Exchange Commission). The Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Loan Parties with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

The Loan Parties hereby acknowledge that (1) the Administrative Agent will make available to the Lenders materials and/or information provided by or on behalf of the Loan Parties hereunder (collectively, "**Borrower Materials**") by posting the Borrower Materials on Intralinks or another similar electronic system (the "**Platform**") and (2) 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 Loan Parties or their securities) (each, a "**Public Lender**"). The Loan Parties hereby agree that so long as any Loan Party is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities they will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that (w) all such Borrower Materials shall be clearly and conspicuously marked "**PUBLIC**" which, at a minimum, shall mean that the word "**PUBLIC**" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "**PUBLIC,**" the Loan Parties 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 (although it may be sensitive and proprietary) with respect to the Loan Parties or their securities for purposes of United States Federal and state securities laws (*provided, however*, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 9.12); (y) all Borrower Materials marked "**PUBLIC**" are permitted to be made available through a portion of the Platform designated "**Public Lender**"; and (z) the Administrative Agent shall treat any Borrower Materials that are not marked "**PUBLIC**" as being suitable only for posting on a portion of the Platform not designated "**Public Lender.**"

Notwithstanding anything to the contrary contained herein or in any other Loan Document, neither Borrower nor any Subsidiary shall be required to provide the Administrative Agent, any Lender or any other party hereto (or any of their advisors or consultants) with access to, or details concerning, any facility or information to the extent that such provision would, in the Borrower's sole good faith judgment, result in a violation of Applicable Law or regulation, including International Traffic in Arms Regulations.

Section 5.02. *Notices of Material Events*.

(a) The Borrower will furnish to the Administrative Agent and each Lender (through the Administrative Agent), promptly following obtaining knowledge thereof, written notice of the following:

(i) the occurrence of any Default or Event of Default;

(ii) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Affiliate thereof that, if adversely determined, would reasonably be expected to result in a Material Adverse Effect;

(iii) (A) as soon as possible upon becoming aware of the occurrence of any ERISA Event or Foreign Plan Event, a written notice specifying the nature thereof, what action the Borrower, any Restricted Subsidiary or any of their respective ERISA Affiliates has taken, is taking or proposes to take with respect thereto and, when known, any action taken or threatened by the IRS, the Department of Labor, the PBGC or any other governmental agency with respect thereto; and (B) with reasonable promptness, upon Administrative Agent's request, copies of (1) each Schedule B (Actuarial Information) to the annual report (Form 5500 Series) filed by the Borrower or any Restricted Subsidiary, any of the Borrower, any Restricted Subsidiary or any of their respective ERISA Affiliates with the IRS with respect to each Pension Plan; (2) all notices received by the Borrower, any of the Restricted Subsidiaries or any of their respective ERISA Affiliates from a Multiemployer Plan sponsor concerning an ERISA Event; and three (3) copies of such other documents or governmental reports or filings relating to any Plan or Pension Plan as Administrative Agent shall reasonably request;

(iv) promptly following receipt thereof, copies of (i) any documents described in Section 101(f) of ERISA that the Borrower, any Restricted Subsidiary or any ERISA Affiliate may request with respect to any Plan, and any documents described in 101(k) or 101(l) of ERISA that the Borrower, any Restricted Subsidiary or any ERISA Affiliate may request with respect to any Multiemployer Plan; provided, that if the relevant Restricted Subsidiaries or ERISA Affiliates have not requested such documents or notices from the administrator or sponsor of the applicable Multiemployer Plans, then, upon reasonable request of the Administrative Agent, such Restricted Subsidiary or the ERISA Affiliate shall promptly make a request for such documents or notices from such administrator or sponsor and the Borrower shall provide copies of such documents and notices to the Administrative Agent promptly after receipt thereof; and

(v) any other development that results in, or would reasonably be expected to result in, a Material Adverse Effect (other than in respect of developments the subject matter of which is covered by subclauses (a)(ii)-(iv)).

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

Section 5.03. *Information Regarding Collateral*. The Borrower will furnish to the Administrative Agent notice of the following changes within fifteen (15) days after any change (i) in any Loan Party's corporate, limited liability company or partnership name, (ii) in the location of any Loan Party's "location" (as determined under Section 9-307 of the UCC), chief executive office or principal place of business (including the establishment of any such new principal place of business), (iii) in any Loan Party's organizational structure or (iv) in any Loan Party's Federal Taxpayer Identification Number or state organizational number. The Borrower agrees not to effect or permit any change referred to in the preceding sentence unless all filings have been made, or are timely made after such change, under the Uniform Commercial Code or otherwise that are required in order for the Administrative Agent to continue at all times following such change to have a valid, legal and perfected security interest in all of the Collateral (free and clear of all Liens other than Liens permitted by Section 6.02).

Section 5.04. *Existence; Conduct of Business*. The Borrower will, and will cause each of the Restricted Subsidiaries (other than Immaterial Subsidiaries) to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its (i) legal existence and (ii) rights, licenses, permits, privileges, franchises and Intellectual Property rights used in the normal conduct of its business, taken as a whole; except, in the case of (i) (other than with respect to the Borrower) or (ii), (x) to the extent (1) that failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect or (2) pursuant to any merger, consolidation, liquidation or dissolution or Disposition permitted under Section 6.03 or Section 6.05, or (y) neither the Borrower nor any Restricted Subsidiary shall be required to preserve, renew or keep in full force and effect any Intellectual Property rights if the Borrower or such Restricted Subsidiary determines in its reasonable business judgment that the preservation, renewal or keeping in full force and effect thereof is no longer desirable in the conduct of the business of the Borrower or such Restricted Subsidiary, taken as a whole.

Section 5.05. *Payment of Taxes*. The Borrower will, and will cause each of the Restricted Subsidiaries to, pay all Taxes imposed upon it or any of its properties or assets or in respect of any of its income, businesses or franchises, before any penalty or fine accrues thereon; *provided*, that no such Tax need be paid if (i) the failure to pay would not be reasonably expected to have a Material Adverse Effect or (ii) it is being contested in good faith by appropriate proceedings and as to which adequate reserve or other appropriate provision, as shall be required in conformity with GAAP shall have been made therefor.

Section 5.06. *Maintenance of Properties*. Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, the Borrower will, and will cause each of the Restricted Subsidiaries to, keep and maintain all tangible property material to the conduct of the business of the Borrower and the Restricted Subsidiaries, taken as a whole, in good working order and condition, ordinary wear and tear, casualty and condemnation excepted; *provided* that the foregoing shall not prohibit any transactions permitted under Section 6.05.

Section 5.07. *Insurance.*

(a) The Borrower will, and will cause each of the Restricted Subsidiaries to: (i) maintain insurance (after giving effect to self-insurance) with financially sound and reputable insurers on such of its property and in at least such amounts and against at least such risks as is customary with companies in the same or similar businesses operating in the same or similar locations; (ii) maintain such other insurance as may be required by law; and (iii) promptly following reasonable request by the Administrative Agent, which request need not be made in writing, furnish the Administrative Agent with certificates evidencing the insurance required by this paragraph. The Loan Parties shall, on or prior to the date set forth in Schedule 5.17, require all property, casualty and liability insurance policies to be endorsed, which endorsement shall be reasonably satisfactory in form and substance to the Administrative Agent, to name the Administrative Agent for the benefit of the Secured Parties, as additional insured or loss payee, as appropriate; *provided* that the Borrower shall only be required to use its commercially reasonable efforts to obtain any notification endorsement. In the event of the Borrower's or any other Loan Party's failure to obtain or maintain the insurance required by this paragraph, without waiving any Event of Default occasioned thereby, the Administrative Agent shall have the right following thirty (30) days prior notice to the Borrower to obtain the required coverage and invoice the Borrower for the premium payments therefor.

(b) The Borrower and the other Loan Parties acknowledge and agree that all income, payments and proceeds of a physical damage property insurance claim payable to them and relating to the Term Priority Collateral will be received by the Borrower and the other Loan Parties as agent hereunder for the benefit of the Lenders and, from and after the Cash Control Implementation Date, deposited in an account subject to an Account Control Agreement in favor of the Administrative Agent or the ABL Agent in accordance with the Security Agreement and the Intercreditor Agreement. Unless an Event of Default has occurred and is continuing, the Administrative Agent shall cause any insurance proceeds for which it is loss payee for the benefit of the Secured Parties to be made available to the Borrower as promptly as practicable after receipt thereof by the Administrative Agent for application as required or otherwise permitted by the Loan Documents.

Section 5.08. *Books and Records; Inspection and Audit Rights*. The Borrower will keep proper financial records in accordance with GAAP in all material respects. The Borrower will, and will cause each of the Restricted Subsidiaries to, permit any representatives designated by the Administrative Agent in consultation with the Borrower, upon reasonable prior notice, no more than once in any period of twelve (12) consecutive months commencing on or after the Closing Date (or on an unlimited basis during the continuance of an Event of Default),

to visit and inspect its properties, to examine and make extracts from such records, and to discuss its affairs, finances and condition with its officers and independent accountants, all during normal business hours at times mutually agreed by the Borrower and the Administrative Agent and in a commercially reasonable manner; *provided* that in no event shall the requirements set forth in this Section 5.08 require the Borrower or any of its Restricted Subsidiaries to provide any such information which (i) constitutes non-financial trade secrets or non-financial proprietary information, (ii) in respect of which disclosure to the Administrative Agent or any Lender (or their respective representatives or contractors) is prohibited by Applicable Law or contractual confidentiality obligation owed to a third party or (iii) in the reasonable determination of the Borrower, is subject to attorney client or similar privilege or constitutes attorney work-product; *provided*, *further* that the Borrower shall be given the opportunity to be present at any meetings with its independent accountants. Notwithstanding anything to the contrary contained herein or in any other Loan Document, no Loan Party shall be required to provide the Administrative Agent, any Lender or any of their advisors or consultants with access to, or details concerning, any facility, document or information to the extent that such provision would, in such Loan Party's reasonable judgment, result in a violation of Applicable Law or regulation, including International Traffic in Arms Regulations.

Section 5.09. *Compliance with Laws and Contractual Obligations*. The Borrower will, and will cause each of the Restricted Subsidiaries to, comply with all Contractual Obligations and all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect.

Section 5.10. *Additional Subsidiaries*. If (x) any additional Domestic Subsidiary is formed or acquired after the Closing Date or if a Domestic Subsidiary that was an Excluded Subsidiary no longer meets the applicable criteria to remain an Excluded Subsidiary, or (y) if any additional Foreign Subsidiary that is not an Immaterial Foreign Subsidiary is formed or acquired after the Closing Date or any Foreign Subsidiary ceases to be an Immaterial Foreign Subsidiary, the Borrower will promptly notify the Administrative Agent and the Lenders thereof and (a) the Borrower will cause any such Subsidiary that is a Domestic Subsidiary (other than an Excluded Subsidiary) (i) to become a party to the Security Agreement in the manner provided therein and within thirty (30) days (or such longer period as the Required Lenders may consent to in their reasonable discretion) after such Subsidiary is formed or acquired or no longer qualifies as an Excluded Subsidiary, (ii) promptly to take such actions to create, grant, establish, preserve and perfect the Liens on such Subsidiary's assets to the extent required under the Security Documents or as the Administrative Agent or the Required Lenders shall reasonably request in accordance with the Loan Documents and (iii) to deliver, if requested by the Administrative Agent a written opinion of counsel (which counsel shall be reasonably satisfactory to the Administrative Agent) to the Borrower or such Subsidiary, as applicable, with respect to the matters described in clauses (i) and (ii) hereof, in each case in form and substance reasonably satisfactory to the Administrative Agent and (b) if any Equity Interests of any such Subsidiary are owned directly by or on behalf of the Borrower or any Guarantor, the Borrower will cause such Equity Interests to be pledged pursuant to the Security Agreement within thirty (30) days for a Domestic Subsidiary and within sixty (60) days for a Foreign Subsidiary (or, in each case, such longer period as the Required Lenders may consent to in their reasonable discretion) after such Subsidiary is formed or acquired (provided that in no event shall more than sixty percent (60%) of the total outstanding voting Equity Interests in any such Subsidiary that is a Material First-Tier Foreign Subsidiary be required to be so pledged; provided further, that no Foreign Subsidiary will be subject to local pledge perfection if in the applicable foreign jurisdiction such Foreign Subsidiary would have to consult a works council, or other similar entity, in order to perfect the pledge and any pledge of the Equity Interests of a Foreign Subsidiary may be subject to applicable limitations under the law of the jurisdictions of such Foreign Subsidiary's organization); *provided further*, that the Administrative Agent may agree at the request of the Borrower to exclude additional Foreign Subsidiaries from the pledge requirement if the burden of providing such pledge to the Borrower outweighs the expected benefit of the pledge to the Lenders.

Section 5.11. *Further Assurances*. Subject to the limitations set forth in the Loan Documents, the Borrower will, and will cause each other Loan Party to, at the expense of the Loan Parties, promptly execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements, Intellectual Property filings, termination statements, fixture filings and other documents), which may be required under any Applicable Law, or which the Administrative Agent or the Required Lenders may reasonably request, to grant, preserve, protect or perfect the Liens created or intended to be created by the Security Documents or the validity or priority of any such Lien; *provided* that, other than with respect to the Pledged Equity (as defined in the Security Agreement), nothing in this Agreement or any other Loan Document shall require any Loan Party to make any filings or take any other actions to record or perfect security interest outside the United States (or reimburse the Administrative Agent or any Lender for the same).

Section 5.12. *Cash Management*.

(a) Annexed hereto as Schedule 5.12(a)(i) is a schedule of all DDAs that are maintained by the Loan Parties as of the Closing Date, which schedule shall include, with respect to each depository as of the Closing Date (i) the name and address of such depository; and (ii) the account number(s) maintained with such depository, and (iii) whether such DDA constitutes an Excluded Account and the basis for making such determination. Attached hereto as Schedule 5.12(a)(ii) is a schedule of all lock boxes that are maintained by the Loan Parties as of the Closing Date (the "**Lock Boxes**").

(b) As soon as practicable and in no event more than sixty (60) days following the Closing Date (which period may be extended by the ABL Agent under the ABL Agreement with the approval of the Administrative Agent, not to be unreasonably withheld, conditioned or delayed) (the "**Cash Control Implementation Date**"), the Loan Parties shall enter into (i) an Account Control Agreement with the banks with which any Loan Party maintains DDAs, with respect to each DDA (other than any Excluded Accounts or Disbursement Accounts) (collectively, the "**Controlled DDA Accounts**") and (ii) a Lock Box Agreement with the banks with which any Loan Party maintains a Lock Box, with respect to each Lock Box (collectively, the "**Controlled Lock Box Accounts**").

(c) If, at any time from and after the Cash Control Implementation Date, any cash or cash equivalents owned by any Loan Party that constitutes Collateral are deposited to any DDA, securities account or Lock Box Account, or held or invested in any manner, other than in a Controlled Account (or a Disbursement Account or an Excluded Account), the Administrative Agent (with the consent of the ABL Agent) may require the applicable Loan Party to close such account and have all funds therein transferred to a Controlled Account, and all future deposits made to a Controlled Account (other than with respect to cash on deposit in an Excluded Account or Disbursement Account).

(d) The Loan Parties may close DDAs or Controlled Accounts and/or open new DDAs or Controlled Accounts, subject to the execution and delivery to the ABL Agent and the Administrative Agent of appropriate Account Control Agreements or Lock Box Agreements, as applicable, consistent with the provisions of this Section 5.12 and otherwise reasonably satisfactory to the ABL Agent and the Administrative Agent.

(e) The only Disbursement Accounts as of the Closing Date are as described in Schedule 5.12(e).

Section 5.13. *Designation of Subsidiaries*. The board of directors of the Borrower may at any time designate any Unrestricted Subsidiary as a Restricted Subsidiary. The designation of any Unrestricted Subsidiary as a Restricted Subsidiary shall constitute the incurrence at the time of designation of any Indebtedness or Liens of such Subsidiary existing at such time.

Section 5.14. *Benefit Plans Payments*. The Borrower, the Restricted Subsidiaries and all ERISA Affiliates shall make all required contributions to any Plans, Pension Plans or Multiemployer Plans which, if not made, would reasonably be expected to result in a Material Adverse Effect, unless such payment is being contested pursuant to Section 5.05.

Section 5.15. *Lender Meetings*. The Borrower will, upon the request of the Administrative Agent or the Required Lenders, participate in one teleconference with the Administrative Agent and the Lenders during each Fiscal Quarter (or, for so long as an Event of Default is continuing, more frequent teleconferences as the Administrative Agent may reasonably request) during normal business hours at such time as may be mutually agreed to by the Borrower and the Required Lenders, which teleconference shall include a clearly demarcated portion suitable for Public Lenders to the extent any of the Lenders constitute Public Lenders at such time (it being understood and agreed that the appropriate ABL Lenders may participate in any such teleconferences and such participation shall satisfy the Borrower's obligation in respect thereof under the ABL Agreement)

Section 5.16. *Environmental Matters*. Without limitation of any other covenants, rights or other obligations expressed elsewhere in this Agreement:

(a) Each Loan Party will, and will cause each of its Restricted Subsidiaries, to take all reasonable actions required under Environmental Laws to (i) the extent it has knowledge thereof, cure any violation of applicable Environmental Laws by any Loan Party or its Restricted Subsidiaries that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (ii) make an appropriate response to any claim, suit or proceeding against any Loan Party or any of its Restricted Subsidiaries asserting any Environmental Liability (in each case to the extent such Loan Party has knowledge of such claim, suit or proceeding) and discharge any obligations it may have to any Person thereunder, where failure to do so would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect; (iii) implement any and all Remedial Actions required to comply with Environmental Laws or that are legally required by any Governmental Authority acting within its jurisdiction (following final resolution of the Loan party's or its Restricted Subsidiaries' challenges or appeals, if any, of the relevant Governmental Authority's order or decision) or that are otherwise necessary to maintain the value and marketability of its owned or leased real estate for industrial usage, except where failure to perform any such Remedial Action would not reasonably be expected to result in a Material Adverse Effect.

(b) Promptly upon obtaining knowledge of the occurrence thereof, the Borrower shall deliver to the Administrative Agent written notice describing in reasonable detail (i) any Release that would reasonably be expected to require a Remedial Action or give rise to Environmental Liability, in each case that would reasonably be expected to result in a Material Adverse Effect, (ii) any Remedial Action by any Loan Party, its Restricted Subsidiaries or any other Person in response to the presence or Release of Hazardous Materials that would reasonably be expected to result in Environmental Liability of any Loan Party or its Restricted Subsidiaries that would be reasonably expected to result in a Material Adverse Effect, (iii) any claim, demand, suit or proceeding (including any request for information by a Governmental Authority) that would reasonably be expected to result in Environmental Liability of any Loan Party or its Restricted Subsidiaries that would reasonably be expected to result in a Material Adverse Effect, (iv) any Loan Party or its Restricted Subsidiaries' discovery of any occurrence or condition at any of its owned or leased real estate, or on any adjoining real estate, that would reasonably be expected to cause such owned or leased real estate, or any part thereof, to be subject to any material restrictions on the ownership, occupancy, transferability or use thereof or any lien in favor of any Governmental Authority to secure the satisfaction of any liability under any Environmental Laws that, in each case, would reasonably be expected to result in a Material Adverse Effect, (v) any proposed acquisition of Equity Interests, assets or property by any Loan Party or any of its Restricted Subsidiaries that would reasonably be expected to expose any Loan Party or any of its Restricted Subsidiaries to, or result in, Environmental Liability that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (vi) any proposed action to be taken by any Loan Party or any of its Restricted Subsidiaries to modify current operations in a manner that would reasonably be expected to subject any Loan Party or any of its Restricted Subsidiaries to additional obligations or requirements under Environmental Laws that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 5.17. *Post-Closing Obligations*

(a) The Borrower shall issue at least $25,000,000 in aggregate original face amount of Series C Preferred Stock on or prior to April 11, 2021; provided, that (A) such date shall be automatically extended until such time as the Borrower and the investors in such Series C Preferred Stock shall have made all filings required to be made pursuant to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "HSR Act"), and all waiting periods (and all extensions thereof) applicable to the issuance of such Series C Preferred Stock shall have been terminated or shall have expired and any required approvals or consents under the HSR Act have been obtained, and (B) Borrower shall promptly make all filings required to be made pursuant to the HSR Act and diligently and in good faith take all actions required to terminate any waiting periods and obtain any required approvals or consents under the HSR Act in connection with such issuance of Series C Preferred Stock.

(b) The Loan Parties shall, within the time periods specified on Schedule 5.17 hereto (as each may be extended by the Required Lenders in their reasonable discretion), complete such uendertakings as are set forth on Schedule 5.17 hereto.

ARTICLE VI
NEGATIVE COVENANTS

Until the Commitments have expired or terminated and the principal of and interest on each Loan and all fees and other Obligations payable hereunder shall have been paid in full (other than contingent indemnification obligations not then due and owing), the Borrower covenants and agrees with the Lenders that:

Section 6.01. *Indebtedness; Certain Equity Securities*.

(a) The Borrower will not, and will not permit any of the Restricted Subsidiaries to, create, incur, assume or permit to exist any Indebtedness, except:

(i) Indebtedness constituting Obligations;

(ii) (A) Indebtedness evidenced by the ABL Loan Documents and (B) Indebtedness evidenced by the Supplemental Letter of Credit Loan Documents; *provided* that the aggregate principal or face amount of Indebtedness incurred under this clause (ii) shall not exceed $165,000,000 at any time outstanding;

(iii) Indebtedness existing on the Closing Date and set forth in Schedule 6.01 and any Permitted Refinancing thereof;

(iv) Indebtedness of the Borrower to any Restricted Subsidiary and of any Restricted Subsidiary to the Borrower or any other Restricted Subsidiary; *provided* that (A) Indebtedness of any Loan Party owing to any Subsidiary that is not a Loan Party shall be subject to an Intercompany Subordination Agreement substantially in the form set forth in Exhibit N (or such other form as may be reasonably satisfactory to the Administrative Agent) and (B) Indebtedness of any Subsidiary that is not a Loan Party owing to any Loan Party shall be subject to Section 6.04(c);

(v) Guarantees by the Borrower of Indebtedness of any Restricted Subsidiary and by any Restricted Subsidiary of Indebtedness of the Borrower or any other Restricted Subsidiary; *provided* that Guarantees by any Loan Party of Indebtedness of any Subsidiary that is not a Loan Party shall be subject to Section 6.04;

(vi) Indebtedness of the Borrower or any Restricted Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and Permitted Refinancings thereof and any Permitted Refinancings of such Refinanced Indebtedness; *provided* that (A) before and after giving effect to the incurrence of such Indebtedness, no Default (to the knowledge of any Loan Party) or Event of Default shall have occurred and be continuing, (B) such Indebtedness (other than any Permitted Refinancings thereof or Permitted Refinancings of any such Refinanced Indebtedness) is incurred prior to or within 270 days after such acquisition or the completion of such construction or improvement and (C) the aggregate principal amount of Indebtedness incurred on or after the Closing Date and permitted by this clause (vi) of this Section 6.01 (together with any Indebtedness incurred under clauses (vii) and (xxvii) of this Section 6.01) at any time outstanding shall not exceed the greater of (x) $40,000,000 and (y) 1.95% of Total Assets

(vii) Indebtedness of the Borrower or any Restricted Subsidiary relating to purchase money security interests (as defined in the New York Uniform Commercial Code, as amended) and Permitted Refinancings thereof and any Permitted Refinancings of such Refinanced Indebtedness; *provided* that (A) before and after giving effect to the incurrence of such Indebtedness no Default or Event of Default shall have occurred and be continuing, (B) such Indebtedness (other than any Permitted Refinancings thereof or Permitted Refinancings of any such Refinanced Indebtedness) is incurred prior to or within 270 days after such acquisition or the completion of such construction or improvement and (C) the aggregate principal amount of Indebtedness incurred on or after the Closing Date and permitted by this clauses (vii) of this Section 6.01 (together with any Indebtedness incurred under clauses (vi) and (xxvii) of this Section 6.01) at any time outstanding shall not exceed the greater of (x) $40,000,000 and (y) 1.95% of Total Assets;

(viii) Indebtedness of the Borrower or any Restricted Subsidiary incurred to finance the acquisition by the Borrower or any Restricted Subsidiary after the Closing Date of real property and improvements thereto (but not inventory or other personal property located therein) and Permitted Refinancings thereof and any Permitted Refinancings of such Refinanced Indebtedness; *provided* that (A) before and after giving effect to the incurrence of such Indebtedness no Default (to the knowledge of any Loan Party) or Event of Default shall have occurred and be continuing, (B) the terms of such Indebtedness are commercially reasonable as determined by the Borrower, (C) the secured recourse to the Borrower or any Restricted Subsidiary of such Indebtedness shall be limited to the value of the real property and improvements financed by such Indebtedness and (D) the aggregate principal amount of Indebtedness incurred on or after the Closing Date and permitted by this clause (viii) of this Section 6.01 at any time outstanding shall not exceed the greater of (x) $25,000,000 and (y) 1.20% of Total Assets;

(ix) Investments permitted under Section 6.04(g) that constitute Indebtedness;

(x) without duplication of any other Indebtedness permitted hereunder, liabilities for Leases of real property characterized as Indebtedness for purposes of GAAP;

(xi) Indebtedness of the Borrower or any of its Restricted Subsidiaries consisting of take-or-pay obligations contained in supply arrangements, in each case incurred in the ordinary course of business;

(xii) Indebtedness arising pursuant to agreements in connection with any Dispositions of any business, assets or Equity Interests of any Restricted Subsidiary permitted under Section 6.05, (including for avoidance of doubt, the FPD Asset Sale and the UK Pension Settlement Agreement), any Permitted Acquisition or any other permitted Investment hereof consisting of indemnification, earn-out obligations, adjustment of purchase price or similar obligations, or guarantees or letters of credit, bankers' acceptances, accommodation guarantees, surety bonds or performance bonds securing any obligations of the Borrower or any of its Restricted Subsidiaries pursuant to such agreements, in any case incurred in connection with such permitted Disposition, Permitted Acquisition or other permitted Investment (other than guarantees of Indebtedness incurred by any Person acquiring all or any portion of such business, assets or capital stock of such Restricted Subsidiary for the purpose of financing such acquisition) and any Permitted Refinancing thereof and any Permitted Refinancings of any such Refinanced Indebtedness;

(xiii) Indebtedness arising from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds in the ordinary course of business (*provided, however,* that such Indebtedness is extinguished within ten (10) Business Days of the Borrower or the applicable Subsidiary becoming aware of such Indebtedness) or other cash management obligations and other Indebtedness in respect of netting services, automatic clearinghouse arrangements, credit card processing, overdraft protections and similar arrangements in the ordinary course of business;

(xiv) Indebtedness arising in connection with endorsements of instruments for deposit in the ordinary course of business;

(xv) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(xvi) Indebtedness in respect of Hedging Agreements designed to hedge against the Borrower's or any Restricted Subsidiary's exposure to interest rates, foreign exchange rates or commodities pricing risks incurred in the ordinary course of business and not for speculative purposes;

(xvii) Indebtedness of any Restricted Subsidiary (A) assumed in connection with any Permitted Acquisition, *provided* that such Indebtedness is not incurred in contemplation of such Permitted Acquisition, and any Permitted Refinancing thereof, or (B) incurred to finance a Permitted Acquisition and any Permitted

Refinancing thereof; *provided* that, in each case, such Indebtedness and all Indebtedness resulting from a Permitted Refinancing thereof (x) is unsecured or the Liens securing such Indebtedness are otherwise permitted and (y) does not exceed $25,000,000 in the aggregate at any time outstanding;

(xviii) Indebtedness incurred by any Foreign Subsidiary for working capital or general corporate purposes (including for acquisitions) which is not guaranteed, or secured, by any assets of any Loan Party (other than the Equity Interests of such Foreign Subsidiary that are not pledged to the Administrative Agent as security for the Obligations) in an aggregate amount not to exceed $60,000,000 at any time outstanding;

(xix) Indebtedness incurred by the Borrower or any of its Restricted Subsidiaries in respect of letters of credit, bank guarantees, supporting obligations, bankers' acceptances, performance bonds, surety bonds, statutory bonds, export or import indemnities, customs and appeal bonds, warehouse receipts or similar instruments issued or created in the ordinary course of business, 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 with respect to reimbursement-type obligations regarding workers compensation claims; *provided* that no such Indebtedness is in respect of borrowed money;

(xx) 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;

(xxi) Indebtedness representing deferred compensation or similar obligations to employees or directors of the Borrower or any of its Restricted Subsidiaries incurred in the ordinary course of business;

(xxii) Indebtedness consisting of promissory notes issued by the Borrower 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 the Borrower or any direct or indirect parent of the Borrower permitted by Section 6.08; *provided* the aggregate principal amount of such Indebtedness shall not exceed $5,000,000 at any time outstanding;

(xxiii) Indebtedness under the Convertible Note (and any Permitted Refinancing thereof) in an aggregate principal amount not to exceed $25,000,000, plus accrual of any interest thereon that is paid in kind;

(xxiv) unsecured Indebtedness consisting of Guarantees of amounts owing by customers of the Borrower under equipment and vendor financing programs in an aggregate amount, when combined with Investments pursuant to Section 6.04(q), not to exceed $40,000,000 at any time outstanding;

(xxv) to the extent constituting Indebtedness, (a) Series B Preferred Stock in an initial face amount of up to $100,000,000 (plus any interest or dividends paid in kind) and any Permitted Refinancing thereof, (b) Series C Preferred Stock in an initial face amount of up to $100,000,000 (plus any interest or dividends paid in kind) and any Permitted Refinancing thereof and (c) unsecured Indebtedness (including, to the extent constituting Indebtedness, additional preferred stock) in an aggregate principal or face amount not to exceed $100,000,000 (plus any interest or dividends paid in kind) at any time outstanding; *provided* that such Indebtedness incurred pursuant to this clause (xxv) shall satisfy the Required Conditions;

(xxvi) Indebtedness in connection with Permitted Receivables Financings in an aggregate amount not to exceed $25,000,000 at any time outstanding;

(xxvii) any Attributable Indebtedness of the Borrower or any Restricted Subsidiary in connection with Sale and Leaseback Transactions permitted under Section 6.06; and

(xxviii) [reserved]; and

(xxix) other unsecured or junior lien Indebtedness of the Borrower or any Restricted Subsidiary in an aggregate principal amount not to exceed $30,000,000 at any time outstanding; *provided* that any such junior lien Indebtedness shall be subject to a customary intercreditor agreement in form and substance reasonably acceptable to the Administrative Agent.

(b) The Borrower will not, nor will it permit any Restricted Subsidiary to, issue any preferred stock or other preferred Equity Interests, other than to the extent such preferred Equity Interests satisfy the Required Conditions; provided that (x) the Borrower may issue other preferred Equity Interests to the extent constituting Indebtedness that is permitted pursuant to Section 6.01(a) and (y) no preferred Equity Interests of the Borrower shall require payments of cash coupons or cash dividends unless such preferred Equity Interests satisfy the Required Conditions and such preferred Equity Interests are deemed to be incurred under Section 6.01(a)(xxv), whether or not constituting Indebtedness, and reduce the availability thereunder.

Section 6.02. *Liens*. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, except:

(a) (i) Liens created under the Loan Documents, and (ii) subject to the Intercreditor Agreement, Liens created under the ABL Loan Documents and the Supplemental Letter of Credit Loan Documents;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Restricted Subsidiary existing as of the Closing Date and set forth in Schedule 6.02; *provided* that (i) such Lien shall not apply to any other property or asset of the Borrower or any Restricted Subsidiary (other than proceeds thereof and extensions or improvements to any such property) unless otherwise permitted herein and (ii) such Lien shall secure only those obligations which it secures on the Closing Date and extensions, refinancings, restructurings, renewals and replacements thereof that do not increase the outstanding principal amount thereof (other than by an amount equal to accrued interest and any fees, costs and expenses incurred in connection therewith), the obligations thereunder or the property or assets securing such obligations, in the case of each of subclauses (i) and (ii) above other than to the extent such Lien constitutes a Permitted Encumbrance;

(d) any Lien existing on any property or asset prior to the acquisition thereof by the Borrower or any Restricted Subsidiary; *provided* that (i) such Lien is not created in contemplation of or in connection with such acquisition, (ii) such Lien shall not apply to any other property or assets of the Borrower or any Restricted Subsidiary (other than proceeds thereof and extensions or improvements to any such property) unless otherwise permitted herein and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition and extensions, renewals, refinancings, restructurings and replacements thereof that do not increase the outstanding principal amount thereof (except to the extent of any reasonable premiums, fees and expenses incurred in connection with any such extensions, renewals and replacements);

(e) Liens on fixed or capital assets acquired, constructed or improved by the Borrower or any Restricted Subsidiary and accessions and improvements thereto; *provided* that (i) such security interests secure Indebtedness permitted by clause (vi) of Section 6.01(a), (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within 270 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of the Borrower or any Restricted Subsidiary (other than proceeds thereof and extensions or improvements to any such property) unless otherwise permitted hereunder;

(f) Liens of sellers of goods to any Loan Party arising under the provisions of Applicable Law similar to Article 2 of the UCC in the ordinary course of business, covering only goods;

(g) Liens that secure Indebtedness permitted by clauses (vii) or (viii) of Section 6.01(a) on the assets being financed;

(h) any right, title and interest of a lessor under any lease entered into by the Borrower or any Restricted Subsidiary in the ordinary course of its business and covering only the assets so leased;

(i) Liens in favor of collecting or payor banks or other financial institutions having a right of setoff, revocation, refund or chargeback with respect to money or instruments of the Borrower or any Restricted Subsidiary thereof on deposit with or in possession of such bank;

(j) (i) deposits in the ordinary course of business to secure liability to insurance carriers and (ii) Liens in insurance policies and proceeds thereof securing the financing of the premiums with respect thereto;

(k) Liens attaching solely to cash earnest money deposits in connection with any letter of intent or purchase agreement in respect of any Permitted Acquisition;

(l) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods in the ordinary course of business and securing obligations (i) that are not overdue by more than sixty (60) days, or (ii) (A) that are being contested in good faith by appropriate proceedings, (B) the applicable Loan Party or Restricted Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (C) such contest effectively suspends collection of the contested obligation and enforcement of any Lien securing such obligation;

(m) Liens (i) of a collection bank arising under Section 4-210 of the Uniform Commercial Code (or equivalent statutes) on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage amounts incurred in the ordinary course of business; *provided* that such Liens (A) attach only to such investments and the proceeds therefrom and (B) secure only obligations incurred in the ordinary course and arising in connection with the acquisition or Disposition of such investments and not any obligation in connection with margin financing; and (iii) in favor of banking institutions arising as a matter of law encumbering deposits (including the right of setoff) and which are within the general parameters customary in the banking industry;

(n) Liens (i) on cash advances in favor of the seller of any property to be acquired in an Investment permitted hereunder, and (ii) consisting of an agreement to Dispose of any property in a Disposition permitted hereunder, 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;

(o) with respect to the equity interests of any non-wholly owned Restricted Subsidiary, non-wholly-owned Unrestricted Subsidiary or joint venture, any put and call arrangements or restrictions on dispositions related to such Equity Interests set forth in the applicable organizational documents or any related joint venture or similar agreement;

(p) Liens in the nature of the right of setoff in favor of counterparties to contractual obligations with the Loan Parties in the ordinary course of business;

(q) Liens arising out of conditional sale, title retention, consignment or other similar arrangements for the sale of goods entered into by the Borrower or any of its Restricted Subsidiaries in the ordinary course of business;

(r) Liens upon specific items of inventory or other goods and proceeds of the Borrower or any of its Restricted Subsidiaries securing such Person's obligations in respect of documentary letters of credit or bankers' acceptances issued or created for the account of such Person to facilitate the purchase, shipment or storage of such inventory or other goods;

(s) Liens on (i) the assets being acquired and/or (ii) the shares of any entity formed for purposes of such acquisition, which secure Indebtedness permitted under Section 6.01(a)(xvii); *provided*, that such Liens (unless limited to the assets acquired and proceeds thereof) shall be subject to an intercreditor agreement reasonably acceptable to the Administrative Agent;

(t) Liens over any assets of any Subsidiary that is not a Loan Party to the extent required to provide collateral in respect of any appeal in good faith of any tax litigation in an aggregate amount not to exceed the amount required to be paid under local law to permit such appeal;

(u) Liens to secure obligations under treasury services agreements or to implement cash pooling arrangements in the ordinary course of business;

(v) Liens on Cash and Cash Equivalents or other property arising in connection with the defeasance, discharge or redemption of Indebtedness, to the extent such defeasance, discharge or redemption is otherwise permitted hereunder;

(w) Liens in favor of a Loan Party;

(x) Liens on assets of Foreign Subsidiaries (or on the shares of such Foreign Subsidiaries to the extent not pledged as Collateral) securing Indebtedness of Foreign Subsidiaries permitted under Section 6.01(a) in an aggregate amount not to exceed $60,000,000 at any time outstanding;

(y) Liens in respect of Permitted Receivables Financings that extend only to the receivables subject thereto, the agreements governing the receivables included in such Permitted Receivables Financings, the rights under any such agreements, the proceeds thereof and the accounts into which such proceeds are paid (solely to the extent of such proceeds);

(z) Liens on property rented to, or leased by, the Borrower or any of its Subsidiaries pursuant to a Sale and Leaseback Transaction permitted under Section 6.06; *provided* that (i) such Liens secure only the Attributable Indebtedness permitted under Section 6.01(xxvii), and (ii) such Liens do not encumber any other property of the Borrower or its Subsidiaries.

(aa) other Liens securing obligations of the Borrower or any Subsidiary in an aggregate amount not to exceed $30,000,000 at any time outstanding; *provided* that such Liens incurred under Section 6.2(aa) shall not be secure any Indebtedness for borrowed money of the Borrower or any Subsidiary on a pari passu or senior basis with the Liens on the Collateral securing the Obligations.

Section 6.03. *Fundamental Changes*.

(a) The Borrower will not, nor will it permit any Restricted Subsidiary to, merge into or consolidate or amalgamate with any other Person, or permit any other Person to merge into or consolidate with it, or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Specified Event of Default shall have occurred and be continuing (i) any Person may merge into or consolidate or amalgamate with the Borrower in a transaction in which the Borrower is the surviving corporation, (ii) any Person that is not a Loan Party may merge into or consolidate or amalgamate with any Subsidiary in a transaction in which a Subsidiary is the surviving corporation (and if any party to such merger, consolidation or amalgamation is a Loan Party, becomes a Loan Party), (iii) any Loan Party (other than the Borrower) may merge into or consolidate or amalgamate with any other Loan Party (other than the Borrower), (iv) any Subsidiary of the Borrower may liquidate or dissolve if the Borrower determines in good faith that such liquidation or dissolution is in the best interests of the Borrower and the Subsidiaries, taken as a whole, and is not materially disadvantageous to the Lenders, (v) any Immaterial Subsidiary may liquidate or dissolve, (vi) Permitted Acquisitions or any disposition permitted by Section 6.05 (other than clause (f) thereof) may be consummated in the form of a merger, consolidation or amalgamation, so long as, in the event of a Permitted Acquisition, a Loan Party is the surviving Person or a Person that shall become a Loan Party immediately after such merger, consolidation or amalgamation is the surviving Person; provided that any such merger involving a Person that is not a wholly owned Subsidiary immediately prior to such merger shall not be permitted unless also permitted by Section 6.04, and (vii) any Subsidiary may merge, amalgamate or consolidate with any other Person (other than the Borrower or any Subsidiary) the purpose of which is to effect a transaction permitted pursuant to Section 6.05.

(b) The Borrower will not, and will not permit any of the Restricted Subsidiaries to engage to any material extent in any business other than a Related Business (except, in the case of a Special Purpose Receivables Subsidiary, Permitted Receivables Financings).

Section 6.04. *Investments, Loans, Advances, Guarantees and Acquisitions*. The Borrower will not, and will not permit any of the Restricted Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any other Person that was not a wholly owned Subsidiary prior to such merger) any Equity Interests in or evidence of Indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or purchase or otherwise acquire (in one transaction or a series of related transactions) any assets of any other Person constituting a business unit (each, an "**Investment**"), except:

(a) Cash and Cash Equivalents;

(b) Investments existing on the Closing Date and set forth on Schedule 6.04, as extended, modified, renewed, replaced, refunded or refinanced at any time and from time to time, so long as the principal amount thereof is not increased;

(c) (i) Investments by the Borrower or any Restricted Subsidiary in the Borrower or any other Restricted Subsidiary, (ii) Investments (other than with Intellectual Property that is material to the business of the Borrower and its Restricted Subsidiaries taken as a whole) in joint ventures not constituting any Unrestricted Subsidiary and (iii) Investments (other than with Intellectual Property that is material to the business of the Borrower and its Restricted Subsidiaries taken as a whole) in Unrestricted Subsidiaries to fund operating or capital expenses in the ordinary course of business; *provided* that (x) any Investment constituting such Equity Interests held by a Loan Party shall be pledged pursuant to, and to the extent required by, the Security Agreement, (y) immediately before and after giving effect to such Investment, no Default or Event of Default shall have occurred and be continuing and (z) the aggregate amount of Investments by Loan Parties in Restricted Subsidiaries that are not Loan Parties and in joint ventures or Unrestricted Subsidiaries pursuant to this clause 6.04(c) shall not exceed $75,000,000 at any time outstanding (*provided* that the aggregate amounts set forth in clause (z) shall be calculated net of any returns, profits, distributions and similar amounts received by any Loan Party from any Investments made by such Loan Party in Restricted Subsidiaries that are not Loan Parties, joint ventures or Unrestricted Subsidiaries pursuant to this clause (c) (which, in each case, shall not exceed the amount of such Investment (valued at cost) at the time such Investment was made)); *provided further* that to the extent funds are returned (in full or in part) to any Loan Party which is making such Investment either from the party in which the Investment was made or any other entity in connection with or related to the transaction in which the Investment was made (even if not classified as return on investment), only the initial Investment net of the amount so returned shall be included for purposes of determining the amount of any limit on Investments by Borrower or any Restricted Subsidiary in the Borrower or any other Restricted Subsidiary and on Investments in joint ventures and Unrestricted Subsidiaries permitted under Section 6.04(c) and the remainder of such Investment shall be permitted;

(d) Guarantees constituting Indebtedness permitted by Section 6.01; *provided* that the aggregate principal amount of Indebtedness of Restricted Subsidiaries that are not Loan Parties that is Guaranteed by any Loan Party shall be subject to the limitation set forth in clause (c) above;

(e) investments received in connection with the bankruptcy or reorganization of, or in partial or full settlement of delinquent accounts, or accounts or disputes with, customers, troubled account debtors and suppliers, or received in compromise or resolution of litigation, arbitration, or commercial disputes;

(f) non-cash consideration received in connection with the Disposition of any asset in compliance with Section 6.05;

(g) earn-outs and other customary post-Disposition obligations arising out of permitted Dispositions;

(h) the Borrower or any Loan Party may acquire all or substantially all the assets of a Person or line of business of such Person, business unit or division, or not less than one hundred percent (100%) of the Equity Interests (other than directors' qualifying shares) of a Person (referred to herein as the "**Acquired Entity**"); *provided* that (1) such acquisition was not preceded by an unsolicited tender offer for such Equity Interests by, or proxy contest initiated by, the Borrower or any Subsidiary; (2) the Acquired Entity shall engage in a Related Business in accordance with Section 6.03(b); (3) immediately before and after giving effect to such transaction, no Default or Event of Default shall have occurred and be continuing; and (4) at the time of such transaction the Borrower shall comply, and shall cause the Acquired Entity to comply, with the applicable provisions of Section 5.10 and the Security Documents (any acquisition of an Acquired Entity meeting all the criteria of this Section 6.04(h) being referred to herein as a "**Permitted Acquisition**");

(i) loans or advances to officers, directors, consultants and employees of any Loan Party (or any direct or indirect parent thereof) or any of the Restricted Subsidiaries (i) for reasonable and customary relocation purposes made in the ordinary course of business in accordance with the relocation policy of the Borrower, (ii) in connection with such Person's purchase of Equity Interests of the Borrower or any direct or indirect parent thereof (*provided* that the amount of such loans and advances shall be contributed to the Borrower in cash as common equity), (iii) to permit the payment of Taxes by such Person with respect to the Equity Interests described in clause (ii) and (iv) for any other purposes not described in the foregoing clauses (i)-(iii); *provided* that the aggregate principal amount under clauses (ii) through (iv) above shall not exceed $5,000,000 outstanding in the aggregate;

(j) Investments in connection with Hedging Agreements permitted by Section 6.07 or consisting of transactions permitted under Section 6.01(a)(xii);

(k) Investments to the extent that payment for such Investments is made solely with Equity Interests of the Borrower (or any direct or indirect parent of the Borrower);

(l) Investments in (i) deposit accounts and securities account (x) opened in the ordinary course of business, (y) holding only Cash and Cash Equivalents and (z) subject to Account Control Agreements to the extent required by the Loan Documents and (ii) Investments in deposit accounts and securities accounts at credit unions or foreign banking institutions, in each case (x) opened in the ordinary course of business and (y) subject to Account Control Agreements to the extent required by the Loan Documents;

(m) (i) loans and advances made to distributors in the ordinary course and (ii) deposits, prepayments and other credits to suppliers or service providers made in the ordinary course of business;

(n) other Investments (other than with Intellectual Property that is material to the business of the Borrower and its Restricted Subsidiaries taken as a whole) in an aggregate amount not to exceed $30,000,000 at any time outstanding; *provided* that immediately before and after giving effect to the making of any such Investment, no Default or Event of Default shall have occurred and be continuing;

(o) Investments arising as a result of Permitted Receivables Financings in an aggregate amount not to exceed $25,000,000 at any time outstanding;

(p) Investments resulting from the funding of amounts owing by customers of the Borrower under equipment and vendor financing programs in an aggregate amount, when combined with Indebtedness incurred pursuant to Section 6.04(a)(xxiv), not to exceed at any time outstanding (x) $40,000,000 during the period ending on the third anniversary of the closing date and (y) $70,000,000 thereafter; and

(q) accounts payable and other similar extension of credit to customers or suppliers in the ordinary course of business.

Section 6.05. *Asset Sales*. The Borrower will not, and will not permit any of its Restricted Subsidiaries to Dispose of any asset, including any Equity Interest owned by it, except:

(a) (i) Dispositions of inventory, used, worn-out, obsolete or surplus equipment, or Cash and Cash Equivalents, in each case in the ordinary course of business or (ii) the abandonment or other Disposition of Intellectual Property that is, in the reasonable judgment of the Borrower, no longer economically practical or commercially reasonable to maintain or useful in any material respect in the conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, in the ordinary course of business;

(b) Dispositions to the Borrower or a Restricted Subsidiary; *provided* that any such sales, transfers or dispositions involving a Restricted Subsidiary that is not a Loan Party shall be made in compliance with Section 6.09;

(c) other Dispositions of assets for fair market value, *provided* that the Borrower or any of its Restricted Subsidiaries shall receive not less than 75% of total consideration expected to be received for such sale, transfer or other disposition in the form of Cash and Cash Equivalents (in each case, free and clear of all Liens at the time received); *provided* that, the value of (i) retained licenses, licenses back to the Borrower or its Restricted Subsidiaries (as a licensee) and covenants not-to-sue with respect to software or Intellectual Property that are incidental to such sale, transfer or other Disposition and received in the ordinary course for such transactions and (ii) the surrender, waiver, settlement, compromise or release of any claim against the Borrower or any of its Restricted Subsidiaries in connection therewith shall be excluded in determining whether 75% of the consideration received is in the form of Cash and Cash Equivalents; *provided* that Designated Non-Cash Consideration, together with Designated Non-Cash Consideration deemed cash pursuant to the last proviso to Section 6.05, in an amount up to $2,500,000 for any individual Disposition and $5,000,000 in the aggregate for all Dispositions during the term of this Agreement shall be deemed cash for these purposes; *provided further* that this clause (c) shall not permit Dispositions of the Equity Interests of any Subsidiary other than (i) in connection with the sale of substantially all Equity Interests of such Subsidiary or (ii) in connection with third-party investments in or the sale of Equity Interests of any Unrestricted Subsidiary.

(d) (i) Leases, subleases, licenses or sublicenses of property (excluding Sale and Leaseback Transactions) and termination thereof by the Borrower or any Restricted Subsidiary in the ordinary course of business or that do not materially impair the operation of the Borrower's or its Restricted Subsidiaries' business, (ii) Leases and subleases of real property located at Eastman Business Park in Rochester, NY and (iii) sales of assets pursuant to Sale and Leaseback Transactions permitted by Section 6.06;

(e) mergers, consolidations, liquidations, amalgamations and dissolutions, in each case in compliance with Section 6.03(a);

(f) Dispositions of Accounts in connection with the compromise, settlement or collection thereof in the ordinary course of business or in bankruptcy, workout or similar proceedings;

(g) to the extent constituting a Disposition, the granting of Liens permitted as Permitted Encumbrances and the making of investments permitted by Section 6.04 or the making of a Restricted Payment permitted by Section 6.08;

(h) Dispositions of property to the extent that (i) such property is exchanged for credit against the purchase price of similar replacement property or (ii) the proceeds of such Disposition are promptly applied to the purchase price of such replacement property;

(i) transfers of property or assets subject to casualty or condemnation;

(j) Dispositions set forth on Schedule 6.05;

(k) Dispositions of Investments in joint ventures (including non-wholly owned Unrestricted 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;

(l) the unwinding of any Hedging Agreement pursuant to its terms;

(m) Dispositions of Accounts that are owned by Foreign Subsidiaries (i) for fair market value or (ii) subject to customary factoring or receivables financing arrangements;

(n) Dispositions of claims that the Borrower or any Restricted Subsidiary may maintain (i) in connection with the settlement of, or judgments in respect of such claims or (ii) to the relevant insurance provider in connection with the receipt of insurance proceeds related to any such claims; and

(o) Dispositions of Intellectual Property in the form of licenses of Intellectual Property to third parties, including exclusive licenses, cross licenses, and covenants not to sue or similar rights with respect to Intellectual Property granted (i) in the ordinary course of business, (ii) in connection with a settlement of litigation, or (iii) in connection with a divestiture of product, product line, business unit or division (either in its entirety or in a particular geographical region); *provided* that no granting of any exclusive licenses of Intellectual Property other than trademarks under clause (i) of this clause (o) shall be permitted to the extent such exclusive license (A) materially impairs, limits, or restricts the operation of the Borrower or its Restricted Subsidiaries' businesses, or (B) in the case of a license which constitutes, in whole or in part, a transfer of title of the licensed Intellectual Property, such license may be exclusive solely with respect to the use of the licensed Intellectual Property in discrete geographical areas or discrete product/services categories, in each case, in which the Borrower or any of its Subsidiaries do not have material operations relating to the licensed Intellectual Property.

Notwithstanding anything to the contrary herein, (i) all Dispositions permitted hereby shall be made for fair value (other than those permitted by clauses (a)(ii), (c), (d)(i), (d)(ii), (e), (g), (i), (k), (l), (n) and (o) of this Section 6.05) and (ii) at least seventy-five percent (75%) consideration consisting of Cash and Cash Equivalents (other than those permitted by clauses (a)(ii), (b), (c) (to the extent otherwise permitted therein), (d), (e), (f), (g), (h), (i), (j), (k), (n) and (o) of this Section 6.05); *provided*, that, the value of (x) retained licenses, licenses back to the Borrower or its Restricted Subsidiaries (as a licensee) and covenants not-to-sue with respect to software or Intellectual Property that are incidental to such sale, transfer or other Disposition and received in the ordinary course for such transactions and (y) the surrender, waiver, settlement, compromise or release of any claim against the Borrower or any of its Restricted Subsidiaries in connection therewith shall be excluded in determining whether 75% of the consideration received is in the form of Cash and Cash Equivalents; *provided further* that at the option of the Borrower, with respect to any Disposition, Designated Non-Cash Consideration, together with Designated Non-Cash Consideration deemed cash pursuant to Section 6.05(c), in an amount up to $5,000,000 in the aggregate shall be deemed cash for these purposes.

Section 6.06. *Sale and Leaseback Transactions*. Except for any Sale and Leaseback Transaction involving Eastman Business Park in Rochester, NY and the Borrower's premises located at 343 State Street, Rochester NY 14650, the Borrower will not, and will not permit any of its Restricted Subsidiaries to, enter into any Sale and Leaseback Transaction, except for (a) any such sale of any fixed or capital asset is entered into in the ordinary course of business and is made for cash consideration in an amount not less fair market value of such fixed or capital asset, (b) the Sale and Leaseback Transaction is consummated within 90 days after such property is sold or transferred and (c) any Liens arising in connection with the use of property is permitted by Section 6.02(z); *provided* that the aggregate market value of all property subject to such Sale and Leaseback Transactions shall not exceed $10,000,000 in the aggregate at any one time outstanding.

Section 6.07. *Hedging Agreements*. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, enter into any Hedging Agreement, other than Hedging Agreements entered into in the ordinary course of business to hedge or mitigate interest rate, currency, commodities or energy exposure to which the Borrower or any Restricted Subsidiary is exposed in the conduct of its business.

Section 6.08. *Restricted Payments; Certain Payments of Indebtedness*.

(a) The Borrower will not, nor will it permit any Restricted Subsidiary to, declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except (i) the Borrower may make Restricted Payments with respect to its Equity Interest payable solely in additional shares of its Equity Interests, (ii) each Restricted Subsidiary may make Restricted Payments to the holders of its Equity Interests ratably with respect to such Equity Interests, (iii) repurchases of Equity Interests (1) constituting fractional shares or (2) deemed to occur upon exercise of stock options or warrants or other securities convertible or exchangeable into Equity Interests if such Equity Interests represent all or a portion of the exercise price of such options or warrants, (iv) repurchases of common Equity Interests of the Borrower not to exceed in the aggregate $5,000,000, (v) repurchases or redemptions of preferred stock using the Net Proceeds of any issuance of common stock (which, for the avoidance of doubt, shall exclude any conversion of Indebtedness to Equity Interests) of the Borrower in an aggregate amount

not to exceed $50,000,000; *provided* that no repurchase or redemptions of preferred stock pursuant to this clause (v) shall be permitted unless the Borrower shall have first made or offered in writing to make (or shall make or offer in writing to make concurrently with such repurchase or redemption) a Specified Prepayment in a principal amount at least equal to the face amount of preferred stock being repurchased, (vi) regularly scheduled dividends on Series B Preferred Stock and Series C Preferred Stock (or any Permitted Refinancing thereof) at a cash coupon rate not to exceed 7.00% per annum, plus regularly scheduled dividends on other preferred Equity Interests of the Borrower to the extent incurred or deemed incurred under Section 6.01(a)(xxv)(c) and (vii) other Restricted Payments in an amount not to exceed in the aggregate $5,000,000.

(b) The Borrower will not, nor will it permit any Restricted Subsidiary to, make, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) in respect of principal of, or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of Subordinated Indebtedness or any other Indebtedness for borrowed money of the Borrower or any Restricted Subsidiary (other than the Loans, the ABL Loans, the Convertible Note, Indebtedness of Foreign Subsidiaries permitted by Section 6.01(a)(xviii), secured Indebtedness permitted by Section 6.01(a)(vi) or (vii), any intercompany Indebtedness permitted under Section 6.01(a)(iv) and (viii) in connection with any such payment in the ordinary course of business, other Indebtedness with a principal amount not exceeding $10,000,000); *provided* that:

(i) the Loan Parties may make regularly scheduled repayments or redemptions of Indebtedness permitted to be incurred under Section 6.01 (including payments of principal and interest as and when due);

(ii) the Borrower or any Restricted Subsidiary may make payments and distributions in respect of, and purchase, redeem, retire, acquire, cancel or terminate any Indebtedness of the Borrower or any Restricted Subsidiary (x) by the conversion of such Indebtedness to Equity Interests of the Borrower or (y) with the issuance of common stock or Qualified Preferred Stock of the Borrower or the proceeds of such issuance;

(iii) with respect to any preferred stock constituting Indebtedness, the Borrower or any Restricted Subsidiary may make payments in respect of such preferred stock to the extent permitted by Section 6.08(a); and

(iv) refinancings, replacements, extensions, renewals and refundings of such Indebtedness subject to and in accordance with the terms of this Agreement shall be permitted.

Notwithstanding anything herein to the contrary, no cash payments may be made with respect to any preferred Equity Interests of the Borrower unless expressly permitted pursuant to Section 6.08(a) above.

Section 6.09. *Transactions with Affiliates*. The Borrower will not, nor will it permit any Restricted Subsidiary to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates if the fair market value of such transactions is in excess of $5,000,000 in the aggregate, except (a) transactions at prices and on terms and conditions that are, taken as a whole, not less favorable in any material respect to the Borrower or such Restricted Subsidiary than could be obtained on an arm's-length basis from unrelated third parties (it being agreed that such condition may be satisfied by the Borrower's or such Restricted Subsidiary's obtaining a "fairness" opinion from a nationally recognized investment bank or accounting firm or other person reasonably acceptable to the Administrative Agent but the Borrower or such Restricted Subsidiary is not obligated to so obtain a "fairness" opinion), (b) transactions between or among the Borrower and its Restricted Subsidiaries and not involving any other Affiliate, (c) transactions, arrangements, fee reimbursements and indemnities specifically and expressly permitted or required under this Agreement, (d) the consummation of the Loan Transactions, (e) Restricted Payments and payments permitted under Section 6.08, (f) employment and severance arrangements between the Borrower and its 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 arrangements in the ordinary course of business, (g) the payment of customary fees and reasonable out of pocket costs to, and indemnities provided on behalf of, directors, managers, officers, employees and consultants of the Borrower and its Restricted Subsidiaries (or any direct or indirect parent of the Borrower) in the ordinary course of business to the

extent attributable to the ownership or operation of the Borrower and its Restricted Subsidiaries, (h) transactions pursuant to agreements in existence on the Closing Date and set forth on Schedule 6.09 or any amendment thereto to the extent such an amendment is not materially adverse to the Lenders, (i) any Permitted Receivables Financing, (j) transactions with a Person who was not an Affiliate immediately before the consummation of such transaction that becomes an Affiliate as a result of such transaction and (k) transactions entered into in the ordinary course of business, including, but not limited to, transactions with licensors, suppliers or other purchasers or sales of goods or services (including any Intellectual Property).

Section 6.10. *Restrictive Agreements*.

(a) Except as set forth in Schedule 6.10, the Borrower will not, nor will it permit any Restricted Subsidiary to, directly or indirectly, enter into or suffer to exist or become effective, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon the ability of the Borrower or any Restricted Subsidiary to create, incur or permit to exist any Lien securing Obligations or any refinancing thereof upon any property or assets actually owned by it; *provided* that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by any Loan Document or ABL Loan Document, (ii) the foregoing shall not apply to customary provisions included in licenses, contracts, leases, agreements and other instruments restricting assignment and/or encumbrance, (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Restricted Subsidiary or other assets pending such sale, provided such restrictions and conditions apply only to the Restricted Subsidiary or other assets that is to be sold and such sale is permitted hereunder, (iv) the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness, (v) the foregoing shall not apply to customary provisions in Leases restricting the assignment thereof, (vi) the foregoing shall not apply to agreements or arrangements that are binding on a Restricted Subsidiary at the time such Restricted Subsidiary first becomes a Subsidiary of the Borrower, so long as such agreements or arrangements were not entered into solely in contemplation of such Person becoming a Subsidiary of the Borrower, (vii) the foregoing shall not apply to customary provisions in joint venture agreements and other similar agreements applicable to joint ventures permitted hereunder and applicable solely to such joint venture entered into in the ordinary course of business, (viii) the foregoing shall not apply to customary provisions restricting subletting, assignment or transfer of any Lease governing a leasehold interest of the Borrower or any Restricted Subsidiary, (ix) the foregoing shall not apply to restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business, (x) the foregoing shall not apply to restrictions arising in connection with cash or other deposits permitted hereunder and limited to such cash or deposit, (xi) the foregoing shall not apply to restrictions regarding (1) the granting of licenses and sublicenses, releases, immunities and covenants not to sue by the Borrower or any of its Restricted Subsidiaries with respect to Intellectual Property in the ordinary course of business or, using reasonable business judgment, in connection with the settlement of any litigation, threatened litigation or other dispute or (2) licenses, sublicenses, releases, immunities and covenants not to sue granted in connection with Intellectual Property acquired by the Borrower or any of its Restricted Subsidiaries to the extent such restrictions exist prior to the acquisition thereof and are not created in contemplation thereof, (xii) the foregoing shall not apply to restrictions on cash earnest money deposits in favor of sellers in connection with acquisitions not prohibited hereunder or deposits made in connection with the defeasance, redemption or discharge of Indebtedness, (xiii) the foregoing shall not apply to restrictions pursuant to any Indebtedness listed on Schedule 6.10 existing on the date hereof and any refinancing thereof permitted hereunder; *provided* that the restrictions contained in any documents governing any such refinancing shall not be more restrictive than those contained in this Agreement, (xiv) the foregoing shall not apply to restrictions which are not more restrictive (taken as a whole) than those contained in this Agreement or contained in any documents governing any Indebtedness incurred after the Closing Date in accordance with the provisions of this Agreement and (xv) the foregoing shall not apply to any amendments, modifications, restatements or renewals of the agreements, contracts or instruments referred to in clauses (i) through (xiv) above; *provided* that such amendments, modifications, restatements, or renewals, taken as a whole, are not materially more restrictive with respect to such encumbrances or restrictions than those contained in such predecessor agreements, contracts or instruments.

(b) The Borrower will not, nor will it permit any Restricted Subsidiary to, enter into any consensual encumbrance or restriction on the ability of any Restricted Subsidiary of the Borrower to (i) make Restricted Payments in respect of any capital stock of such Restricted Subsidiary held by, or pay any Indebtedness owed to, the Borrower or any other Restricted Subsidiary of the Borrower, (ii) make loans or advances to, or other Investments in, the

Borrower or any other Restricted Subsidiary of the Borrower or (iii) transfer any of its assets to the Borrower or any other Restricted Subsidiary of the Borrower, except for (a) customary restrictions and conditions contained in agreements relating to the sale of assets pending such sale, provided such restrictions and conditions apply only to the assets that are to be sold and such sale is permitted hereunder, (b) restrictions set forth in the document governing the ABL Loans, the Convertible Note and in the documents governing other existing Indebtedness as set forth on Schedule 6.10, (c) restrictions contained in any Permitted Receivables Document with respect to any Special Purpose Receivables Subsidiary, (d) restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in leases, licenses and similar agreements entered into in the ordinary course of business (provided that such restrictions are limited to the property or assets secured by such Liens or the property or assets subject to such leases, licenses or similar agreements, as the case may be) and (e) customary restrictions in agreements representing Indebtedness permitted to be incurred hereunder of a Subsidiary of the Borrower that is not a Loan Party.

Section 6.11. *Amendment of Material Documents*. The Borrower will not, nor will it permit any Restricted Subsidiary to amend, modify or waive any of (a) the provisions of its certificate of incorporation, by-laws or other organizational documents in a manner materially adverse to the Lenders, except to the extent provided by Section 6.03, (b) the terms of the ABL Loan Documents or the Supplemental Letter of Credit Loan Documents; *provided* that with respect to any such Indebtedness, the Borrower and the Restricted Subsidiaries shall have the right to amend, modify or waive terms to the extent not prohibited by the Intercreditor Agreement, (c) the terms of any Subordinated Indebtedness, or (d) any other Indebtedness for borrowed money to the extent constituting Material Indebtedness, or (e) any preferred stock (including, without limitation, the Series A Preferred Stock); *provided* that with respect to any such Indebtedness or any preferred stock, the Borrower and the Restricted Subsidiaries shall have the right to amend, modify or waive terms if such amendment, modification or waiver is not materially adverse to the Lenders (it being understood and agreed that any amendment, modification or waiver to Material Indebtedness or preferred stock that was, when incurred, required to satisfy the Required Conditions hereunder that results in the maturity date, any scheduled amortization payments, mandatory redemptions or sinking fund obligations or mandatory prepayments (including cash flow sweeps) on or prior to the date that is 91 days after the Maturity Date (other than, in the case of Indebtedness, customary offers to purchase upon a change of control, asset sale or event of loss, customary acceleration rights after an event of default and payments required to prevent any such Indebtedness from being treated as an "applicable high yield discount obligation" with the meaning of Section 163(i) of the Code, or any successor provision thereto or, in the case of preferred stock, redemption rights in connection with a fundamental change and similar provisions) shall be deemed materially adverse to the Lenders).

Section 6.12. *Limitation on Change in Fiscal Year*. The Borrower will not, without the written consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed), permit its fiscal year to end on a date other than December 31 of each calendar year.

Section 6.13. *Consolidated Capital Expenditures*. The Borrower will not, nor will it permit any Restricted Subsidiary to, make any Capital Expenditures, except (i) Capital Expenditures of the Borrower and its Restricted Subsidiaries not exceeding $30,000,000 in the aggregate in any fiscal year and (ii) Capital Expenditures relating to the pharmaceuticals business, light blocking, battery coating and printed electronics businesses; *provided* that (a) any such amount referred to in clause (i) above, if not so expended in the fiscal year for which it is permitted, may be carried over for expenditure in the next immediately succeeding fiscal year and (b) Capital Expenditures made pursuant to this Section 6.13 during any fiscal year shall be deemed made, first, in respect of amounts permitted for such fiscal year as provided above and, second, in respect of amounts carried over from the prior fiscal year pursuant to clause (i) above.

ARTICLE VII
EVENTS OF DEFAULT

Section 7.01. *Events of Default*. If any of the following events (each, an "**Event of Default**") shall occur:

(a) any Loan Party shall fail to pay any principal of any Loan when and as the same shall become due and payable;

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

(c) any representation or warranty made or deemed made by the Borrower or any other Loan Party in or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with any Loan Document or any amendment or modification thereof or waiver thereunder, shall prove to have been incorrect in any material respect when made or deemed made;

(d) the Borrower shall fail to observe or perform any covenant, condition or agreement contained in Section 5.04 (with respect to the existence of the Borrower), 5.12(b), 5.17 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in any Loan Document (other than those specified in clause (a), (b) or (d) of this Section 7.01), and such failure shall continue unremedied for a period of thirty (30) days after written notice thereof from the Administrative Agent to the Borrower (which notice may be given at the request of the Required Lenders);

(f) the Borrower or any Restricted Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable and such failure continues after the expiration of any applicable grace periods or cure periods and such Material Indebtedness is, or is permitted to be, accelerated such that all obligations thereunder shall become immediately due and payable;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (after the giving of notice and/or the lapse of any applicable grace period) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity in each case beyond the grace period, if any, provided therein; *provided* that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness; *provided further* that, for the avoidance of doubt, the conversion by any holder of convertible Indebtedness into Equity Interests of the Borrower shall not constitute an Event of Default under this clause (g);

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

(i) the Borrower or any Material Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Section 7.01, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for the Borrower or any Material Subsidiary or for substantially all of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any corporate action for the purpose of authorizing any of the foregoing;

(j) the Borrower or any Material Subsidiary shall become unable, admit in writing its general inability or fail generally, to pay its debts as they become due;

(k) except for any judgments set forth on Schedule 7.01(k), one or more judgments for the payment of money of a liability or debt in an aggregate amount in excess of $25,000,000 (or its equivalent) in excess of amounts covered by insurance shall be rendered against the Borrower, any Restricted Subsidiary (excluding Subsidiaries which would be permitted, at all times while the applicable judgment remains outstanding, to be designated as Immaterial Subsidiaries or Immaterial Foreign Subsidiaries, without regard for if such designation has been made) or any combination thereof, and the same shall remain undischarged for a period of sixty (60) consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of the Borrower or any Restricted Subsidiary to enforce any such judgment;

(l) (i) an ERISA Event and/or a Foreign Plan Event shall have occurred; (ii) a trustee shall be appointed by a United States district court to administer any Pension Plan; (iii) the PBGC shall institute proceedings to terminate any Pension Plan; or (iv) the Borrower, any Restricted Subsidiary or any of their respective ERISA Affiliates shall have been notified by the sponsor of a Multiemployer Plan that it has incurred or will be assessed Withdrawal Liability to such Multiemployer Plan and such entity does not have reasonable grounds for contesting such Withdrawal Liability or is not contesting such Withdrawal Liability in a timely and appropriate manner; and in each case in clauses (i) through (iv) above, such event or condition, together with all other such events or conditions, if any, could, in the sole judgment of the Required Lenders, reasonably be expected to result in a Material Adverse Effect;

(m) any Lien purported to be created under any Security Document shall cease to be, or shall be asserted by any Loan Party not to be, a valid and perfected Lien on any material portion of the Collateral, with the priority required by the applicable Security Document, except as expressly permitted hereunder or thereunder; or any Loan Party contests in any manner the validity or enforceability of any provision of any Loan Document or any Lien granted under any Security Document; or any Loan Party denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any provision of any Loan Document or any Lien granted under any Loan Document, except, in each case, (i) in accordance with the terms of the Loan Documents (ii) to the extent that any absence of perfection or priority results from the failure of the Administrative Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Security Documents or to file Uniform Commercial Code continuation statements and (iii) with respect to any Lien purported to be created on Collateral consisting of real estate that ceases to be a valid and perfected Lien on any material portion of such Collateral, to the extent that such losses are covered by a lender's title insurance policy and such insurer has not denied coverage;

(n) any Loan Document shall not be in full force and effect (other than in accordance with its terms); or

(o) the subordination provisions set forth in any Subordinated Indebtedness that is Material Indebtedness shall, in whole or in material 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 such Subordinated Indebtedness.

Section 7.02. *Remedies Upon Event of Default*. If any Event of Default occurs and is continuing, the Administrative Agent may, or, at the request of the Required Lenders shall, take any or all of the following actions:

(a) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other amounts owing or payable hereunder or under any other Loan Document to be immediately due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby expressly waived by the Loan Parties; and

(b) whether or not the maturity of the Obligations shall have been accelerated pursuant hereto, may (and at the direction of the Required Lenders, shall) proceed to protect, enforce and exercise all rights and remedies of the Credit Parties under this Agreement, any of the other Loan Documents or Applicable Law, including, but not limited to, by suit in equity, action at law or other appropriate proceeding, whether for the specific performance of any covenant or agreement contained in this Agreement and the other Loan Documents or any instrument pursuant to which the Obligations are evidenced, and, if such amount shall have become due, by declaration or otherwise, proceed to enforce the payment thereof or any other legal or equitable right of the Credit Parties.

(c) No remedy herein is intended to be exclusive of any other remedy and each and every remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or any other provision of Applicable Law.

Section 7.03. *Application of Funds*. After the exercise of remedies provided for in Section 7.02 (or after the Loans have automatically become immediately due and payable), any amounts received on account of the Obligations shall be applied by the Administrative Agent in the following order:

First, to payment of that portion of the Obligations constituting fees, indemnities, expenses and other amounts (including fees, charges and disbursements of counsel to the Administrative Agent reimbursable under the Loan Documents and amounts payable under Article II) payable to the Administrative Agent, in its capacity as such;

Second, to payment of that portion of the Obligations constituting indemnities, expenses, and other amounts (other than principal, interest and fees) payable to the Lenders, 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, and fees, ratably among the Lenders in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Obligations constituting unpaid principal of the Loans, ratably among the Lenders in proportion to the respective amounts described in this clause Fourth held by them;

Fifth, to payment of all other Obligations (including the cash collateralization of unliquidated indemnification obligations) to the Credit Parties, their Affiliates and the Related Parties of the foregoing; and

Last, the balance, if any, after all of the Obligations have been paid in full, to the Loan Parties or as otherwise required by Applicable Law or the Intercreditor Agreement.

Notwithstanding anything to the contrary in this Agreement, it is understood and agreed that if the Loans are accelerated or otherwise become due prior to the Maturity Date, including without limitation as a result of any Event of Default set forth in Section 7.01(a), (b), (h) or (i) (including the acceleration of claims by operation of law), the Prepayment Premium that would have been payable if the Loans were optionally prepaid pursuant to Section 2.06(a) on such date of acceleration will also automatically be due and payable and shall constitute part of the Obligations with respect to the Loans, 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 Lender's lost profits as a result thereof. Any such Prepayment Premium payable shall be presumed to be the liquidated damages sustained by each Lender as the result of the early prepayment and each of the Loan Parties agrees that it is reasonable under the circumstances currently existing. EACH OF THE LOAN PARTIES 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 FOREGOING AMOUNTS IN CONNECTION WITH ANY SUCH ACCELERATION, ANY RESCISSION OF SUCH ACCELERATION OR THE COMMENCEMENT OF ANY PROCEEDING UNDER THE BANKRUPTCY CODE OR A SIMILAR DEBTOR RELIEF LAWS. Each of the Loan Parties 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 Lenders and the Loan Parties giving specific consideration in this transaction for such agreement to pay such Prepayment Premium; and (D) the Loan Parties shall be estopped hereafter from claiming differently than as agreed to in this paragraph. Each of the Loan Parties expressly acknowledges that its agreement to pay such Prepayment Premium to Lenders as herein described is a material inducement to Lenders to enter into this Agreement.

ARTICLE VIII
THE AGENT

Section 8.01. *Appointment and Administration by Administrative Agent*. Each Lender hereby irrevocably designates Alter Domus (US) LLC as Administrative Agent under this Agreement and the other Loan Documents. The general administration of the Loan Documents shall be by the Administrative Agent. The Lenders each hereby (a) irrevocably authorizes the Administrative Agent (i) to enter into the Loan Documents to which it is a party, and (ii) at its discretion, to take or refrain from taking such actions as agent on its behalf and to exercise or refrain from exercising such powers under the Loan Documents as are delegated by the terms hereof or thereof, as appropriate, together with all powers reasonably incidental thereto, and (b) agrees and consents to all of the provisions of the Security Documents and the Intercreditor Agreement. All Collateral shall be held or administered by the Administrative Agent (or its duly-appointed agent) for its own benefit and for the ratable benefit of the other Credit Parties in their capacity as such and no Credit Party (other than the Administrative Agent) shall be required to execute any Security Documents as a party thereto. The Administrative Agent shall have no duties or responsibilities except as set forth in this Agreement and the other Loan Documents, nor shall it have any fiduciary relationship with any other Credit Party, and no implied covenants, responsibilities, duties, obligations, or liabilities shall be read into the Loan Documents or otherwise exist against the Administrative Agent.

Section 8.02. *Reserved.*

Section 8.03. *Agreement of Applicable Lenders*. Upon any occasion requiring or permitting an approval, consent, waiver, election or other action on the part of the Lenders, action shall be taken by the Administrative Agent, for and on behalf or for the benefit of all Credit Parties upon the direction of the requisite percentage of Lenders, and any such action shall be binding on all Credit Parties. No amendment, modification, consent, or waiver shall be effective except in accordance with the provisions of Section 9.02.

Section 8.04. *Liability of Agent*.

(a) The Administrative Agent, when acting on behalf of the Credit Parties, may execute any of its respective duties under this Agreement by or through any of its officers, agents and employees, and neither the Administrative Agent nor its respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken in good faith, or be responsible for the consequences of any oversight or error of judgment, or for any loss, except to the extent of any liability imposed by law by reason of Administrative Agent's own gross negligence or willful misconduct, in each case, as determined by a court of competent jurisdiction in a final and non-appealable judgment. Neither Administrative Agent nor its respective directors, officers, agents and employees shall in any event be liable for any action taken or omitted to be taken by it pursuant to instructions received by it from the requisite percentage of Lenders, or in reliance upon the advice of counsel selected by it; provided that, no action taken or not taken in accordance with the direction of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances) shall be deemed to constitute gross negligence or willful misconduct of the Administrative Agent, including, without limitation Section 9.03. Without limiting the foregoing, no Agent or any of its respective directors, officers, employees, or agents shall be: (i) responsible for the due execution, validity, genuineness, effectiveness, sufficiency, or enforceability of, or for any recital, statement, warranty or representation in, this Agreement, any other Loan Document or any related agreement, document or order; (ii) required to ascertain or to make any inquiry concerning the performance or observance by any Loan Party of any of the terms, conditions, covenants, or agreements of this Agreement or any of the Loan Documents; (iii) responsible for the state or condition of any properties of the Loan Parties or any other obligor hereunder constituting Collateral for the Obligations or any information contained in the books or records of the Loan Parties; (iv) responsible for the validity, enforceability, collectability, effectiveness or genuineness of this Agreement or any other Loan Document or any other certificate, document or instrument furnished in connection therewith; or (v) responsible for the validity, priority or perfection of any Lien securing or purporting to secure the Obligations or for the value or sufficiency of any of the Collateral.

(b) The Administrative Agent may execute any of its duties under this Agreement or any other Loan Document by or through its agents or attorneys-in- fact, and shall be entitled to the advice of counsel concerning all matters pertaining to its rights and duties hereunder or under the other Loan Documents. The exculpatory provisions of this Article VIII shall apply to any agent or attorney in fact and the Related Parties of each agent or attorney-in-fact. The Administrative Agent shall not be responsible for the negligence or misconduct of any agents or attorneys-in-fact selected by it with reasonable care.

(c) The Agent or any of its respective directors, officers, employees, or agents shall not have any responsibility to any Loan Party on account of the failure or delay in performance or breach by any other Credit Party (other than by Administrative Agent in its capacity as a Lender) of any of its respective obligations under this Agreement or any of the other Loan Documents or in connection herewith or therewith.

(d) The Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any notice, consent, certificate, affidavit, or other document or writing believed by them in good faith to be genuine and correct and to have been signed, sent or made by the proper person or persons, and upon the advice and statements of legal counsel (including, without, limitation, counsel to the Loan Parties), independent accountants and other experts selected by any Loan Party or any Credit Party. The Administrative Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless it shall first receive such advice or concurrence of the requisite percentage of the Lenders as it deems appropriate or they shall first be indemnified to its satisfaction by the other Credit Parties against any and all liability and expense which may be incurred by them by reason of the taking or failing to take any such action.

Section 8.05. *Notice of Default*. The Administrative Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default unless the Administrative Agent has actual knowledge of the same or has received written notice from a Lender or Loan Party referring to this Agreement, describing such Default or Event of Default and stating that such notice is a "notice of default". In the event that the Administrative Agent obtains such actual knowledge or receives such written notice, the Administrative Agent shall give prompt notice thereof to each of the Lenders. Upon and during the occurrence of an Event of Default, the Administrative Agent shall (subject to the provisions of Section 9.02) take such action with respect to such Event of Default as shall be reasonably directed by the Required Lenders. Unless and until the Administrative Agent shall have received such direction, the Administrative Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to any such Event of Default as it shall deem advisable in the best interest of the Credit Parties. In no event shall the Administrative Agent be required to comply with any such directions to the extent that the Administrative Agent believes that its compliance with such directions would be unlawful.

Section 8.06. *Credit Decisions*. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender, and based on the financial statements prepared by the Loan Parties and such other documents and information as it has deemed appropriate, made its own credit analysis and investigation into the business, assets, operations, property, and financial and other condition of the Loan Parties and has made its own decision to enter into this Agreement and the other Loan Documents. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender, and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit decisions in determining whether or not conditions precedent to closing any Loan hereunder have been satisfied and in taking or not taking any action under this Agreement and the other Loan Documents.

Section 8.07. *Reserved.*

Section 8.08. *Rights of Agent*. It is understood and agreed that the Administrative Agent shall have the same rights and powers hereunder (including the right to give such instructions) as the other Lenders and may exercise such rights and powers, as well as its rights and powers under other agreements and instruments to which it is or may be party, and engage in other transactions with the Loan Parties, as though it was not the Administrative Agent. Administrative Agent and its Affiliates may accept deposits from, lend money to, and generally engage in any kind of commercial or investment banking, trust, advisory or other business with the Loan Parties and their Affiliates as if it were not the Administrative Agent hereunder.

Section 8.09. *Notice of Transfer*. The Administrative Agent may deem and treat a Lender party to this Agreement as the owner of such Lender's portion of the Obligations for all purposes, unless and until, and except to the extent, an Assignment and Acceptance shall have become effective as set forth in Section 9.04.

Section 8.10. *Successor Agent*. Administrative Agent may (and shall at the direction of Required Lenders) resign at any time by giving thirty (30) days' prior written notice thereof to the Lenders and the Borrower. Upon any such resignation of the Administrative Agent, the Required Lenders shall have the right to appoint a successor Administrative Agent, which, so long as there is no Event of Default continuing, shall be reasonably satisfactory to the Borrower (whose consent in any event shall not be unreasonably withheld or delayed). If no successor Administrative Agent shall have been so appointed by the Required Lenders and/or none shall have accepted such appointment within thirty (30) days' after the retiring Agent's giving of notice of resignation, the retiring Administrative Agent may, on behalf of the Lenders, appoint a successor Administrative Agent, so long as there is no Event of Default continuing, shall be reasonably satisfactory to the Borrower (whose consent shall not in any event be unreasonably withheld or delayed). If no successor Administrative Agent has been appointed by the date that is thirty (30) days following a retiring Administrative Agent's notice of its resignation, then the retiring Administrative Agent's resignation shall nevertheless thereupon become effective, and the Lenders shall assume and perform all of the duties of the Administrative Agent until such time as a successor Administrative Agent has been appointed. Upon the acceptance of any appointment as Administrative Agent by a successor Administrative Agent, such successor Administrative Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Administrative Agent shall (to the extent not already discharged as provided above) be discharged from its duties and obligations under this Agreement.

After any retiring Administrative Agent's resignation hereunder as Administrative Agent, the provisions of this Article VIII and Section 9.03 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Administrative Agent under this Agreement.

Section 8.11. *Relation Among the Lenders*. The Lenders are not partners or co-venturers, and no Lender shall be liable for the acts or omissions of, or authorized to act for, any other Lender.

Section 8.12. *Reports and Financial Statements*. By signing this Agreement, each Lender:

(1) is deemed to have requested that the Administrative Agent furnish such Lender, promptly after they become available, copies of all financial statements required to be delivered by the Borrower hereunder (including those described in Sections 5.01(a) through (d) hereof) and all examinations and appraisals of the Collateral received by the Administrative Agent (collectively, the "**Reports**");

(2) expressly agrees and acknowledges that the Administrative Agent (i) makes no representation or warranty as to the accuracy of the Reports, and (ii) shall not be liable for any information contained in any Report;

(3) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that any party performing any audit or examination will inspect only specific information regarding the Loan Parties and will rely significantly upon the Loan Parties' books and records, as well as on representations of the Loan Parties' personnel;

(4) agrees to keep all Reports and other Information confidential in accordance with Section 9.12; and

(5) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Administrative Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or conclusion the indemnifying Lender may reach or draw from any Report in connection with any Borrowings that the indemnifying Lender has made or may make to the Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a Loan or Loans of the Borrower; and (ii) to pay and protect, and indemnify, defend, and hold the Administrative Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including attorney costs) incurred by the Administrative Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 8.13. *Agency for Perfection*. Each Lender hereby appoints each other Lender as agent for the purpose of perfecting Liens for the benefit of the Administrative Agent and the Lenders, in assets which, in accordance with Article 9 of the UCC or any other Applicable Law of the United States of America can be perfected only by possession or control. Should any Lender (other than Administrative Agent) obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor, shall deliver such Collateral to the Administrative Agent or otherwise deal with such Collateral in accordance with the Administrative Agent's instructions.

Section 8.14. *Collateral and Guaranty Matters*.

(a) The Lenders irrevocably authorize the Administrative Agent to and the Administrative Agent shall,

(i) release any Lien on any property granted to or held by the Administrative Agent under any Loan Document (i) upon termination of the Commitments and payment in full of all Obligations (other than contingent indemnification obligations not then due and owing), (ii) that is sold or otherwise Disposed or to be sold or Disposed of (in each case, other than to the Borrower or any Loan Party) as part of or in connection with any sale or Disposition permitted under the Loan Documents or (iii) if approved, authorized or ratified in writing in accordance with Section 9.02;

(ii) release any Loan Party from its obligations under the Loan Documents if such Person (i) ceases to be a Subsidiary or (ii) becomes an Excluded Subsidiary, in each case, as a result of a transaction or designation permitted hereunder; *provided* that no such release shall occur with respect to an entity that becomes an Excluded Subsidiary if such Loan Party continues to be a guarantor in respect of the ABL Facility unless and until each guarantor is (or is being simultaneously) released from its guarantee with respect to the ABL Facility;

(iii) subordinate any Lien on any property granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien on such property that is permitted by Section 6.02(e) or 6.02(g) or clause (g), (i), (j) or (k) of the definition of Permitted Encumbrances;

(iv) release any Lien on any property granted to or held by the Administrative Agent under any Loan Document on any assets that are excluded from the Collateral; and

(v) enter into or amend an intercreditor agreement with the collateral agent or other representatives of the holders of Indebtedness that is permitted to be secured by a Lien on the Collateral.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority, as applicable, to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Documents pursuant to this Section 8.14. In each case as specified in this Section 8.14, the Administrative Agent will, at the Loan Parties' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Security Documents or to subordinate its interest in such item, or to release such Loan Party from its obligations under the Loan Documents, in each case in accordance with the terms of the Loan Documents and this Section 8.14.

(b) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the Administrative Agent shall (without notice to, or vote or consent of, any Lender, or any affiliate of any Lender that is a party to any Hedging Agreement) take such actions as shall be reasonably requested by the Borrower as necessary or desirable to release, or document the release, by the Administrative Agent, of the security interest in any Collateral being sold, disposed of or transferred in a transaction permitted by the Loan Documents, in each case to a person other than the Borrower and its Subsidiaries, and to release any guarantee obligations under any Loan Documents of any person being sold, disposed of or transferred to a person other than the Borrower or its Subsidiaries, or no longer required to provide a guaranty hereunder to the extent necessary to permit consummation of such sales or dispositions of assets in accordance with the Loan Documents.

ARTICLE IX
MISCELLANEOUS

Section 9.01. *Notices*.

(a) Except in the case of notices and other communications expressly permitted to be given by telephone (and except as provided in subsection (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail, e-mailed or sent by telecopier as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:

(i) if to the Borrower, to it at:

c/o Eastman Kodak Company
343 State Street
Rochester, New York 14650
Attention: General Counsel
Tel: 585-724-4000
Fax: 585-724-1089
E-mail: roger.byrd@kodak.com

with a copy to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10005
Attention: S. Neal McKnight
E-mail: mcknight@sullcrom.com

(ii) if to the Administrative Agent, to:

Alter Domus (US) LLC
225 W. Washington St., 9th Floor
Chicago, Illinois 60606
Attention: Legal Department and Bill Ryan
Phone: 312-564-5100
Fax: 312-376-0751
Email: legal@alterdomus.com
bill.ryan@alterdomus.com

with a copy to (which shall not constitute notice):

Holland & Knight LLP
150 North Riverside Plaza, Suite 2700
Chicago, Illinois 60606
Attention: Joshua M. Spencer
Fax: 312-578-6666
Email: Joshua.spencer@hklaw.com

and:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, New York 10036
Attn: Frederick Lee; Ryan Kim
Fax: 212-872-1002
Email: flee@akingump.com
kimr@akingump.com

(iii) if to a Lender, to it at its mail or e-mail address (or telecopy number) set forth in its Administrative Questionnaire.

Any e-mail notice to the Administrative Agent shall be in "pdf" format. Any party hereto may change its address, e-mail address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; *provided* that the foregoing shall not apply to notices to any Lender pursuant to Article II if such Lender has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; *provided* that approval of such procedures may be limited to particular notices or communications. Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement); *provided* that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient; and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

(c) *The Platform*. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE". THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "**Agent Parties**") have any liability to any Loan Party, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of the Loan Parties' or the Administrative Agent's transmission of Borrower Materials through the Internet, except to the extent that such losses, claims, damages, liabilities or expenses are determined by a court of competent jurisdiction by a final and nonappealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party (or its Related Parties); *provided, however*, that in no event shall Agent Party have any liability to any Loan Party, any Lender or any other Person, nor shall any Loan Party have any liability to Agent Party, any Lender or any other Person, for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages); *provided further* that this clause (c) shall not limit the indemnity obligations of the Borrower or any Subsidiary to the extent otherwise set forth in Section 9.03.

Section 9.02. *Waivers; Amendments*.

(a) No failure or delay by the Administrative Agent, or any Lender 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 Administrative 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 any Loan Document or consent to any departure by any Loan Party therefrom shall in any event be effective unless the same shall be

permitted by clause (b) of this Section 9.02, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan shall not be construed as a waiver of any Default or Event of Default, regardless of whether the Administrative Agent or any Lender may have had notice or knowledge of such Default or Event of Default at the time.

(b) Neither this Agreement nor any other Loan Document nor any provision hereof or thereof may be waived, amended or modified except, in the case of this Agreement, pursuant to an agreement or agreements in writing entered into by the Borrower, Administrative Agent and the Required Lenders, or, in the case of any other Loan Document, pursuant to an agreement or agreements in writing entered into by the Administrative Agent that is a party thereto and the Loan Party or Loan Parties that are parties thereto, in each case with the consent of the Required Lenders (other than an amendment or modification (x) to correct, amend, cure any ambiguity, inconsistency, defect or correct any typographical error or other manifest error in this Agreement or any other Loan Document, (y) to comply with Applicable Law or advice of local counsel in respect of a Security Document or (z) to cause a Security Document to be consistent with this Agreement and the other Loan Documents, which may be amended or modified by the agreement of the Borrower and the Administrative Agent); *provided* that no such agreement shall:

(i) increase the Commitment of any Lender without the written consent of such Lender,

(ii) reduce the principal amount of any Loan or reduce the rate of interest thereon, or reduce any fees payable hereunder, without the written consent of each Lender whose principal amount of its Loan or rate of interest or fees payable would be reduced (it being understood and agreed that waivers of any Defaults, Events of Defaults or additional interest payable during the continuation of an Event of Default shall not be deemed to be a reduction in the rate of interest or any fees payable hereunder),

(iii) postpone the scheduled date of payment of the principal amount of any Loan under Section 2.05 or any date for the payment of any interest or fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Commitment, without the written consent of each Lender whose payment would be so postponed, reduced, waived or excused or each Lender with Commitments for which the scheduled date of expiration would be postponed, as applicable,

(iv) amend or modify Section 2.11(b), 2.11(c) or 7.03, without the written consent of each Lender,

(v) amend or modify any of the provisions of this Section 9.02 or reduce the percentage set forth in (x) the definition of "Required Lenders" or (y) any other provision of any Loan Document specifying the number or percentage of Lenders required to waive, amend or modify any rights thereunder or make any determination or grant any consent thereunder, without the written consent of each Lender,

(vi) release all or substantially all of the Guarantors from their Guarantees under the Security Agreement, or limit the liability of all or substantially all of the Guarantors in respect of their Guarantees under the Security Agreement, in each case without the written consent of each Lender, or

(vii) release all or substantially all of the Collateral from the Liens of the Security Documents (except with respect to sales or transfers of, and other transactions relating to, Collateral permitted pursuant to the Loan Documents as of the Closing Date), without the written consent of each Lender;

provided further that no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent without the prior written consent of the Administrative Agent, as the case may be. Each Lender shall be bound by any waiver, amendment or modification authorized by this Section 9.02 and any consent by any Lender pursuant to this Section 9.02 shall bind any successor or assignee of such Lender.

(c) If any Lender refuses to consent to any amendment or modification to or waiver of any Loan Document requested by the Borrower that requires the consent of all Lenders or all affected Lenders in accordance with this Section 9.02, and such amendment, modification or waiver is consented to by the Required Lenders

(a "**Non-Consenting Lender**"), then the Borrower may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Non-Consenting Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in Section 9.04), all its interests, rights and obligations under this Agreement to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment); *provided* that such Non-Consenting Lender shall have received payment of an amount equal to the outstanding principal of its Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower (in the case of all other amounts).

Section 9.03. *Expenses; Indemnity; Damage Waiver*.

(a) The Borrower agrees to pay (i) all reasonable and documented out-of-pocket expenses (including the reasonable fees and documented expenses of other advisors and professionals engaged by the Administrative Agent or the Initial Lenders in consultation with the Borrower) incurred by Administrative Agent or the Initial Lenders and their respective Affiliates, and in the case of legal fees and expenses, limited to the reasonable fees, charges and disbursements of one primary counsel designated by the Administrative Agent (and appropriate local and/or special counsel for each relevant jurisdiction and/or specialized area of law, but limited to one local and/or special counsel in each such jurisdiction or specialized area of law) for the Administrative Agent and the one primary counsel for the Initial Lenders (and appropriate local and/or special counsel for each relevant jurisdiction and/or specialized area of law, but limited to one local and/or special counsel in each such jurisdiction or specialized area of law (absent any actual or perceived conflict of interest in which case the Administrative Agent and Lenders who are similarly situated may engage and be reimbursed for one additional primary counsel and one additional local and/or special counsel in each relevant jurisdiction or specialized area of law for group members who are similarly situated)), in connection with the syndication of the credit facilities provided for herein, the preparation, execution, delivery and administration of the Loan Documents or any amendments, supplements, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated) and (ii) all documented out-of-pocket expenses incurred by Administrative Agent or any Lender, including the fees, charges and disbursements of any counsel or other professional consultants for Administrative Agent or any Lender, in connection with the enforcement or protection of their rights in connection with the Loan Documents, including their rights under this Section 9.03, or in connection with the Loans made hereunder, including all such out-of-pocket expenses (including the fees, charges and disbursements of any counsel or other professional consultants for Administrative Agent or any Lender) incurred during any workout, restructuring or negotiations in respect of such Loans.

(b) The Borrower agrees to indemnify the Administrative Agent and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "**Indemnitee**") against, and hold each Indemnitee harmless (on an after-tax basis) from, any and all losses, claims, causes of action, damages, liabilities, settlement payments, costs and related expenses, including the reasonable and documented out-of-pocket fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of:

(i) the execution or delivery of any Loan Document or any other agreement or instrument contemplated hereby or thereby, the performance by the parties to the Loan Documents of their respective obligations thereunder or the consummation of the Loan Transactions or any other transactions contemplated hereby or thereby,

(ii) any Loan or the use of the proceeds therefrom,

(iii) any actual or alleged presence or release of or exposure to Hazardous Materials on or from any property currently or formerly owned, leased or operated by the Borrower or any Subsidiary (including any predecessor for whom the Borrower or any such Subsidiary bears liability contractually or by operation of law), or any Environmental Liability, 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 and regardless of whether any Indemnitee is a party thereto;

provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities, costs or related expenses (A) are determined by a court of competent jurisdiction by final non-appealable judgment to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnitee (or its affiliates, officers, directors, employees, advisors and agents), (B) relate to Hazardous Materials that are first placed at any property owned by the Borrower or any Subsidiary after such property is transferred to any Indemnitee or its successors and assigns by foreclosure, deed in lieu of foreclosure or similar transfer or (C) arise from a dispute solely among Indemnitees not involving any act or omission on the part of the Borrower or its Subsidiaries or Affiliates, other than any losses, claims, damages, liabilities or costs incurred by or asserted against the Administrative Agent acting in its capacity as such under this Agreement or any Loan Document; *provided further* that the Indemnitees shall be entitled to reimbursement for no more than one counsel representing the Administrative Agent and its respective Related Parties and one counsel representing the Lenders and their respective Related Parties (and, in each case, appropriate local counsel and special counsel in each applicable local jurisdictions and/or for each specialized area of law, but limited to one local counsel in each such jurisdiction and one special counsel in each such area of law and solely in the case of a conflict of interest, one additional primary counsel and one additional counsel in each relevant jurisdiction and/or specialized area of law to the affected Indemnitees who are similarly situated).

(a) Each Lender shall indemnify and hold harmless the Administrative Agent and its Related Parties (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 counsel for the Administrative Agent and its Related Parties, taken as a whole (and appropriate local and/or special counsel for each relevant jurisdiction and/or specialized area of law, but limited to one local and/or special counsel in each such jurisdiction or specialized area of law), of any kind or nature whatsoever which may at any time be imposed on, incurred by or asserted against Administrative Agent or any of its Related Parties 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 the Administrative Agent or any of its Related Parties. Without limiting the foregoing, each Lender 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 for the Administrative Agent and its Related Parties, taken as a whole (and appropriate local and/or special counsel for each relevant jurisdiction and/or specialized area of law, but limited to one local and/or special counsel in each such jurisdiction or specialized area of law), to the extent that the Administrative Agent and its Related Parties 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).

(b) To the extent permitted by Applicable Law, no party to this Agreement shall assert, and each party to this Agreement hereby waives, any claim against any other party to this Agreement, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Loan Transactions, any Loan or the use of the proceeds thereof; *provided* that this clause (d) shall not limit the indemnity obligations of the Borrower or any Subsidiary to the extent otherwise set forth in Section 9.03(a) through (c).

(c) All amounts due under this Section 9.03 shall be payable within thirty (30) days after written demand therefor (including documentation reasonably supporting such request).

For the avoidance of doubt, this Section 9.03 shall not apply with respect to Taxes other than any Taxes that represent losses or damages arising from any non-Tax claim.

Section 9.04. *Successors and Assigns*.

(a) *Successors and Assigns Generally*. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby, except that no Loan Party may assign or otherwise transfer any of its rights or obligations hereunder or under any other Loan Document except to the extent otherwise permitted as a result of mergers or consolidations permitted hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by the Borrower shall be null and void) and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of Section 9.04(b), (ii) by way of participation in accordance with the provisions of Section 9.04(d) or (iii) by way of pledge or assignment of a security interest subject to the restrictions of Section 9.04(f) (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in Section 9.04(d) and, to the extent expressly contemplated hereby, the Related Parties of each of the Credit Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) *Assignments by Lenders*. Subject to clause (vii) of this Section 9.04(b), any Lender may at any time assign to one or more Eligible Assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment(s) and the Loans at the time owing to it); *provided* that any such assignment shall be subject to the following conditions:

(i) *Minimum Amounts*:

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and the Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, no minimum amount need be assigned; and

(B) in any case not described in subsection (b)(i)(A) of this Section 9.04, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent, shall not be less than $1,000,000, unless each of the Administrative Agent and, so long as no Event of Default has occurred and is continuing, the Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed); *provided, however*, that concurrent assignments to members of an Assignee Group and concurrent assignments from members of an Assignee Group to a single Eligible Assignee (or to an Eligible Assignee and members of its Assignee Group) will be treated as a single assignment for purposes of determining whether such minimum amount has been met;

(ii) *Proportionate Amounts*. Each partial assignment by a Lender shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to such Lender's Loan;

(iii) *Required Consents*. No consent shall be required for any assignment except to the extent required by subsection (b)(i)(B) of this Section 9.04 and, in addition:

(A) the consent of the Borrower (such consent not to be unreasonably withheld or delayed) shall be required unless (i) a Specified Event of Default has occurred and is continuing at the time of such assignment or (ii) such assignment is to a Lender, an Affiliate of a Lender or an Approved Fund of such Lender; *provided* that the Borrower shall be deemed to have consented to any such assignment (other than to a Disqualified Institution) if it shall not have responded to a consent request with respect thereto within ten (10) Business Days of written receipt thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments except if such assignment is to a Person that is a Lender, an Affiliate of such Lender or an Approved Fund of such Lender.

(iv) *Assignment and Acceptance*. The parties to each assignment (other than assignments by a Lender to its Affiliate or an Approved Fund of such Lender or pursuant to Section 2.12 or 9.04(f)) shall execute and deliver to the Administrative Agent an *Assignment and Acceptance*, together with a processing and recordation fee of $3,500, *provided, however*, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it shall not be a Lender, shall deliver to the Administrative Agent (i) an Administrative Questionnaire and (ii) 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.

(v) *Assignments to Borrower*. Notwithstanding anything to the contrary contained in this Section 9.04 or any other provision of this Agreement, so long as no Default or Event of Default has occurred and is continuing or would result therefrom, each Lender shall have the right at any time to sell, assign or transfer all or a portion of its Loans, owing to it to Borrower or any of its Subsidiaries on a non-*pro rata* basis, subject to the following limitations:

(A) To effectuate such repurchase the Borrower or such Subsidiary of the Borrower must effectuate such repurchase (for all or any portion of the Loans) pursuant to one or more modified Dutch auctions (each, an "**Auction**"), *provided* that, (x) notice of the Auction shall be made to Administrative Agent (for distribution to the Lenders) and (y) the Auction shall be conducted pursuant to reasonable and customary procedures as the Auction Manager may establish which are consistent with this Section 9.04(b)(v) and the Auction procedures set forth on Exhibit L and are otherwise reasonably acceptable to Borrower, the Auction Manager, and Administrative Agent;

(B) With respect to all repurchases made by Borrower or such Subsidiary of the Borrower pursuant to this Section 9.04(b)(v), (x) Borrower shall deliver to the Auction Manager a certificate of a Responsible Officer stating that (1) no Default or Event of Default has occurred and is continuing or would result from such repurchase and (2) as of the launch date of the related Auction and the effective date of any Affiliate Assignment Agreement, the Borrower is not in possession of any material non-public information regarding Borrower or its Subsidiaries, or their assets, that has not previously been disclosed to the Auction Manager, Administrative Agent and any Lenders (taken into account all public information available about Borrower and its Subsidiaries) and (y) the assigning Lender, Borrower and any Subsidiary of the Borrower making such repurchase shall execute and deliver to the Auction Manager an Affiliate Assignment Agreement; and

(C) Following repurchase pursuant to this Section 9.04(b)(v), the Loans so repurchased shall, without further action by any Person, be deemed cancelled for all purposes and no longer outstanding (and may not be resold by Borrower (or its Subsidiaries, as applicable)), for all purposes of this Agreement and all other Loan Documents, including, but not limited to (x) the making of, or the application of, any payments to the Lenders under this Agreement or any other Loan Document, (y) the making of any request, demand, authorization, direction, notice, consent or waiver under this Agreement or any other Loan Document or (z) the determination of Required Lenders, or for any similar or related purpose, including calculation of Excess Cash Flow, under this Agreement or any other Loan Document. In connection with any Loans repurchased and cancelled pursuant to this Section 9.04(b)(v), Administrative Agent is authorized to make appropriate entries in the Register to reflect any such cancellation.

(vi) *Assignment with regards to Defaulting Lenders*. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the

Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (x) pay and satisfy in full all payment liabilities then owed by such Defaulting Lender to the Administrative Agent or any Lender hereunder (and interest accrued thereon) and (y) acquire (and fund as appropriate) its full pro rata share of all Loans. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.

(vii) *Control by KLIM*. Unless a Specified Event of Default has occurred and is continuing, KLIM or funds controlled by KLIM shall retain beneficial ownership of and full voting rights with respect to a majority in outstanding principal amount of all Loans and Commitments in respect thereof at all times.

Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the "know your customer" documentation requested by the Administrative Agent (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Section 9.04(b) and any written consent to such assignment required by Section 9.04(b), the Administrative Agent shall accept such Assignment and Acceptance and record the information contained therein in the Register. No assignment shall be effective for purposes of this Assignment unless it has been recorded in the Register as provided in this paragraph.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section 9.04, from and after the date of such recordation in the Register, the Eligible Assignee thereunder shall be a party to this Agreement 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 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 of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto) but shall continue to be entitled to the benefits of Sections 2.11, 2.12, 2.13 and 9.03 with respect to facts and circumstances occurring prior to the effective date of such assignment. Promptly following request, the Borrower (at its expense) shall execute and deliver a promissory note to the assignee Lender (provided that such assignee Lender shall use its commercially reasonable efforts to cause the assignor Lender to deliver to the Borrower any promissory notes delivered to it by the Borrower hereunder). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 9.04(d).

(c) *Register*. The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrower, shall maintain at the Administrative 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 the Lenders, and the Commitments of, and principal amounts (and stated interest) of 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 Loan Parties, the Administrative Agent and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by any Loan Party and any Lender at any reasonable time and from time to time upon reasonable prior written notice.

(d) *Participations*. Any Lender may at any time, without the consent of, or notice to, the Loan Parties or the Administrative Agent, sell participations to any Person (other than a natural person, the Loan Parties or any of the Loan Parties' Affiliates or Subsidiaries or to any Disqualified Institution) (each, a "**Participant**") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and/or the Loans owing to it); *provided* that (x) such Lender's obligations under this Agreement shall remain unchanged, (y) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (z) the Loan Parties, the Administrative Agent and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce the Loan Documents and to approve any amendment, supplement, modification or waiver of any provision of the Loan Documents; *provided* that such agreement or instrument may provide that such Lender will not, without the consent

of the Participant, agree to any amendment, supplement, modification or waiver described in the first proviso to Section 9.02(b) that requires the consent of each Lender or each affected Lender. Subject to Section 9.04(e), the Borrower agrees that each Participant shall be entitled to the benefits of Sections 2.09, and 2.10 (subject to the requirements and limitations of such Sections, including the requirements under Section 2.13(f) (it being understood that the documentation required under Section 2.10(f) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Section 9.04(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender; *provided* that such Participant agrees to be subject to Section 2.11(c) as though it were a Lender.

(e) *Limitations upon Participant Rights*. A Participant shall not be entitled to receive any greater payment under Section 2.09 or 2.10 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Borrower's prior written consent, which shall not be unreasonably withheld or delayed, and except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. A Participant that would be a Non-U.S. Lender if it were a Lender shall not be entitled to the benefits of Section 2.10 unless the Borrower is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.10(f) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrower, maintain a register in the United States on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "**Participant Register**"); *provided* that no Lender shall have any obligation to disclose all or any portion of the Participant Register to any Person (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender shall treat each person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(f) *Certain Pledges*. Any Lender may at any time grant, pledge, hypothecate or assign a security interest in all or any portion of its rights under this Agreement (including under its promissory note, if any) to secure obligations of such Lender, including any grant, pledge, hypothecation or assignment to secure obligations to a Federal Reserve Bank or other central bank, and none of the restrictions or conditions set forth in this Section 9.04 related to any grant, pledge, hypothecation or assignment shall apply to any such grant, pledge, hypothecation or assignment of a security interest; *provided* that no such grant, pledge, hypothecation or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such grantee, pledgee, hypothecatee or assignee for such Lender as a party hereto.

(g) *Electronic Execution of Assignments*. The words "execution," "signed," "signature," and words of like import in any Assignment and Acceptance 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.

(h) The Administrative Agent may conclusively rely on the list of Disqualified Institutions provided by the Borrower (or any supplement thereto) for all purposes of this Agreement and the other Loan Documents, executing and delivering any Assignment and Acceptance, making any recording in the Register in respect of such Assignment and Acceptance or otherwise, and shall have no liability of any kind to any Loan Party or any Affiliate thereof, any Lender or any other Person if such list of Disqualified Institutions (or any supplement thereto) is incorrect or if any Person is incorrectly identified in such list of Disqualified Institutions (or any supplement thereto) as a Person to whom no assignment is to be made. Notwithstanding anything to the contrary contained in this Agreement, (a) the Administrative Agent shall not be responsible or have any liability for, or have any duty to ascertain, inquire into, monitor or enforce, compliance with the provisions hereof relating to a Disqualified Institution and (b) the Borrower

and the Lenders acknowledge and agree that the Administrative Agent shall have no responsibility or obligation to determine whether any Lender or potential Lender is a Disqualified Institution and that the Administrative Agent shall have no liability with respect to any assignment or participation made to a Disqualified Institution.

(i) Notwithstanding any provision to the contrary, any Lender may assign to one or more special purpose funding vehicles that are not Disqualified Institutions (each, an "**SPV**") all or any portion of its funded Loans (without the corresponding Commitment), without the consent of any Person or the payment of a fee, by execution of a written assignment agreement in a form agreed to by such Lender and such SPV, and may grant any such SPV the option, in such SPV's sole discretion, to provide the Borrower all or any part of any Loans that such Lender would otherwise be obligated to make pursuant to this Agreement. Such SPVs shall have all the rights which a Lender making or holding such Loans would have under this Agreement (subject to the requirements and limitations to which the Lender would subject under this Agreement) but no obligations; *provided* that the Lender shall make all determinations on behalf of the SPV with respect to any matters requiring the consent or approval of the SPV hereunder and the Agent and the Borrower shall be entitled to rely on such determination by the Lender, without further inquiry and notwithstanding any communication to the contrary by the SPV; *provided further* an SPV shall not be entitled to receive any greater payment under Section 2.09 or 2.10 than the applicable granting Lender would have been entitled to receive absent such grant, without the consent of the Borrower (such consent not to be unreasonably withheld or delayed). The Lender making such assignment shall remain liable for all its original obligations under this Agreement, including its Commitment (although the unused portion thereof shall be reduced by the principal amount of any Loans held by an SPV). Notwithstanding such assignment, the Agent and Borrower may deliver notices to the Lender making such assignment (as agent for the SPV) and not separately to the SPV.

Section 9.05. *Survival*. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent or any Lender may have had notice or knowledge of any Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid (other than any contingent indemnification obligations not then due and payable) and so long as the Commitments have not expired or terminated. The provisions of Sections 2.11, 2.12, 2.13 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans or the termination of this Agreement or any provision hereof.

Section 9.06. *Counterparts; Integration; Effectiveness*. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or electronic transmission shall be effective as delivery of a manually executed counterpart of this Agreement.

Section 9.07. *Severability*. Any provision of this Agreement held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions hereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction.

Section 9.08. *Right of Setoff*. If one or more Events of Default shall have occurred and be continuing, each Lender shall have the right, in addition to and not in limitation of any right which any such Lender may have under Applicable Law or otherwise, to set off and apply any and all deposits (general or special, time or demand,

provisional or final), at any time held and other obligations at any time owing by such Lender or its Affiliates to or for the credit or the account of the Borrower against any of and all the obligations of the Borrower now or hereafter existing under this Agreement and the other Loan Documents held by such Lender, irrespective of whether or not such Lender shall have made any demand under this Agreement or such other Loan Document and although such obligations may be unmatured. The rights of each Lender under this Section 9.08 are in addition to other rights and remedies (including other rights of setoff) which such Lender may have. No Credit Party will, or will permit its Participant to, exercise its rights under this Section 9.08 without the consent of the Administrative Agent or the Required Lenders. ANY AND ALL RIGHTS TO REQUIRE THE ADMINISTRATIVE AGENT TO EXERCISE ITS RIGHTS OR REMEDIES WITH RESPECT TO ANY OTHER COLLATERAL WHICH SECURES ANY OF THE OBLIGATIONS PRIOR TO THE EXERCISE OF THE SETOFF RIGHTS UNDER THIS SECTION ARE HEREBY KNOWINGLY, VOLUNTARILY AND IRREVOCABLY WAIVED.

Section 9.09. *GOVERNING LAW; JURISDICTION; CONSENT TO SERVICE OF PROCESS.*

(a) THIS AGREEMENT SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAW OF THE STATE OF NEW YORK (EXCEPT FOR THE CONFLICT OF LAWS RULES THEREOF, BUT INCLUDING GENERAL OBLIGATIONS LAW SECTIONS 5-1401 AND 5-1402).

(b) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property to the exclusive jurisdiction of the Supreme Court of the State of New York and of the United States District Court of the Southern District of New York, in each case sitting in New York County, and any appellate court from any thereof (and, to the extent necessary to enforce the Administrative Agent's or the Lenders' rights under the Loan Documents, courts where Collateral may be located or deemed to be located and any appellate court thereof), in any action or proceeding arising out of or relating to any Loan Document, or for recognition or enforcement of any judgment relating to any Loan Document, 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.

(c) 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 any other Loan Document in any court referred to in paragraph (b) of this Section 9.09. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement or any other Loan Document will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

Section 9.10. *WAIVER OF JURY TRIAL*. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENT OR THE LOAN TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 9.11. *Headings*. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

Section 9.12. *Confidentiality*. Each of the Administrative Agent and the Lenders agrees to maintain the confidentiality of the Information (as defined below) except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors, and funding sources 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 and shall agree to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by Applicable Law or regulations or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to a written agreement containing provisions substantially the same as those of this Section 9.12, to any assignee of or Participant in, or any prospective assignee of or Participant in (other than, in each case, any Disqualified Institution), any of its rights or obligations under this Agreement, (g) with the prior written consent of the Borrower or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section 9.12 or (ii) becomes available to the Administrative Agent or any Lender on a nonconfidential basis from a source other than the Borrower. For the avoidance of doubt, the obligations of any Lender under this Section 9.12 shall not be abrogated by such Lender's assignment of all of its Loans under this Agreement. For the purposes of this Section 9.12, "**Information**" means all information received from the Borrower relating to the Borrower or its business, other than any such information that is available to the Administrative Agent or any Lender on a nonconfidential basis prior to disclosure by the Borrower. Any Person required to maintain the confidentiality of Information as provided in this Section 9.12 shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Section 9.13. *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 in accordance with Applicable Law, the rate of interest payable in respect of such Loan 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 but were not payable as a result of the operation of this Section 9.13 shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans 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 9.14. *Patriot Act*. Each Lender and the Administrative Agent hereby notifies the Borrower and the other Loan Parties that pursuant to the requirements of the USA PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrower and the other Loan Parties, which information includes the name and address of the Borrower and the other Loan Parties and other information that will allow such Lender to identify the Borrower and the other Loan Parties in accordance with the USA PATRIOT Act.

Section 9.15. *Additional Waivers*.

(a) The Obligations are the joint and several obligation of each Loan Party. To the fullest extent permitted by Applicable Law, the obligations of each Loan Party hereunder shall not be affected by (i) the failure of the Administrative Agent or any Lender to assert any claim or demand or to enforce or exercise any right or remedy against any other Loan Party under the provisions of this Agreement, any other Loan Document or otherwise, (ii) any rescission, waiver, amendment or modification of, or any release of any Loan Party from, any of the terms or provisions of, this Agreement or any other Loan Document, (other than as expressly contemplated by such waiver, amendment or modification), (iii) the failure to perfect any security interest in, or the release of, any of the Collateral or other security held by or on behalf of the Administrative Agent or any Lender or (iv) any insolvency, bankruptcy, reorganization or other similar proceeding affecting any other Loan Party or its assets or any resulting release or discharge of any obligation of any other Loan Party under any Loan Documents.

(b) The obligations of each Loan Party to pay the Obligations in full hereunder shall not be subject to any reduction, limitation, impairment or termination for any reason (other than the payment in full in cash of all Obligations and termination of the Commitments), including any claim of waiver, release, surrender, alteration or

compromise of any of the Obligations and shall not be subject to any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of the invalidity, illegality or unenforceability of any of the Obligations or otherwise. Without limiting the generality of the foregoing, the obligations of each Loan Party hereunder shall not be discharged or impaired or otherwise affected by the failure of Administrative Agent or any Lender to assert any claim or demand or to enforce any remedy under this Agreement, any other Loan Document or any other agreement, by any waiver or modification of any provision of any thereof (other than to the extent such waiver or modification so expressly waives or modifies such obligations or remedies), any default, failure or delay, willful or otherwise, in the performance of any of the Obligations, or by any other act or omission that may or might in any manner or to any extent vary the risk of any Loan Party or that would otherwise operate as a discharge of any Loan Party as a matter of law or equity (other than the payment in full in cash of all Obligations (other than contingent indemnification obligations not then due and payable) and termination of the Commitments).

(c) To the fullest extent permitted by Applicable Law, each Loan Party waives any defense based on or arising out of any defense of any other Loan Party or the unenforceability of the Obligations or any part thereof from any cause, or the cessation from any cause of the liability of any other Loan Party, other than the payment in full in cash of all the Obligations (other than contingent indemnification obligations not then due and payable) and termination of the Commitments. The Administrative Agent and the Lenders may, at their election, foreclose on any security held by one or more of them by one or more judicial or nonjudicial sales, accept an assignment of any such security in lieu of foreclosure, compromise or adjust any part of the Obligations, make any other accommodation with any other Loan Party, or exercise any other right or remedy available to them against any other Loan Party, without affecting or impairing in any way the liability of any Loan Party hereunder except to the extent that all the Obligations have been paid in full in cash (other than contingent indemnification obligations not then due and payable) and the Commitments terminated. Pursuant to Applicable Law, each Loan Party waives any defense arising out of any such election even though such election operates, pursuant to Applicable Law, to impair or to extinguish any right of reimbursement or subrogation or other right or remedy of such Loan Party against any other Loan Party, as the case may be, or any security.

(d) Each Loan Party (except for the Borrower) is a direct or indirect subsidiary of the Borrower, and each Loan Party acknowledges that (x) together with the other Loan Parties, it makes up a related organization of various entities constituting a single economic and business enterprise such that the Loan Parties share a common identity of interests and any benefit received by any one Loan Party benefits the other Loan Parties, and

(e) it will derive substantial benefit from the making of the Loans by the Lenders. Each Loan Party hereby agrees to keep each other Loan Party fully apprised at all times as to the status of its business, affairs, finances, and financial condition, and its ability to perform its Obligations under the Loan Documents and in particular as to any adverse developments with respect thereto. Each Loan Party hereby agrees to undertake to keep itself apprised at all times as to the status of the business, affairs, finances, and financial condition of each other Loan Party, and of the ability of each other Loan Party to perform its Obligations under the Loan Documents, and in particular as to any adverse developments with respect to any thereof. Each Loan Party hereby agrees, in light of the foregoing mutual covenants to inform each other, and to keep themselves and each other informed as to such matters, that the none of the Administrative Agent or any Lender shall have any duty to inform any Loan Party of any information pertaining to the business, affairs, finances, or financial condition of any other Loan Party, or pertaining to the ability of any other Loan Party to perform its Obligations under the Loan Documents, even if such information is adverse, and even if such information might influence the decision of one or more of the Loan Parties to continue to be jointly and severally liable for, or to provide Collateral for, Obligations of one or more of the other Loan Parties. To the fullest extent permitted by Applicable Law, each Loan Party hereby expressly waives any duty of the Administrative Agent or any Lender to inform any Loan Party of any such information.

Section 9.16. *No Advisory or Fiduciary Responsibility*. In connection with all aspects of each transaction contemplated hereby, the Loan Parties each acknowledge and agree that: (a) the credit facility 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 Loan Parties, on the one hand, and the Administrative Agent and the Lenders, on the other hand, and each of the Loan Parties is capable of evaluating and understanding and understands and accepts the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents (including any amendment, waiver or other modification hereof or thereof); (b) in connection with the process leading to such transaction,

Administrative Agent and Lender is and has been acting solely as a principal and is not the financial advisor, agent or fiduciary, for the Loan Parties or any of their respective Affiliates, stockholders, creditors or employees or any other Person; (c) none of the Administrative Agent or Lenders has assumed or will assume an advisory, agency or fiduciary responsibility in favor of the Loan Parties with respect to any of the transactions contemplated hereby or the process leading thereto, including with respect to any amendment, waiver or other modification hereof or of any other Loan Document (irrespective of whether any of the Administrative Agent or Lenders has advised or is currently advising any Loan Party or any of its Affiliates on other matters) and none of the Administrative Agent or Lenders has any obligation to any Loan Party or any of its Affiliates with respect to the transactions contemplated hereby except those obligations expressly set forth herein and in the other Loan Documents; (d) the Administrative Agent and Lenders and their respective Affiliates may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their respective Affiliates, and none of the Administrative Agent or Lenders has any obligation to disclose any of such interests by virtue of any advisory, agency or fiduciary relationship; and (e) none of the Administrative Agent and Lenders have provided or will 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 each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. Each of the Loan Parties hereby waives and releases, to the fullest extent permitted by law, any claims that it may have against the Administrative Agent and each of the Lenders with respect to any breach or alleged breach of agency or fiduciary duty.

Section 9.17. *Intercreditor Agreement*.

(a) Notwithstanding any provisions in the Agreement or any other Loan Document to the contrary, the terms, conditions and provisions of this Agreement and the other Loan Documents are subject to the term of the Intercreditor Agreement. To the extent there is a conflict between the Loan Documents and the Intercreditor Agreement, the terms and conditions of the Intercreditor Agreement shall control.

(b) Without limiting the generality of the foregoing, and notwithstanding anything herein to the contrary, all rights and remedies of the Administrative Agent (and the Lenders) shall be subject to the terms of the Intercreditor Agreement, and until the First Priority Obligations Payment Date (each as defined in the Intercreditor Agreement) in respect of the ABL/LC Priority Collateral, any obligation of the Borrower and any Guarantor hereunder or under any other Loan Document with respect to the delivery or control of any Collateral constituting ABL/LC Priority Collateral, the novation of any lien on any certificate of title, bill of lading or other document, the giving of any notice to any bailee or other Person or the obtaining of any consent of any Person, in each case to the extent relating to ABL/LC Priority Collateral, shall be deemed to be satisfied if the Borrower or such Guarantor, as applicable, complies with the requirements of the similar provision of the applicable ABL Loan Document and the Supplemental Letter of Credit Documents. Until the First Priority Obligations Payment Date in respect of the ABL/LC Priority Collateral, the delivery of any Collateral constituting ABL/LC Priority Collateral to the ABL/LC Agents pursuant to the applicable ABL Loan Documents and Supplemental Letter of Credit Documents shall satisfy any delivery requirement hereunder or under any other Loan Document.

[SIGNATURE PAGES FOLLOW]

EASTMAN KODAK COMPANY, as Borrower

By: /s/ David E. Bullwinkle

Name: David E. Bullwinkle

Title: Chief Financial Officer and Senior Vice President

[*Signature Page to the Credit Agreement*]

ALTER DOMUS (US) LLC, as Administrative Agent

By: /s/ Matthew Trybula
Name: Matthew Trybula
Title: Associate Counsel

[*Signature Page to the Credit Agreement*]

KENNEDY LEWIS CAPITAL PARTNERS MASTER FUND LP, as a Lender

By: /s/ Anthony Pasqua
Name: Anthony Pasqua
Title: COO

KENNEDY LEWIS CAPITAL PARTNERS MASTER FUND II LP, as a Lender

By: /s/ Anthony Pasqua
Name: Anthony Pasqua
Title: COO

FORM OF
ASSIGNMENT AND ACCEPTANCE

This Assignment and Acceptance (the "**Assignment and Acceptance**") is dated as of the Effective Date set forth below and is entered into between the Assignor named below (the "**Assignor**") and the Assignee named below (the "**Assignee**"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Assignment and Acceptance as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "**Assigned Interest**"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Assignment and Acceptance, without representation or warranty by the Assignor.

1. Assignor: _____

2. Assignee: _____
   [and is an Affiliate/Approved Fund of [*identify Lender*][1]]

3. Borrower: The Company (as defined below).

4. Administrative Agent: Alter Domus (US) LLC, including any successor thereto, as administrative agent under the Credit Agreement.

5. Credit Agreement: The Credit Agreement dated as of February 26, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), among EASTMAN KODAK COMPANY (the "Company"), the Lenders party thereto and Alter Domus (US) LLC, as Administrative Agent.

6. Assigned Interest:

Aggregate Amount of Loans for all Lenders	Amount of Loans Assigned	Percentage Assigned of Loans[2]
$	$	%

1 Select as applicable.
2 Set forth, to at least 9 decimals, as a percentage of the Commitment of all Lenders.

Effective Date: [•], 20[•] [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

[The Assignee agrees to deliver to the Administrative Agent (i) a completed administrative questionnaire in which the Assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Borrower, the Loan Parties and their Affiliates 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, and (ii) any "know your customer" documentation reasonably requested by the Administrative Agent.][3]

The terms set forth in this Assignment and Acceptance are hereby agreed to:

ASSIGNOR

NAME OF ASSIGNOR

By: _____
Name:
Title:

ASSIGNEE

NAME OF ASSIGNEE

By: _____
Name:
Title:

3 To be inserted only if the Assignee is not a Lender at the time of such Assignment.

Consented to and Accepted:

ALTER DOMUS (US) LLC,
as Administrative Agent

By _____
Name:
Title:

[Consented to:][4]

[EASTMAN KODAK COMPANY]

By _____
Name:
Title:

4 To be added only if the consent of the Borrower is required by the terms of the Credit Agreement.

Reference is hereby made to the Credit Agreement, dated as of February 26, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among EASTMAN KODAK COMPANY (the "**Borrower**"), the Lenders party thereto and ALTER DOMUS (US) LLC, as Administrative Agent (in such capacity, the "**Administrative Agent**").

STANDARD TERMS AND CONDITIONS FOR
ASSIGNMENT AND ACCEPTANCE

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim[, and] (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby [and (iv) the Assignee is not a Disqualified Institution][5] and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Assignment and Acceptance and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iii) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (iv) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Assignment and Acceptance and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender and (v) if it is a Non-U.S. Lender, attached to the Assignment and Acceptance is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor 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 the Loan Documents and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Assignment and Acceptance shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Assignment and Acceptance may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Assignment and Acceptance by email or telecopy shall be effective as delivery of a manually executed counterpart of this Assignment and Acceptance. This Assignment and Acceptance shall be governed by, and construed in accordance with, the law of the State of New York.

---

5 Bracketed language to be excluded from any Assignment and Acceptance consented to by the Borrower pursuant to the Master Consent to Assignment dated [•], 2021 relating to the Credit Agreement.

[Reserved]

FORM OF
GUARANTEE AND COLLATERAL AGREEMENT

See attached.

[Reserved]

[Reserved]

FORM OF
U.S. TAX COMPLIANCE CERTIFICATE
(For Non-U.S. Lenders That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of February 26, 2021 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Eastman Kodak Company (the "**Borrower**"), a New Jersey company, the several banks and other financial institutions or entities from time to time parties to this Agreement and Alter Domus (US) LLC as Administrative Agent.

Pursuant to the provisions of Section 2.13 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: [•], 20[•]

FORM OF
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Not Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of February 26, 2021 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Eastman Kodak Company (the "**Borrower**"), a New Jersey company, the several banks and other financial institutions or entities from time to time parties to this Agreement and Alter Domus (US) LLC as Administrative Agent.

Pursuant to the provisions of Section 2.13 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record and beneficial owner of the participation in respect of which it is providing this certificate, (ii) it is not a bank within the meaning of Section 881(c)(3)(A) of the Code, (iii) it is not a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (iv) it is not a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with a certificate of its non-U.S. Person status on IRS Form W-8BEN. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender in writing, and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: [•], 20[•]

FORM OF
U.S. TAX COMPLIANCE CERTIFICATE
(For Foreign Participants That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of February 26, 2021 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Eastman Kodak Company (the "**Borrower**"), a New Jersey company, the several banks and other financial institutions or entities from time to time parties to this Agreement and Alter Domus (US) LLC as Administrative Agent.

Pursuant to the provisions of Section 2.13 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the participation in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such participation, (iii) with respect to such participation, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished its participating Lender with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W-8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform such Lender and (2) the undersigned shall have at all times furnished such Lender with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: [•], 20[•]

FORM OF
U.S. TAX COMPLIANCE CERTIFICATE
(For Non-U.S. Lenders That Are Partnerships For U.S. Federal Income Tax Purposes)

Reference is hereby made to the Credit Agreement dated as of February 26, 2021 (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among Eastman Kodak Company (the "**Borrower**"), a New Jersey company, the several banks and other financial institutions or entities from time to time parties to this Agreement and Alter Domus (US) LLC as Administrative Agent.

Pursuant to the provisions of Section 2.13 of the Credit Agreement, the undersigned hereby certifies that (i) it is the sole record owner of the Loan(s) (as well as any promissory note(s) evidencing such Loan(s)) in respect of which it is providing this certificate, (ii) its direct or indirect partners/members are the sole beneficial owners of such Loan(s) (as well as any promissory note(s) evidencing such Loan(s)), (iii) with respect to the extension of credit pursuant to this Credit Agreement or any other Loan Document, neither the undersigned nor any of its direct or indirect partners/members is a bank extending credit pursuant to a loan agreement entered into in the ordinary course of its trade or business within the meaning of Section 881(c)(3)(A) of the Code, (iv) none of its direct or indirect partners/members is a ten percent shareholder of the Borrower within the meaning of Section 871(h)(3)(B) of the Code and (v) none of its direct or indirect partners/members is a controlled foreign corporation related to the Borrower as described in Section 881(c)(3)(C) of the Code.

The undersigned has furnished the Administrative Agent and the Borrower with IRS Form W-8IMY accompanied by one of the following forms from each of its partners/members that is claiming the portfolio interest exemption: (i) an IRS Form W-8BEN or (ii) an IRS Form W- 8IMY accompanied by an IRS Form W-8BEN from each of such partner's/member's beneficial owners that is claiming the portfolio interest exemption. By executing this certificate, the undersigned agrees that (1) if the information provided on this certificate changes, the undersigned shall promptly so inform the Borrower and the Administrative Agent, and (2) the undersigned shall have at all times furnished the Borrower and the Administrative Agent with a properly completed and currently effective certificate in either the calendar year in which each payment is to be made to the undersigned, or in either of the two calendar years preceding such payments.

Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

[NAME OF LENDER]

By: _____
Name:
Title:

Date: [•], 20[•]

EXHIBIT G

FORM OF BORROWING REQUEST

Alter Domus (US) LLC,
as Administrative Agent (the "Administrative Agent") for the Lenders party to the Credit Agreement referred to below
225 W. Washington Street, 9th Floor
Chicago, Illinois 60606
Attention: Legal Department and Bill Ryan
E-mail: legal@alterdomus.com and bill.ryan@alterdomus.com

[•], 20[•]

Ladies and Gentlemen:

Reference is made to the Credit Agreement dated as of February 26, 2021 (as amended, restated, modified and/or supplemented from time to time, the "**Credit Agreement**", the capitalized terms defined therein being used herein as therein defined), among Eastman Kodak Company (the "**Borrower**"), the Lenders party thereto, and Alter Domus (US) LLC, as Administrative Agent. The undersigned hereby gives you irrevocable notice, pursuant to Section 2.03 of the Credit Agreement, that the undersigned hereby requests a Borrowing under the Credit Agreement, and in connection therewith sets forth below the information relating to such Borrowing (the "**Proposed Borrowing**") as required by Section 2.03 of the Credit Agreement:

Aggregate amount of Proposed Borrowing: $[•]

Date of Proposed Borrowing (which is a Business Day): [•]

Location and number of Borrower's account to which proceeds of Borrowing are to be disbursed[6]:[•]

Very truly yours,
Eastman Kodak Company
By: _____
Name:
Title:

6 Must comply with the requirements of Section 2.04 of the Credit Agreement.

[Reserved]

EXHIBIT I

PROMISSORY NOTE

$[•] [•], 20[•]
Chicago, Illinois

FOR VALUE RECEIVED, EASTMAN KODAK COMPANY., a New Jersey corporation (the "**Borrower**"), hereby promises to pay to [Lender] (the "**Lender**"), at the offices of Alter Domus (US) LLC, as Administrative Agent under the Credit Agreement referred to below (in such capacity, the "**Administrative Agent**"), at 225 W. Washington Street, 9th Floor, Chicago, Illinois 60606, or such other office as shall be notified to the Borrower from time to time, the principal sum of [DOLLAR AMOUNT] DOLLARS ($[•]), in lawful money of the United States of America and in immediately available funds, on the dates and in the principal amounts provided in the Credit Agreement, and to pay interest on the unpaid principal amount of the Loan made by the Lender to the Borrower, at such office, in like money and funds, for the period commencing on the date of such Loan until such Loan shall be paid in full, at the rates per annum and on the dates provided in the Credit Agreement.

The date and amount of the Loan made by the Lender to the Borrower, and each payment made on account of the principal thereof, shall be recorded by the Lender on its books and, prior to any transfer of this Promissory Note, endorsed by the Lender on the schedule attached hereto or any continuation thereof; provided that the failure of the Lender to make any such recordation or endorsement shall not affect the obligations of the Borrower to make a payment when due of any amount owing under the Credit Agreement or hereunder in respect of the Loan made by the Lender.

This Promissory Note evidences the Loan made by the Lender under the Credit Agreement dated as of February 26, 2021 (as amended, restated, modified and/or supplemented from time to time, the "**Credit Agreement**", the capitalized terms defined therein being used herein as therein defined), among the Borrower, Lender and the other banks and financial institutions from time to time party thereto, and the Administrative Agent. Terms used but not defined in this Promissory Note have the respective meanings assigned to them in the Credit Agreement.

The Credit Agreement provides for the acceleration of the maturity of this Promissory Note upon the occurrence of certain events and for prepayments of Loans upon the terms and conditions specified therein.

Except as permitted by Section 9.04 of the Credit Agreement, this Promissory Note may not be assigned by the Lender to any other Person.

This Promissory Note shall be governed by, and construed in accordance with, the law of the State of New York.

EASTMAN KODAK COMPANY
By _____
Name:
Title:

[Eastman Kodak Company Promissory Note Signature Page]

SCHEDULE TO PROMISSORY NOTE

This Promissory Note evidences a Loan made under the within-described Credit Agreement to the Borrower, on the dates, in the principal amounts, bearing interest at the rates set forth below and pursuant to the Credit Agreement, subject to the payments and prepayments of principal set forth below:

Date	Principal Amount of Loan	Interest Rate	Amount Paid or Prepaid,	Notation Made by

FORM OF AFFILIATE ASSIGNMENT AGREEMENT

This Affiliate Assignment Agreement (the "**Affiliate Assignment Agreement**") is dated as of the Effective Date set forth below and is entered into between the Assignor named below (the "**Assignor**")[, Eastman Kodak Company] and the Assignee named below (the "**Assignee**"). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement identified below (as amended, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), receipt of a copy of which is hereby acknowledged by the Assignee. The Standard Terms and Conditions set forth in Annex 1 attached hereto are hereby agreed to and incorporated herein by reference and made a part of this Affiliate Assignment Agreement as if set forth herein in full.

For an agreed consideration, the Assignor hereby irrevocably sells and assigns to the Assignee, and the Assignee hereby irrevocably purchases and assumes from the Assignor, subject to and in accordance with the Standard Terms and Conditions and the Credit Agreement, as of the Effective Date inserted by the Administrative Agent below (i) all of the Assignor's rights and obligations in its capacity as a Lender under the Credit Agreement and any other documents or instruments delivered pursuant thereto to the extent related to the amount and percentage interest identified below of all of such outstanding rights and obligations of the Assignor under the respective facilities identified below and (ii) to the extent permitted to be assigned under applicable law, all claims, suits, causes of action and any other right of the Assignor (in its capacity as a Lender) against any Person, whether known or unknown, arising under or in connection with the Credit Agreement, any other documents or instruments delivered pursuant thereto or the loan transactions governed thereby or in any way based on or related to any of the foregoing, including contract claims, tort claims, malpractice claims, statutory claims and all other claims at law or in equity related to the rights and obligations sold and assigned pursuant to clause (i) above (the rights and obligations sold and assigned pursuant to clauses (i) and (ii) above being referred to herein collectively as the "**Assigned Interest**"). Such sale and assignment is without recourse to the Assignor and, except as expressly provided in this Affiliate Assignment Agreement, without representation or warranty by the Assignor.

1. Assignor: _____

2. Assignee: _____
   [and is an Affiliate/Approved Fund of [*identify Lender*][7]]

3. Borrower: The Company (as defined below).

4. Administrative Agent: Alter Domus (US) LLC, including any successor thereto, as administrative agent under the Credit Agreement.

5. Credit Agreement: The Credit Agreement dated as of February 26, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time), among EASTMAN KODAK COMPANY (the "**Company**"), the Lenders party thereto and Alter Domus (US) LLC, as Administrative Agent.

6. Assigned Interest:

Aggregate Amount of Loans for all Lenders	Amount of Loans Assigned	Percentage Assigned of Loans[8]
$	$	%

7 Select as applicable.

8 Set forth, to at least 9 decimals, as a percentage of the Commitment of all Lenders.

Effective Date:[•], 20[•] [TO BE INSERTED BY ADMINISTRATIVE AGENT AND WHICH SHALL BE THE EFFECTIVE DATE OF RECORDATION OF TRANSFER IN THE REGISTER THEREFOR.]

The terms set forth in this Affiliate Assignment Agreement are hereby agreed to:

ASSIGNOR

NAME OF ASSIGNOR
By: _____
Name:
Title:

ASSIGNEE

NAME OF ASSIGNEE
By: _____
Name:
Title:

[EASTMAN KODAK COMPANY][9]
By: _____
Name:
Title:

9 To be added if the Borrower is not the Assignee

Consented to and Accepted:

ALTER DOMUS (US) LLC, as Administrative Agent

By _____
Name:
Title:

Reference is hereby made to the Credit Agreement, dated as of February 26, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**Credit Agreement**"), among EASTMAN KODAK COMPANY (the "**Borrower**"), the Lenders party thereto and ALTER DOMUS (US) LLC, as Administrative Agent (in such capacity, the "**Administrative Agent**").

STANDARD TERMS AND CONDITIONS FOR
AFFILIATE ASSIGNMENT AGREEMENT

1. Representations and Warranties.

1.1 Assignor. The Assignor (a) represents and warrants that (i) it is the legal and beneficial owner of the Assigned Interest, (ii) the Assigned Interest is free and clear of any lien, encumbrance or other adverse claim and (iii) it has full power and authority, and has taken all action necessary, to execute and deliver this Affiliate Assignment Agreement and to consummate the transactions contemplated hereby and (b) assumes no responsibility with respect to (i) any statements, warranties or representations made in or in connection with the Credit Agreement or any other Loan Document, (ii) the execution, legality, validity, enforceability, genuineness, sufficiency or value of the Loan Documents or any collateral thereunder, (iii) the financial condition of the Borrower, any of its Subsidiaries or Affiliates or any other Person obligated in respect of any Loan Document or (iv) the performance or observance by the Borrower, any of its Subsidiaries or Affiliates or any other Person of any of their respective obligations under any Loan Document.

1.2. Assignee. The Assignee (a) represents and warrants that (i) it has full power and authority, and has taken all action necessary, to execute and deliver this Affiliate Assignment Agreement and to consummate the transactions contemplated hereby and to become a Lender under the Credit Agreement, (ii) it is the Borrower or a Subsidiary of the Borrower permitted to acquire the Assigned Interest in accordance with Section 9.04(b)(v) of the Credit Agreement (iii) it satisfies the requirements, if any, specified in the Credit Agreement that are required to be satisfied by it in order to acquire the Assigned Interest and become a Lender, (iv) from and after the Effective Date, it shall be bound by the provisions of the Credit Agreement as a Lender thereunder and, to the extent of the Assigned Interest, shall have the obligations of a Lender thereunder, (v) it has received a copy of the Credit Agreement, together with copies of the most recent financial statements delivered pursuant to Section 5.01 thereof, and such other documents and information as it has deemed appropriate to make its own credit analysis and decision to enter into this Affiliate Assignment Agreement and to purchase the Assigned Interest on the basis of which it has made such analysis and decision independently and without reliance on the Administrative Agent or any other Lender and (vi) if it is a Non-U.S. Lender, attached to the Affiliate Assignment Agreement is any documentation required to be delivered by it pursuant to the terms of the Credit Agreement, duly completed and executed by the Assignee and (b) agrees that (i) it will, independently and without reliance on the Administrative Agent, the Assignor 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 the Loan Documents and (ii) it will perform in accordance with their terms all of the obligations which by the terms of the Loan Documents are required to be performed by it as a Lender. The Assignee affirms that (x) no Default or Event of Default has occurred and is continuing or would result from the transactions that are the subject of this Affiliate Assignment and Assumption, (y) as of the Effective Date, the Assignee is not in possession of any material non-public information regarding the Borrower or its Subsidiaries, or their assets, that has not previously been disclosed to the Auction Manager, Administrative Agent and any Lenders (taken into account all public information available about Borrower and its Subsidiaries) and (z) this Affiliate Assignment Agreement is being entered into in connection with an offer by the Assignee to purchase or take by assignment Term Loans pursuant to a Dutch auction in accordance with the terms of Section 9.04(b)(v) of the Credit Agreement. The Assignee consents to the provisions of the Credit Agreement that apply to the purchase by or assignment to the Borrower or its Subsidiaries of Term Loans.

2. Payments. From and after the Effective Date, the Administrative Agent shall make all payments in respect of the Assigned Interest (including payments of principal, interest, fees and other amounts) to the Assignor for amounts which have accrued to but excluding the Effective Date and to the Assignee for amounts which have accrued from and after the Effective Date.

3. General Provisions. This Affiliate Assignment Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns. This Affiliate Assignment Agreement may be executed in any number of counterparts, which together shall constitute one instrument. Delivery of an executed counterpart of a signature page of this Affiliate Assignment Agreement by email or telecopy shall be effective as delivery of a manually executed counterpart of this Affiliate Assignment Agreement. This Affiliate Assignment Agreement shall be governed by, and construed in accordance with, the law of the State of New York.

EXHIBIT K

FORM OF SOLVENCY CERTIFICATE

[•], 2021

This Solvency Certificate is being executed and delivered pursuant to Section 4.01(e) of that certain Credit Agreement dated as of February 26, 2021 (as amended, restated, amended and restated, extended, supplemented or otherwise modified in writing from time to time, the "**Credit Agreement**", the capitalized terms defined therein being used herein as therein defined), among Eastman Kodak Company (the "**Borrower**"), the Lenders party thereto, and Alter Domus (US) LLC, as Administrative Agent.

I, David E. Bullwinkle, the Chief Financial Officer of the Borrower, in such capacity and not in an individual capacity, hereby certify as follows:

1. I am generally familiar with the businesses and assets of the Borrower and its subsidiaries, taken as a whole, and am duly authorized to execute this Solvency Certificate on behalf of the Borrower pursuant to the Credit Agreement; and

I am familiar with the historical and current financial condition of the Borrower and its subsidiaries on a consolidated basis as the Chief Financial Officer of the Borrower. In preparing this certificate, I have made such investigations and inquiries as I deem necessary and prudent in connection with the matters set forth herein and have reviewed the terms of the Credit Agreement and the other Loan Documents.

As of the date hereof and after giving effect to the Loan Transactions, (i) the sum of the debt and liabilities (including subordinated and contingent liabilities) of the Borrower and its subsidiaries, taken as a whole, does not exceed the fair value of the present assets of the Borrower and its subsidiaries, taken as a whole; (ii) the present fair saleable value of the assets of the Borrower and its subsidiaries, taken as a whole, is greater than the total amount that will be required to pay the probable debt and liabilities (including subordinated and contingent liabilities) of the Borrower and its subsidiaries as they become absolute and matured, (iii) the capital of the Borrower and its subsidiaries, taken as a whole, is not unreasonably small in relation to the business of the Borrower or its subsidiaries, taken as a whole, contemplated as of the date hereof and as proposed to be conducted following the Closing Date; and (iv) the Borrower and its subsidiaries, taken as a whole, have not incurred, or believe that they will incur, debts or other liabilities including current obligations beyond their ability to pay such debt as they mature in the ordinary course of business. For the purposes hereof, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, I have executed this Solvency Certificate on the date first written above.

By: _____
Name: David E. Bullwinkle
Title: Chief Financial Officer

AUCTION PROCEDURES

*This outline is intended to summarize certain basic terms of procedures with respect to Dutch auctions (each, an "**Auction**") pursuant to and in accordance with the terms and conditions of Section 9.04(b)(v) of the Credit Agreement to which this Exhibit L is attached. It is not intended to be a definitive list of all of the terms and conditions of an Auction and all such terms and conditions shall be set forth in the applicable auction procedures documentation set for each Auction (the "**Offer Documents**"), which shall be reasonably acceptable to the Borrower, the Auction Manager and the Administrative Agent and shall otherwise comply with Section 9.04(b)(v) of the Credit Agreement. None of the Administrative Agent, any Auction Manager or any of their respective Affiliates makes any recommendation pursuant to the Offer Documents as to whether or not any Lender should sell by assignment any of its Term Loans pursuant to the Offer Documents (including, for the avoidance of doubt, by participating in the Auction as a Term Lender) or whether or not the Borrower or any of its Subsidiaries should purchase by assignment any Term Loans from any Lender pursuant to any Auction. Each Lender should make its own decision as to whether to sell by assignment any of its Term Loans and, if so, the principal amount of and price to be sought for such Term Loans. In addition, each Lender should consult its own attorney, business advisor or tax advisor as to legal, business, tax and related matters concerning any Auction and the Offer Documents. Capitalized terms used but not otherwise defined herein have the meanings assigned to them in the Credit Agreement.*

Summary. The Borrower or any of its Subsidiaries may purchase (by assignment) Term Loans on a non-pro rata basis by conducting one or more Auctions pursuant to the procedures described herein and otherwise in compliance with Section 9.04(b)(v) of the Credit Agreement; provided that no more than one Auction may be ongoing at any one time and no more than five Auctions may be made in any period of four consecutive fiscal quarters of the Company.

Notice Procedures. In connection with each Auction, the Borrower or any of its Subsidiaries (the "**Offeror**") will provide notification to the Administrative Agent and Auction Manager (for distribution to the Lenders) of the Term Loans that will be the subject of the Auction by delivering to the Administrative Agent and Auction Manager a written notice in form and substance reasonably satisfactory to the Administrative Agent and Auction Manager (an "**Auction Notice**"). Each Auction Notice shall contain (i) the maximum principal amount of Term Loans the Offeror is willing to purchase (by assignment) in the Auction (the "**Auction Amount**"), which shall be no less than $5,000,000 or an integral multiple of $1,000,000 in excess of thereof, (ii) the range of discounts to par (the "**Discount Range**"), expressed as a range of prices per $1,000, at which the Offeror would be willing to purchase Term Loans in the Auction, (iii) the first date on which Return Bids (as defined below) may be submitted and (i) the date on which the Auction will conclude, on which date Return Bids will be due at the time provided in the Auction Notice (such time, the "**Expiration Time**"), as such date and time may be extended upon notice by the Offeror to the Auction Manager not less than 24 hours before the original Expiration Time. The Auction Manager will deliver a copy of the Offer Documents to each Lender promptly following completion thereof.

Reply Procedures. In connection with any Auction, each Lender holding Term Loans wishing to participate in such Auction shall, prior to the Expiration Time, provide the Auction Manager with an irrevocable notice of participation in form and substance reasonably satisfactory to the Auction Manager (the "**Return Bid**", to be included in the Offer Documents) which shall specify (i) a discount to par that must be expressed as a price per $1,000 of Term Loans (the "**Reply Price**") within the Discount Range and (ii) the principal amount of Term Loans, in an amount not less than $1,000,000, that such Lender is willing to offer for sale at its Reply Price (the "**Reply Amount**"); provided, that each Lender may submit a Reply Amount that is less than the minimum amount and incremental amount requirements described above only if the Reply Amount comprises the entire amount of the Term Loans held by such Lender at such time. A Lender may only submit one Return Bid per Auction, but each Return Bid may contain up to three component bids, each of which may result in a separate Qualifying Bid (as defined below) and each of which will not be contingent on any other component bid submitted by such Lender resulting in a Qualifying Bid. In addition to the Return Bid, a participating Lender must execute and deliver, to be held by the Auction Manager, an assignment and acceptance in the form included in the Offer Documents which shall be in form and substance reasonably satisfactory to the Auction Manager and the Administrative Agent (the "**Affiliate Assignment Agreement**"). The Offeror will not purchase any Term Loans at a price that is outside of the applicable Discount Range, nor will any Return Bids (including any component bids specified therein) submitted at a price that is outside such applicable Discount Range be considered in any calculation of the Applicable Threshold Price (as defined below).

Acceptance Procedures. Based on the Reply Prices and Reply Amounts received by the Auction Manager, the Auction Manager, in consultation with the Offeror, will calculate the lowest purchase price (the "**Applicable Threshold Price**") for the Auction within the Discount Range for the Auction that will allow the Offeror to complete the Auction by purchasing the full Auction Amount (or such lesser amount of Term Loans for which the Offeror has received Qualifying Bids). The Offeror shall purchase (by assignment) Term Loans from each Lender whose Return Bid is within the Discount Range and contains a Reply Price that is equal to or less than the Applicable Threshold Price (each, a "**Qualifying Bid**"). The principal amount of all Term Loans included in Qualifying Bids received at a Reply Price lower than the Applicable Threshold Price will be purchased at a purchase price equal to the applicable Reply Price and shall not be subject to proration. If a Lender has submitted a Return Bid containing multiple component bids at different Reply Prices, then all Term Loans of such Lender offered in any such component bid that constitutes a Qualifying Bid with a Reply Price lower than the Applicable Threshold Price shall also be purchased (to the extent the Auction is consummated) at a purchase price equal to the applicable Reply Price and shall not be subject to proration.

Allocation Procedures. All Term Loans offered in Return Bids (or, if applicable, any component bid thereof) constituting Qualifying Bids equal to the Applicable Threshold Price will be purchased at a purchase price equal to the Applicable Threshold Price; provided that if the aggregate principal amount of all Term Loans for which Qualifying Bids have been submitted in any given Auction equal to the Applicable Threshold Price would exceed the remaining portion of the Auction Amount (after deducting all Term Loans purchased below the Applicable Threshold Price), the Offeror shall purchase the Term Loans for which the Qualifying Bids submitted were at the Applicable Threshold Price ratably based on the respective principal amounts offered and in an aggregate amount up to the amount necessary to complete the purchase of the Auction Amount. For the avoidance of doubt, no Return Bids (or any component thereof) will be accepted above the Applicable Threshold Price.

Notification Procedures. The Auction Manager, in consultation with the Offeror, will calculate the Applicable Threshold Price no later than the next Business Day after the date that the Return Bids were due. The Auction Manager will insert the amount of Term Loans to be assigned and the applicable settlement date determined by the Auction Manager in consultation with the Offeror onto each applicable Affiliate Assignment Agreement received in connection with a Qualifying Bid and provide a copy of the same to the Administrative Agent. To the extent that the Administrative Agent isn't acting as the Auction Manager, the Auction Manager shall further provide the Administrative Agent with all information the Administrative Agent requires and/or requests to record such Affiliate Assignment Agreement in the Register. The Administrative Agent shall be entitled to rely on all information received by it from the Auction Manager as it relates to any Affiliate Assignment Agreement and shall have no liability with respect to the amount of the Term Loans to be assigned, the Affiliate Assignment Agreement and the recordation of the Affiliate Assignment Agreement in the Register. Upon written request of the submitting Lender, the Auction Manager will promptly return any Affiliate Assignment Agreement received in connection with a Return Bid that is not a Qualifying Bid.

Additional Procedures. Once initiated by an Auction Notice, the Offeror may withdraw an Auction by written notice to the Auction Manager so long as no Qualifying Bids have been received by the Auction Manager at or prior to the time the Auction Manager receives such written notice; provided that that the Offeror's obligation to purchase Term Loans from any Lender shall be conditioned on (i) such Lender making the representations and warranties set forth in the Affiliate Assignment Agreement and (ii) there being no pending actions, suits or proceedings pending or threatened, in each case brought by a third party, in writing that seek to enjoin such Auction. Furthermore, in connection with any Auction, upon submission by a Lender of a Return Bid, such Lender will not have any withdrawal rights. Any Return Bid (including any component bid thereof) delivered to the Auction Manager may not be modified, revoked, terminated or cancelled; provided that a Lender may modify a Return Bid at any time prior to the Expiration Time solely to reduce the Reply Price included in such Return Bid. However, an Auction shall become void if the Offeror fails to satisfy one or more of the conditions to the purchase of Term Loans set forth in Section 9.04(b) of the Credit Agreement, as applicable, or to otherwise comply with any of the provisions of such Section 9.04(b). The purchase price for all Term Loans purchased in an Auction shall be paid in cash by the Offeror directly to the respective assigning Lender on a settlement date as determined by the Auction Manager in consultation with the Offeror (which shall be no later than ten (10) Business Days after the date Return Bids are due). The Offeror shall execute each applicable Affiliate Assignment Agreement received in connection with a Qualifying Bid.

All questions as to the form of documents and validity and eligibility of Term Loans that are the subject of an Auction will be determined by the Auction Manager in accordance with the terms of the Loan Documents, in consultation with the Offeror, and the Auction Manager's determination will be conclusive, absent manifest error.

None of the Administrative Agent, the Auction Manager, any other agent or any of their respective affiliates assumes any responsibility for the accuracy or completeness of the information concerning the Borrower or its Subsidiaries contained in the Offer Documents or otherwise or for any failure to disclose events that may have occurred and may affect the significance or accuracy of such information.

The Auction Manager acting in its capacity as such under an Auction shall be entitled to the benefits of the provisions of Article 8 and Section 9.03 of the Credit Agreement to the same extent as if each reference therein to the "Administrative Agent" were a reference to the Auction Manager, and the Administrative Agent shall cooperate with the Auction Manager as reasonably requested by the Auction Manager in order to enable it to perform its responsibilities and duties in connection with each Auction.

This Exhibit L shall not require the Borrower or any of its Subsidiaries to initiate any Auction, nor shall any Lender be obligated to participate in any Auction.

FORM OF
COMPLIANCE CERTIFICATE

This Compliance Certificate (this "**Certificate**") is delivered pursuant to Section 5.01(e) of the Credit Agreement dated as of February 26, 2021 (as amended, restated, modified and/or supplemented from time to time, the "**Credit Agreement**"), among Eastman Kodak Company (the "**Borrower**"), the Lenders party thereto, and Alter Domus (US) LLC, as administrative agent (in such capacity, the "**Administrative Agent**"). Unless otherwise defined herein, terms defined in the Credit Agreement and used herein shall have the meanings given to them in the Credit Agreement.

1. I am a Responsible Officer and a Financial Officer of the Borrower.

2. I have reviewed and am familiar with the contents of this Certificate.

3. I have reviewed the terms of the Credit Agreement and the Loan Documents and have made or caused to be made under my supervision, a review in reasonable detail of the transactions and condition of the Borrower during the accounting period covered by the financial statements attached hereto as Attachment 1 (the "**Financial Statements**").

4. Attached hereto as Attachment 2 is all information and reasonably detailed calculations necessary for determining compliance by the Borrower and its Restricted Subsidiaries with Section 6.13 and Section 6.14 of the Credit Agreement as of the last day of the Fiscal Quarter or fiscal year of the Borrower to which the Financial Statements relate.

5. [Attached hereto as Attachment 3 is an updated Perfection Certificate, which shall include, among other things, (i) descriptions of any change in the jurisdiction of organization of any Loan Party and (ii) a list of any registered or pending Intellectual Property acquired by any Loan Party, in each case since the date of the most recent Compliance Certificate (or, in the case of the first Compliance Certificate so delivered, since the Closing Date).][10][11]

6. Attached hereto as Attachment 4 is a description of any new Subsidiary as of the date of delivery of this Certificate since the date of the most recent Compliance Certificate (or, in the case of the first Compliance Certificate so delivered, since the Closing Date).[12]

IN WITNESS WHEREOF, I have executed this Certificate this day of [•], 20[•].

_____
Name:
Title:

10 Bracketed language only required in compliance certificate accompanying audited annual financial statements.

11 Alternatively, the Responsible Officer shall confirm that there is no change to the information set forth on the Perfection Certificate since the later of the Closing Date or the date of the last such list.

12 Alternatively, the Responsible Officer shall confirm that there are no additional Subsidiaries since the later of the Closing Date or the date of the last such list.

[Attach Financial Statements]

The information described herein is as of [•], [•], and pertains to the period from [•], to [•], [•].

[Set forth Compliance Calculations]

[Perfection Certificate]

Exhibit 10.7

EXECUTION VERSION

KENNEDY LEWIS INVESTMENT MANAGEMENT LLC

February 26, 2021

Eastman Kodak Company
343 State Street
Rochester, New York 14650

Re: Board Rights

Ladies and Gentlemen:

Reference is made to that certain Credit Agreement, dated as of the date hereof (the "**Credit Agreement**"), by and among Eastman Kodak Company, a New Jersey corporation ("**Company**"), the other Loan Parties party thereto, the lenders from time to time party thereto (the "**Lenders**") and Alter Domus (US) LLC, as administrative agent (in such capacity, the "**Administrative Agent**"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Credit Agreement.

In connection with the execution and delivery of the Credit Agreement, Company and Kennedy Lewis Investment Management LLC (together with its affiliates and certain funds, accounts or clients managed, advised or sub-advised by Kennedy Lewis Investment Management LLC or its affiliates, "**KLIM**") (each, a "**Party**," and, together, the "**Parties**") desire to enter into this letter agreement (this "**Agreement**") to define certain rights and obligations of the Parties, including, without limitation, certain rights that KLIM shall have with respect to the board of directors (or similar governing body) of Company (the "**Board**") or its successors or assigns, to be exercised by the individuals designated by KLIM in accordance with the terms set forth herein. In consideration of the foregoing, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby agree, intending to be legally bound, as follows:

1. **Board Nomination Right.**

(a) As soon as practicable after the date hereof, and in any event on or prior to the next annual meeting of the Company's shareholders, the Company agrees that the Board will appoint Darren L. Richman as a member of the Board, provided that as a condition to such appointment, Mr. Richman will have satisfied all applicable requirements regarding service as a director of the Company under applicable law or stock exchange rules regarding service as a director and such other criteria and qualifications for service as a director applicable to all directors of the Company and in effect from time to time. Thereafter, until the earlier of (i) the third anniversary of the date hereof or (ii) such time as KLIM ceases to hold at least 50% of the original principal amount of the Loans and Commitments in respect of the Credit Agreement that were outstanding as of the Closing Date, KLIM shall be entitled to, at each annual or special meeting of the Company's shareholders during such period, nominate one (1) director (such Person, which shall be Mr. Richman to the extent he is appointed to the Board prior to the next annual meeting of the Company's shareholders, the "**Designated Director**") to serve on the Board; provided, however, that such nomination is subject to such Designated Director's satisfaction of all applicable requirements regarding service as a director of the Company under applicable law or stock

exchange rules regarding service as a director and such other criteria and qualifications for service as a director applicable to all directors of the Company and in effect from time to time. In the event that a Designated Director is nominated, the Company shall (i) include such Designated Director in its slate of nominees for election to the Board at each annual or special meeting of the Company's shareholders, (ii) recommend that the Company's shareholders vote in favor of the election of the Designated Director and (iii) support the Designated Director in a manner generally no less rigorous and favorable than the manner in which the Company supports its other Board nominees. The Company shall take all reasonably necessary actions to ensure that, at all times when a Designated Director is eligible to be appointed or nominated, there are sufficient vacancies on the Board to permit such designation. Notwithstanding the foregoing, the rights of KLIM to appoint or nominate one (1) director shall terminate immediately on the earlier of (A) the third anniversary of the date hereof or (B) such time as KLIM ceases to hold at least 50% of the original principal amount of the Loans and Commitments in respect of the Credit Agreement that were outstanding as of the Closing Date.

(b) If any Designated Director ceases to serve on the Board for any reason during his or her term, the vacancy created thereby shall be filled, and the Company shall cause the Board to fill such vacancy, with a new Designated Director eligible to serve on the Board in accordance with Section 1(a); provided, however, notwithstanding anything to the contrary in this Agreement, in the event that KLIM's rights under Section 1(a) have been terminated pursuant to the terms of this Agreement, any Designated Director serving on the Board at such time shall immediately tender his or her resignation; provided further that (i) such requirement may be waived in advance by the Company's Compensation, Nominating & Governance Committee and (ii) such resignation shall be subject to the approval of the Board.

(c) For the avoidance of doubt, a Designated Director shall be entitled to the same retainer, equity compensation and other fees or compensation, including travel and expense reimbursement, paid to the non-executive directors of the Company for his or her service as a director, and the Company shall maintain, in full force and effect, directors' and officers' liability insurance in reasonable amounts to the same extent it now indemnifies and provides insurance for the non-executive directors on the Board. Any director minimum share ownership requirements shall be deemed satisfied in respect of the Designated Director by any shares (or notes convertible into shares) of common stock held by KLIM or one or more of its Affiliates. The Company acknowledges and agrees that it is the indemnitor of first resort (for the Designated Director in connection with matters arising from Designated Director's service as a director of the Company). For the avoidance of doubt, the Designated Director shall be entitled to customary access and information rights in the same manner as received by the other directors on the Board.

2. **Board Observation Rights.**

(a) Until such time as KLIM ceases to hold at least 50% of the original principal amount of the Loans and Commitments in respect of the Credit Agreement that were outstanding as of the Closing Date, and solely to the extent that a Designated Director is not serving on the Board at the applicable time, KLIM shall have the right to designate (i) one observer who is a natural person reasonably acceptable to the Company (the "**Observer Representative**") and (ii) one alternate observer who is a natural person reasonably acceptable to the Company (the "**Alternate Observer**", and together with the Observer Representative, collectively, the

"**Observer**") one of whom shall have the right to be present (whether in person or by telephone) in a non-voting observer capacity at all meetings of the Board and each current or future committee and subcommittee thereof to the extent that (I) the Board has delegated substantially all of its functions to such committee or subcommittee or (II) such committee or subcommittee has been delegated authority by the Board to consider a strategic transaction (but solely to the extent the meetings or materials of such committee or subcommittee relate to such strategic transaction) (as applicable, the "**Relevant Body**"). The Alternate Observer shall have the same rights as the Observer Representative in the event that the Observer Representative is unable to exercise his or her rights as set forth herein or as otherwise notified by KLIM to the Company in writing. At any time and from time to time while this Agreement is in effect, such Observer may be removed or replaced by KLIM in its sole discretion with a natural person reasonably acceptable to the Company, provided that, without the consent of the Company (not to be unreasonably withheld, delayed or conditioned), such replacement shall not occur more than once in any 12-month period except in the case of an Observer ceasing to be an employee or consultant of KLIM, and the term "Observer" in this Agreement shall also refer to any such replacement designee. Notwithstanding the foregoing, KLIM shall not be entitled to any observation rights under Section 2 hereof at any time when a Designated Director is serving on the Board pursuant to Section 1.

(b) The Observer shall be entitled to (i) attend and, subject to the limitations set forth in Section 2(c), participate (in person, telephonically, or by such other means as is available to any members of the Relevant Body in connection with such meetings or in accordance with the terms herein) all meetings of the Relevant Body (whether regular or special, formal or informal) (a "**Relevant Body Meeting**"), (ii) receive written notice of, and agendas and attendance details for, all Relevant Body Meetings (including minutes of previous meetings) substantially simultaneously with all other members of the Relevant Body prior to such Relevant Body Meetings, and (iii) if the Relevant Body proposes to take any action by written consent in lieu of a meeting or otherwise act other than at a Relevant Body Meeting, receive a copy of such written consent when sent to some or all members of the Relevant Body for execution and (iv) receive all other documents (whether in draft or final form, and including all exhibits, schedules and appendices thereto), notices, presentations, minutes, reports, consents, resolutions, written materials and other information provided to any members of the Relevant Body. The Observer shall not be entitled to actively participate in any such meetings unless expressly invited to participate by the chairman of the Board and in any case shall be subject to the limitations set forth in Section 2(c).

(c) With respect to the matters set forth in Section 2(b), the Observer may be excluded from any Relevant Body Meeting or portion of such Relevant Body Meeting, or denied access to information or documentation, if the Relevant Body determines in good faith that (A) providing the Observer with access to such meeting or information may reasonably be expected to (i) adversely affect attorney-client privilege from which such communication would otherwise benefit, (ii) give rise to an actual or potential conflict of interest between the Observer and/or KLIM, on the one hand, and Company or any of its Affiliates, on the other; (iii) result in a breach of fiduciary duty of any Board member or (iv) result in a breach of confidentiality obligations to third parties or applicable law or (B) such Board Meeting or portion thereof or such information or documentation includes or relates to materials of a sensitive or confidential nature (including for the avoidance of doubt, any matters of a proprietary nature, such as inventions, trade secrets and know-how and any details or discussions regarding any potential or actual refinancing or restructuring plans); provided, however, that any such exclusion or denial of access shall be limited

to the portion of the information or documentation and/or meeting that is related to the basis for such exclusion or denial of access; provided, further, that in any event, KLIM shall receive notice of (A) the occurrence of such meeting in accordance with Section 2(b) and a summary thereof and (B) the exclusion of such information and documentation and the basis and summary thereof (but not the substance thereof).

(d) The Observer shall not be deemed a director of Company. For the avoidance of doubt, the Observer shall not (i) have voting rights or the right to participate in any discussions (except as provided in Section 2(b) above) of or action by written consent of any Relevant Body, (ii) have the right to call special meetings of any Relevant Body, or (iii) be counted for purposes of determining the size of any Relevant Body or whether a quorum has been obtained. The Observer shall not, by virtue of his or her capacity as such, have or be deemed to have, or otherwise be subject to, any duties (fiduciary or otherwise) to the Company or its Subsidiaries or its or their equityholders or any other person or entity or any duties (fiduciary or otherwise) otherwise applicable to the members of the Relevant Body.

(e) The Company shall pay the Observer's reasonable out-of-pocket expenses in connection with each Observer's in-person attendance at such Relevant Body Meetings, subject to the same expense limitations that are applicable to members of the Relevant Body under the Company's travel policies.

3. **Indemnification.**

(a) A Designated Director shall be entitled to the same indemnification rights as other non-executive directors of the Company.

(b) The Company shall indemnify and hold harmless the Observer from and against any and all losses, claims, causes of action, damages, liabilities and expenses, including attorney's fees (collectively, "***Losses***"), to which the Observer may become subject, insofar as such Losses (or actions in respect thereof) arise out of, relate to, or are based upon the Observer's (i) designation or attendance as a non-voting observer at any Relevant Body Meeting, (ii) receipt of materials, consents or information under this Agreement, or (iii) exercise of his or her rights under this Agreement; *provided* that the Company shall have no obligation to indemnify any Observer from any claims arising from (x) a breach of this Agreement or of the Credit Agreement by such Observer, KLIM or any of its Affiliates, or (y) any dispute between any Lenders under the Credit Agreement not arising as a result of a default by the Company or its Subsidiaries thereunder. The Company will pay or reimburse the Observer for such Losses as they are incurred, including, without limitation, for amounts incurred in connection with investigating or defending any such Loss or action in respect thereof.

(c) Promptly after receipt by the Observer of notice of the commencement of any action, the Observer will, if a claim in respect thereof is to be made under this Section 3, notify the Company in writing of the commencement thereof, but the delay or omission to so notify the Company will not relieve the Company from any liability under this Section 3. In case any such action is brought against the Observer, and the Observer notifies the Company of the commencement thereof, the Company will be entitled, at its sole discretion, to assume the defense thereof, with separate counsel, at its sole cost and expense. Such assumption shall not relieve the

Company of the obligation to pay or reimburse the Observer for reasonable and documented out-of-pocket legal and other expenses incurred by the Observer in defending himself or herself. Subject to the limitations set forth herein, the Company shall pay all reasonable and documented legal fees and expenses of the Observer (limited to the fees and expenses of one firm of counsel for KLIM, the Observer and their Affiliates collectively) in the defense of such claims or actions. In addition to, and notwithstanding the foregoing, the Observer shall be entitled to all rights to indemnification and exculpation, to the same extent and in the same manner, as are made available to any other member of the applicable Relevant Body as of the date hereof, together with any and all incremental rights added thereto following the date hereof.

4. **Confidentiality.**

(a) A Designated Director shall be bound by the same confidentiality restrictions as the other non-executive directors; provided that a Designated Director may provide information concerning or relating to the Company or any of its subsidiaries that is furnished to the Designated Director in his or her capacity as such, to KLIM and its representatives (provided that any such disclosure is pursuant to a confidentiality agreement between the Company and KLIM in form and substance reasonably acceptable to each of the Company and KLIM (which shall provide that KLIM shall be subject to the Company's trading policy to the same extent as a director of the Company in the event KLIM receives confidential information from a Designated Director (and which shall not include any mandatory disclosure requirements for the Company)), but shall not provide any such information to the extent the chairman of the Board determines that providing such information to KLIM and its representatives would reasonably be expected to (i) adversely affect attorney-client privilege from which such information would otherwise benefit or (ii) result in a breach of confidentiality obligations to third parties or applicable law and has informed the Designated Director of such determination; provided, further, that the Designated Director shall recuse himself or herself, as applicable, from any Board meeting or portion thereof in the event such meeting relates to any potential or actual financing, refinancing or restructuring involving the Company or if the Designated Director's participation otherwise would, in the judgment of the chairman of the Board, give rise to an actual or potential conflict of interest between the Designated Director and/or KLIM, on the one hand, and the Company or any of its Affiliates, on the other.

(b) Company acknowledges and agrees that the Observer (but not a Designated Director) may, if and to the extent he or she desires to do so, disclose to KLIM information, including certain confidential or proprietary information, concerning Company and/or any of its Subsidiaries that he or she obtains in his or her capacity as the Observer hereunder. Each Observer and KLIM, on behalf of itself and each Observer, agrees that all information provided to or learned by the Observer in connection with the rights granted by Company under this Agreement shall be subject to the confidentiality provisions set forth in the Credit Agreement (provided that any such information shall not be disclosed to any Lender that is not KLIM or an Affiliate of KLIM).

5. **Insurance.** During the Term of this Agreement, and thereafter for the duration of the applicable statute of limitations:

(a) with respect to a Designated Director, the Company shall maintain, in full force and effect, directors' and officers' liability insurance in reasonable amounts to the same extent it now indemnifies and provides insurance for the non-executive directors on the Board; and

(b) with respect to any Observer, the Company agrees to use commercially reasonable efforts to provide for coverage of the Observer under the policies of officers' and directors liability insurance that the Company maintains from time to time; provided, however, that nothing herein shall require the Company to incur any increased premium or other costs or acquire any new insurance policies in order to extend such coverage to the Observer.

6. **Term.** This Agreement shall be effective as of the date hereof and shall remain in full force and effect until the earlier to occur of the following: (i) KLIM and its Affiliates shall cease to retain beneficial ownership of and full voting rights with respect to at least 50% of the original principal amount of the Loans and Commitments in respect of the Credit Agreement that were outstanding as of the Closing Date, and (ii) the date that the Commitments have expired or terminated and the Obligations under the Credit Agreement and the other Loan Documents shall have been paid in full (other than contingent indemnification obligations not then due and owing) (the "**Term**"). Notwithstanding anything to the contrary hereto, Sections 3, 4, 6, 8 and 12-17 shall survive any termination of this Agreement.

7. **No Assignment; Benefit of Parties; No Transfer.** No Party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party, any such assignment being void *ab initio*; provided, however, that KLIM (or its assignee) may assign this Agreement, in whole but not in part, without the prior written consent of Company to any Affiliate of KLIM, subject to such Affiliate acceding to and becoming party to this Agreement and agreeing to be subject to the confidentiality provisions set out in the Credit Agreement; provided that such proposed assignee is not a bona fide direct competitor or a financial sponsor that directly or indirectly owns a direct competitor identified in writing by Company to the Administrative Agent prior to the date hereof, as such list may be updated from time to time thereafter; provided, further, that Company may assign its rights hereunder to any successor entity or in connection with the sale of all or substantially all its assets. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns for the uses and purposes set forth and referred to herein. Each of the Parties acknowledges and agrees that the Designated Director and/or Observer is a third party beneficiary of this Agreement and is entitled to the rights and benefits hereunder and may enforce the provisions hereof as if he or she were a party hereto. Except as explicitly set forth herein, nothing contained in this Agreement shall confer or is intended to confer on any third party or entity that is not a party hereto any rights under this Agreement.

8. **Remedies.** Each of the Parties shall be entitled to enforce their rights under this Agreement specifically, to recover damages by reason of any breach or violation of any provision of this Agreement and to exercise all other rights existing in their favor. The Parties agree and acknowledge that a breach or violation of this Agreement would cause irreparable harm and that money damages would not be an adequate remedy for any such breach and that, in addition to other rights and remedies hereunder, each of the Parties shall be entitled to seek specific performance and/or injunctive or other equitable relief (without posting a bond or other security) from any court of law or equity of competent jurisdiction in order to enforce or prevent any breaches or violations of this Agreement.

9. **Representations and Warranties.** Each Party hereby represents and warrants to the other Party as follows:

(a) Such Party is duly incorporated, organized, or formed (as applicable), validly existing, and (if applicable) in good standing under the laws of the jurisdiction of its incorporation, organization, or formation; if required by applicable law, that such Party is duly qualified and in good standing in the jurisdiction of its principal place of business, if different from its jurisdiction of incorporation, organization, or formation; and that such Party has the requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder, and all necessary actions by the board of directors (or similar governing body), officers, equityholders, managers, members, partners, trustees, beneficiaries, or other applicable persons necessary for the due authorization, execution, delivery, and performance of this Agreement by such Party have been duly taken.

(b) Such Party has duly executed and delivered this Agreement, and (assuming the due execution and delivery by each other Party hereto) this Agreement constitutes the valid and binding obligation of such Party enforceable against it in accordance with its terms (except as may be limited by applicable bankruptcy, insolvency or similar laws and by the effect of general principles of equity, regardless of whether considered at law or in equity).

(c) Such Party's authorization, execution, delivery, and performance of this Agreement does not and will not (i) conflict with, or result in a breach, default or violation of, (A) the organizational documents of such Party, (B) any material contract or agreement to which such Party is a party or is otherwise subject, or (C) any law, writ, injunction, or arbitral award to which such Party is subject; or (ii) require any consent, approval, or authorization from, filing or registration with, or notice to, any governmental authority or other person (including the equityholders or any Relevant Body), unless such requirement has already been satisfied.

10. **Further Assurances.** Each of the Parties hereby agrees that it will hereafter execute and deliver any further document, agreement, instruments of assignment, transfer or conveyance as may be necessary or desirable to effectuate the purposes hereof (including the ability of KLIM to exercise observer rights in respect of any current or future Relevant Body).

11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which shall be deemed one instrument, and may be delivered by means of facsimile or electronic transmission in portable document format.

12. **Governing Law; Jurisdiction.** This Agreement, and any matter or dispute arising out of or related to this Agreement, shall be exclusively construed by, subject to and governed in accordance with the internal laws of the State of Delaware without giving effect to conflict of laws or other principles that may result in the application of laws other than the internal laws of the State of Delaware. Unless each of the Parties consents in writing, the state and federal courts of Delaware shall, to the fullest extent permitted by applicable law, be the sole and exclusive forum for any legal action or proceeding arising out of this Agreement. Each Party irrevocably consents to the service of process outside the territorial jurisdiction of such courts in any such action or proceeding in accordance with Section 17 of this Agreement, although nothing contained in this Agreement shall affect the right to serve process in any other manner permitted by applicable law. Each Party (i) certifies that no representative, agent or attorney of any Party has represented, expressly or otherwise, that such Party would not, in the event of litigation, seek to enforce that foregoing waiver and (ii) acknowledges that it and the other Parties have been induced to enter into this Agreement, as applicable, by, among other things, the mutual waivers and certifications in this Section 12.

13. **Mutual Waiver of Jury Trial.** THE PARTIES HEREBY IRREVOCABLY WAIVE ANY AND ALL RIGHTS TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT. ANY ACTION OR PROCEEDING WHATSOEVER BETWEEN THE PARTIES HERETO RELATING TO THIS AGREEMENT SHALL BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

14. **Severability.** In the event that any one or more of the provisions herein should be held invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remaining provisions contained herein 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 affect the validity of such provision in any other jurisdiction).

15. **Entire Agreement.** This Agreement (together with the Credit Agreement and the other Loan Documents) constitutes the entire agreement and understanding of the Parties in respect of the subject matter hereof and supersedes all prior understandings, agreements or representations by or among the Parties, written or oral, to the extent they relate in any way to the subject matter hereof.

16. **Amendment; Waiver.** No amendment of any provision of this Agreement shall be effective unless set forth in a written instrument executed by both Parties. Except as otherwise provided herein, no waiver of any provision of this Agreement shall be effective unless set forth in a written instrument executed by the Party against whom the waiver is effective. The failure of any Party to enforce any provision hereof shall in no way be construed as a waiver of such provision or of any other provision and shall not affect the right of such Party thereafter to enforce each and every provision hereof in accordance with its terms. The rights and remedies in this Agreement are cumulative and not exclusive of any rights or remedies provided by law.

17. **Notices.** All notices, reports and other communications required by this Agreement must be written and sent, and shall be deemed given, as provided in the Credit Agreement and, if applicable, this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the undersigned have duly executed this Agreement as of the date first indicated above.

KENNEDY LEWIS INVESTMENT MANAGEMENT LLC

By: /s/ Anthony Pasqua
Name: Anthony Pasqua
Title: Authorized Signatory

[Signature Page to Board Rights Agreement]

EASTMAN KODAK COMPANY

By: /s/ David E. Bullwinkle
Name: David E. Bullwinkle
Title: Chief Financial Officer and Senior Vice President

[Signature Page to Board Rights Agreement]

Exhibit 10.8

EXECUTION VERSION

SECURITIES PURCHASE AGREEMENT

This SECURITIES PURCHASE AGREEMENT (this "***Agreement***"), dated as of February 26, 2021, is entered into by and between Eastman Kodak Company, a New Jersey corporation (the "***Company***"), Kennedy Lewis Capital Partners Master Fund LP, a Delaware limited partnership ("***Fund I***"), and Kennedy Lewis Capital Partners Master Fund II LP ("***Fund II***, and together with Fund I, each a "***Buyer***" and collectively, the "***Buyers***").

WHEREAS, simultaneously with the execution and delivery of this Agreement, the Company is entering into that certain Credit Agreement, by and among the Company, the lenders party thereto and Alter Domus (US) LLC, as Administrative Agent (as defined therein) (the "***Credit Agreement***");

WHEREAS, the Company and the Buyers are executing and delivering this Agreement in reliance upon an exemption from securities registration afforded by the Securities Act of 1933, and the rules and regulations promulgated by the United States Securities and Exchange Commission thereunder (the "***Securities Act***");

WHEREAS, the Company wishes to issue and sell to the Buyers, and the Buyers wish to purchase from the Company, an aggregate of 1,000,000 shares of common stock, par value $0.01 per share, of the Company (the "***Common Stock***") on the terms and conditions stated in this Agreement;

WHEREAS, the Company has authorized the issuance of one or more convertible promissory notes, in the aggregate original principal amount of $25.0 million, substantially in the form attached hereto as Exhibit A (the "***Notes***"), which Notes shall be convertible into shares of Common Stock, upon the terms and subject to the limitations and conditions set forth in such Notes; and

WHEREAS, the Company and the Buyers will execute and deliver, among other things, a Registration Rights Agreement, substantially in the form attached hereto as Exhibit B (the "***Registration Rights Agreement***"), in connection with the purchase and sale of the Purchased Shares (as defined below) and the Purchased Notes (as defined below).

WHEREAS, this Agreement, the Notes, the Registration Rights Agreement and all other certificates, documents, agreements, resolutions and instruments delivered to any party under or in connection with this Agreement, as the same may be amended from time to time, are collectively referred to herein as the "***Transaction Documents***."

NOW, THEREFORE, the Company and the Buyers hereby agree as follows:

1. PURCHASE AND SALE OF PURCHASED SHARES.

(a) Purchase and Sale of the Common Stock. On the terms and subject to the conditions herein, at the Closing (as defined below), the Company shall issue and sell to the Buyers, and the Buyers agree to purchase from the Company, 1,000,000 shares of Common Stock, free and clear of any liens and other encumbrances (other than restrictions arising under applicable securities laws), which shall be allocated among the Buyers as set forth on Schedule I. The shares of Common Stock to be issued and sold by the Company to the Buyers pursuant to this Agreement are referred to as the "***Purchased Shares***."

(b) Purchase Price. Each Buyer shall pay $10.00 in cash for each Purchased Share to be purchased by each Buyer at the Closing (the "***Shares Purchase Price***"), for an aggregate Purchase Price of $10,000,000 (the "***Shares Aggregate Purchase Price***"), with each Buyer being obligated to pay the portion of the Shares Aggregate Purchase Price set forth opposite its name on Schedule I.

2. PURCHASE AND SALE OF THE PURCHASED NOTES.

(a) Purchase and Sale of the Notes. On the terms and subject to the conditions herein, at the Closing, the Company shall issue and sell to the Buyers, and the Buyers agree to purchase from the Company, the Notes, free and clear of any liens and other encumbrances (other than restrictions arising under applicable securities laws) which shall be allocated among the Buyers as set forth on Schedule I. The Notes to be issued and sold by the Company to the Buyers pursuant to this Agreement are referred to as the "***Purchased Notes***."

(b) Purchase Price. Each Buyer shall pay $25,000,000 in cash for the Purchased Notes to be purchased by each Buyer at the Closing (the "***Notes Purchase Price***"), for an aggregate Purchase Price of $25,000,000 (the "***Notes Aggregate Purchase Price***"), with each Buyer being obligated to pay the portion of the Notes Aggregate Purchase Price set forth opposite its name on Schedule I.

3. CLOSING.

(a) Closing Date. The closing (the "***Closing***") of the purchase and sale of the Purchased Shares and the Purchased Notes shall occur simultaneously with the execution and delivery of this Agreement, remotely by electronic exchange of Closing documentation. The date on which the Closing occurs is referred to as the "Closing Date."

(b) Closing. At the Closing, (i) each Buyer shall (A) pay its respective portion of the Shares Aggregate Purchase Price to the Company for the Purchased Shares, by wire transfer of immediately available funds in accordance with the Company's written wire instructions or as otherwise agreed to by the parties, (B) pay its respective portion of the Notes Aggregate Purchase Price to the Company for the Purchased Notes, by wire transfer of immediately available funds in accordance with the Company's written wire instructions or as otherwise agreed to by the parties, and (C) deliver to the Company a duly executed copy of the Registration Rights Agreement and (ii) the Company shall (A) issue to each Buyer in book-entry form the Purchased Shares in the amounts set forth on Schedule I, (B) issue to each Buyer an electronic copy of the physical Purchased Notes in the amounts set forth on Schedule I, and (C) deliver to each Buyer a duly executed copy of the Registration Rights Agreement. Within three (3) Business Days (as defined below) of the Closing, the Company shall issue to each Buyer in physical form the Purchased Notes. For the purposes of this Section 3(b), "Business Days" shall mean any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

4. BUYERS' REPRESENTATIONS AND WARRANTIES. Each Buyer represents and warrants, severally and not jointly, to the Company that as of the date hereof:

(a) Organization and Qualification. Such Buyer is duly organized and validly existing and in good standing under the laws of the Cayman Islands and has the requisite power and authorization to carry on its business as now being conducted in all material respects.

(b) Authorization; Validity; Enforcement. Such Buyer has the requisite power and authority to enter into and perform its obligations under this Agreement and the Registration Rights Agreement. The execution and delivery of this Agreement and the Registration Rights Agreement by each Buyer and the consummation by such Buyer of the transactions contemplated hereby and thereby have been duly authorized by such Buyer. This Agreement has been, and, when executed, the Registration Rights Agreement will be, duly and validly executed and delivered on behalf of each Buyer and constitutes the legal, valid and binding obligations of each Buyer enforceable against each Buyer in accordance with its terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, liquidation and other similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies, regardless of whether considered in a proceeding in equity or at law.

(c) No Conflicts. The execution, delivery and performance by each Buyer of this Agreement and the Registration Rights Agreement and the consummation by each Buyer of the transactions contemplated hereby and thereby will not (i) result in a violation of the organizational documents of each Buyer, (ii) conflict with, or constitute a default (or an event which with notice or lapse of time or both would become a default) in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which each Buyer is a party, or (iii) result in a violation of any law, rule, regulation, order, judgment or decree (including foreign, federal and state securities laws and regulations and applicable laws of any foreign, federal, and other state laws) applicable to each Buyer or by which any property or asset of each Buyer is bound or affected, other than, in the case of clause (ii) or clause (iii), as would not, individually or in the aggregate, reasonably be expected to prevent, materially delay, or materially impair the Buyers' ability to consummate any of the transactions contemplated hereby.

(d) Consents. Each Buyer is not required to obtain any consent, authorization or order of, or make any filing or registration with any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by this Agreement or the Registration Rights Agreement.

(e) Purchase for Investment. Each Buyer acknowledges that as of the Closing Date the Purchased Shares, the Purchased Notes and the Conversion Shares (as defined below) will not have been registered under the Securities Act or under any state or other applicable securities laws. Each Buyer acknowledges that it (i) is acquiring the Purchased Shares, the Purchased Notes and the Conversion Shares pursuant to an exemption from registration under the Securities Act solely for investment and for each Buyer's own account, not as nominee or agent, and with no present intention or view to distribute any of the Purchased Shares, the Purchased

Notes and the Conversion Shares to any Person in violation of the Securities Act, (ii) will not sell or otherwise dispose of any of the Purchased Shares, the Purchased Notes and the Conversion Shares, except in compliance with the registration requirements or exemption provisions of the Securities Act and any other applicable securities laws, (iii) is knowledgeable, sophisticated and experienced in financial and business matters, has previously invested in securities similar to the Purchased Shares, the Purchased Notes and the Conversion Shares, understands the limitations on transfer and the restrictions on sales of such Purchased Shares, the Purchased Notes and the Conversion Shares and is able to bear the economic risk of its investment and afford the complete loss of such investment, (iv) (A) 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 its investment in the Purchased Shares, the Purchased Notes and the Conversion Shares and of making an informed investment decision, (B) has conducted an independent review and analysis of the business and affairs of the Company and its subsidiaries that it considers sufficient and reasonable for purposes of making its investment in the Purchased Shares, the Purchased Notes and the Conversion Shares, (C) based thereon and on its own knowledge, has formed an independent judgment concerning the advisability of the transactions contemplated by this Agreement, and (v) is an "accredited investor" (as such term is defined in Rule 501(a) of Regulation D promulgated under the Securities Act).

(f) Access to Information. Each Buyer has relied solely on its own independent investigation in evaluating the Company and the value of the Purchased Shares and the Purchased Notes in determining to proceed with the transactions under this Agreement (the "***Transactions***") and has not relied on any assertions made by the Company or its Affiliates or any person acting on their behalf other than the representations and warranties of the Company expressly set forth herein. Each Buyer has undertaken such independent investigation of the Company as each Buyer in its judgment believes is appropriate to make an informed decision in connection with the Transactions. Each Buyer understands the disadvantage to which it is subject on account of the disparity of information as between the Company and the Buyers with respect to the business and financial performance of the Company. Each Buyer has access to all information that it believes to be necessary, sufficient or appropriate in connection with the Transactions. Each Buyer has undertaken such independent investigation of the Company as in its judgment is appropriate to make an informed decision with respect to the Transactions, and has made its own decision to consummate the Transactions based on its own independent review and consultations with such investment, legal, tax, accounting and other advisers as it has deemed necessary and without reliance on any express or implied representation or warranty of the Company (except as expressly set forth herein). Each Buyer understands that the Company has and may come into possession of material non-public information with respect to the Company not known to each Buyer, including, without limitation, information with respect to the Company's financial performance for the year ended December 31, 2020. Each Buyer acknowledges that any such material non-public information not known to it may impact the value of the Company and the Purchased Shares and the Purchased Notes or may otherwise be material to such the Buyers' decision to enter into this Agreement and to consummate the Transactions. Each Buyer acknowledges that it is entering into this Agreement knowingly and voluntarily, without access to or the benefit of such information. Each Buyer hereby waives any right to rescind or invalidate the issuance of the Purchased Shares and the Purchased Notes to the Buyers or to seek any damages or remuneration from the Company based on the Company's possession of any information regarding the Company or the lack of possession of any information regarding the Company by the Buyers. The foregoing does not limit or modify the representations and warranties of the Company in Section 5 hereof or the right of the Buyers to rely thereon.

(g) Private Placement Consideration. Each Buyer understands and acknowledges that: (i) its representations and warranties contained herein are being relied upon by the Company as a basis for availing itself of such exemption and other exemptions under the securities laws of all applicable states and for other purposes, (ii) no U.S. state or federal agency has made any finding or determination as to the fairness of the terms of the sale of the Purchased Shares and the Purchased Notes or any recommendation or endorsement thereof, and (iii) the Purchased Shares and the Purchased Notes are "restricted securities" under the Securities Act inasmuch as they are being acquired from the Company in a transaction not involving a public offering and that under applicable securities laws such Purchased Shares and the Purchased Notes may be resold without registration under the Securities Act only in certain limited circumstances.

(h) Ownership of Company Securities. Prior to the Closing, each Buyer does not have record or beneficial ownership (within the meaning of Rule 13d-3 under the Securities Exchange Act of 1934, as amended (the "***Exchange Act***")) of any shares of Common Stock.

(i) Brokers; Finders. No broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisors or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of each Buyer.

(j) No Other Company Representations or Warranties. Each Buyer acknowledges and agrees, on behalf of itself and its Affiliates, that, except for the representations and warranties contained in Section 5, neither the Company nor any other Person, makes any express or implied representation or warranty with respect to the Company, its subsidiaries or their respective businesses, operations, assets, liabilities, employees, employee benefit plans, conditions or prospects in connection with this Agreement (but specifically excluding the Credit Agreement), and each Buyer, on behalf of itself and its Affiliates, hereby disclaims reliance upon any such other representations or warranties. In particular, without limiting the foregoing disclaimer, each Buyer acknowledges and agrees, on behalf of itself and its Affiliates, that neither the Company nor any other Person, makes or has made any representation or warranty hereunder with respect to, and each Buyer, on behalf of itself and its Affiliates, hereby disclaims reliance upon (i) any financial projection, forecast, estimate, budget or prospect information relating to the Company, its subsidiaries or their respective business, or (ii) without limiting the representations and warranties made by the Company in Section 5 (or under the Credit Agreement), any information presented to each Buyer or any of its Affiliates or representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or in the course of the transactions contemplated hereby. To the fullest extent permitted by applicable law, without limiting the representations and warranties contained in Section 5 (and the representations and warranties of the Company under the Credit Agreement), neither the Company nor any of its subsidiaries shall have any liability to each Buyer or its Affiliates or representatives on any basis (including in contract or tort, under federal or state securities laws or otherwise) based upon any other representation or warranty, either express or implied, included in any information or statements (or any omissions therefrom) provided or made available by the Company or its subsidiaries to each Buyer or its Affiliates or representatives in the course of their due diligence investigation of the Company, the negotiation of this Agreement or in the course of the transactions contemplated by this Agreement.

5. REPRESENTATIONS AND WARRANTIES OF THE COMPANY. The Company represents and warrants to each Buyer as of the date hereof:

(a) Organization and Qualification. The Company is duly organized and validly existing and in good standing under the laws of the State of New Jersey and has the requisite power and authority to carry on its business as now being conducted in all material respects.

(b) Capitalization. Immediately prior to the Capitalization Date (as defined below), the authorized capital of the Company consists of 500,000,000 shares of Common Stock and 60,000,000 shares of preferred stock, no par value per share ("***Preferred Stock***"). As of the close of business on February 22, 2021 (the "***Capitalization Date***"), there were 77,364,845 shares of Common Stock issued and outstanding, 2,000,000 shares of Preferred Stock designated as 5.5% Series A Convertible Preferred Stock issued and outstanding, and 711,791 shares of Common Stock held by the Company as treasury shares. From the Capitalization Date through and as of the date of this Agreement, no other shares of Common Stock or Preferred Stock have been issued other than (i) Common Stock issued in respect of the exercise of the Company's stock options or grant or payment of Company stock awards in the ordinary course of business, (ii) the Common Stock issued pursuant to this Agreement, (iii) 1,000,000 shares of Preferred Stock designated as 4.0% Series B Convertible Preferred Stock, and (iv) 750,000 shares (which shall be increased to 1,000,000 shares after the satisfaction of certain conditions and further increased by the number of such shares issued from time to time as dividends payable in kind pursuant to the terms of such shares) of Preferred Stock designated as 5.0% Series C Convertible Preferred Stock.

(c) Authorization; Enforcement; Validity. The Company has the requisite corporate power and authority to enter into and perform its obligations under the Transaction Documents and to consummate the transactions contemplated hereby and thereby and to issue the Purchased Shares, the Purchased Notes and the Conversion Shares in accordance with the terms of this Agreement and the Purchased Notes. The execution and delivery of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby, including the issuance of the Purchased Shares, the Purchased Notes and the Conversion Shares (when issued pursuant to the terms of the Purchased Notes) have been duly authorized by the Company's Board of Directors (the "***Board***") and no further consent or authorization is required by the Board, the Company or its shareholders. This Agreement has been, and, when executed, the Registration Rights Agreement, the Purchased Notes and the other Transaction Documents will be, duly executed and delivered by the Company, and constitute the legal, valid and binding obligations of the Company, enforceable against the Company in accordance with their respective terms, except as such enforceability may be limited by general principles of equity or applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to, or affecting generally, the enforcement of applicable creditors' rights and remedies, regardless of whether considered in a proceeding in equity or at law.

(d) Issuance of Purchased Shares. The issuance of the Purchased Shares is duly authorized and, upon issuance in accordance with the terms of this Agreement, shall be (i) validly issued, (ii) free from all preemptive or similar rights, liens and other encumbrances with respect to the issue thereof (other than restrictions arising under applicable securities laws) and (iii) fully paid and nonassessable, with the holder being entitled to all rights accorded to a holder of Common Stock. Assuming in part the accuracy of each of the representations and warranties of the Buyers set forth in Section 4 of this Agreement, the offer and issuance by the Company of the Purchased Shares is exempt from registration under the Securities Act.

(e) Issuance of Purchased Notes. The issuance of the Purchased Notes is duly authorized and, upon issuance in accordance with the terms of this Agreement, shall be (i) validly issued, (ii) free from all preemptive or similar rights, liens and other encumbrances with respect to the issue thereof (other than restrictions arising under applicable securities laws) and (iii) valid and binding obligations of the Company, with the holder being entitled to all rights accorded to a holder of the Purchased Notes. Assuming in part the accuracy of each of the representations and warranties of the Buyers set forth in Section 4 of this Agreement, the offer and issuance by the Company of the Purchased Notes is exempt from registration under the Securities Act.

(f) No Conflicts. The execution, delivery and performance of the Transaction Documents by the Company and the consummation by the Company of the transactions contemplated hereby and thereby (including the issuance of the Purchased Shares, the Purchased Notes and the Conversion Shares (when issued pursuant to the terms of the Purchased Notes)) will not (i) result in a violation of the Company's Certificate of Incorporation or the Company's Bylaws, or (ii) conflict with, or constitute a default in any respect under, or give to others any rights of termination, amendment, acceleration or cancellation of, any agreement, indenture or instrument to which the Company or any of its subsidiaries is a party, or (iii) assuming the accuracy of the representations and warranties of the Buyers under this Agreement, result in a violation of any law, rule, regulation, order, judgment or decree applicable to the Company or any of its subsidiaries or by which any property or asset of the Company or any of its subsidiaries is bound or affected, other than, in the case of clause (ii) or clause (iii), as would not, individually or in the aggregate, reasonably be expected to prevent, materially delay or materially impair the Company's ability to consummate any of the transactions contemplated hereby.

(g) Consents. The Company is not required to obtain any consent, authorization or order of, or make any filing or registration with (other than the filing with the Securities and Exchange Commission of a Form D and one or more registration statements in accordance with the requirements of the Registration Rights Agreement, other filings as may be required by state securities agencies and the listing of the Purchased Shares and the Conversion Shares on the New York Stock Exchange), any court, governmental agency or any regulatory or self-regulatory agency or any other Person in order for it to execute, deliver or perform any of its obligations under or contemplated by the Transaction Documents, except (i) such as have been obtained or made and are in full force and effect and (ii) immaterial consents, approvals, registrations or filings.

(h) No General Solicitation. Neither the Company, nor any of its subsidiaries, nor, to the knowledge of the Company, any Person acting on its or their behalf, has engaged in any form of general solicitation or general advertising (within the meaning of Regulation D) in connection with the offer or sale of the Purchased Shares, the Purchased Notes or the Conversion Shares.

(i) No Integrated Offering. None of the Company nor its subsidiaries, nor, to the knowledge of the Company, any Person acting on its or their behalf has, directly or indirectly, made any offers or sales of any security or solicited any offers to buy any security, under circumstances that would require registration of the issuance of any of the Purchased Shares under the Securities Act, whether through integration with prior offerings or otherwise, or cause this offering of the Purchased Shares, the Purchased Notes or the Conversion Shares to require the approval of the shareholders of the Company for purposes of any applicable shareholder approval provisions, including under the rules and regulations of the New York Stock Exchange.

(j) Conversion Shares. The Company understands and acknowledges that its obligations to issue all shares of Common Stock issuable upon conversion of all or any portion of the Notes (the ***"Conversion Shares***") pursuant to the terms of the Notes in accordance with this Agreement and the Notes is absolute and unconditional regardless of the dilutive effect that such issuance may have on the ownership interests of other shareholders of Company; when issued upon conversion of a Note in accordance with the terms of such Note, the Conversion Shares will be duly authorized, validly issued, fully paid for and non-assessable, free of all preemptive or similar rights and free and clear of any security interest, mortgage, pledge, lien, claim, charge or other encumbrance of any kind (other than as may be granted by each Buyer).

(k) No Other Buyer Representations or Warranties. The Company acknowledges and agrees, on behalf of itself and its Affiliates, that, except for the representations and warranties contained in Section 4, neither the Buyers nor any other Person, makes any express or implied representation or warranty with respect to each Buyer, and the Company, on behalf of itself and its Affiliates, hereby disclaims reliance upon any such other representations or warranties. To the fullest extent permitted by applicable law, without limiting the representations and warranties contained in Section 4, neither the Buyers nor any of its Affiliates shall have any liability to the Company or its Affiliates or representatives on any basis (including in contract or tort, under federal or state securities laws or otherwise) based upon any other representation or warranty, either express or implied, included in any information or statements (or any omissions therefrom) provided or made available by each Buyer or its Affiliates to the Company or its Affiliates or representatives in the course the negotiation of this Agreement or the Registration Rights Agreement or in the course of the transactions contemplated by this Agreement or the Registration Rights Agreement.

6. COVENANTS.

(a) Legends.

(i) The book-entry accounts maintained by the Company's transfer agent representing the Purchased Shares, except as set forth below, shall bear a restrictive legend in substantially the following form:

> NEITHER THE ISSUANCE NOR SALE OF THESE SECURITIES HAS BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR APPLICABLE STATE SECURITIES LAWS. THE SECURITIES MAY NOT BE OFFERED FOR SALE, SOLD, TRANSFERRED OR ASSIGNED IN THE ABSENCE OF (A) AN EFFECTIVE REGISTRATION STATEMENT FOR THE SECURITIES UNDER THE SECURITIES ACT OF 1933, AS AMENDED, OR (B) PURSUANT TO AN EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT OF 1933.

(ii) At the request of a holder of the Purchased Shares or Conversion Shares, upon receipt of customary representations and opinions (to the extent reasonably required by the Company or the Company's transfer agent), the legend set forth in Section 6(a)(i) above shall be removed from the applicable Purchased Shares or Conversion Shares on the book-entry accounts maintained by the Company's transfer agent representing the Purchased Shares or Conversion Shares if such legend is not required in order to establish compliance with any provisions of the Securities Act.

(b) NYSE Listing. Promptly following the execution of this Agreement, the Company shall apply to cause the Purchased Shares and the Conversion Shares to be approved for listing on the New York Stock Exchange. The Company shall use its commercially reasonable efforts to cause the Purchased Shares to be approved for listing on the New York Stock Exchange as promptly as practicable after the date of this Agreement.

(c) Transfer Taxes. The Company shall pay any and all documentary, stamp and similar issue or transfer tax incurred in connection with the issuance of the Purchased Shares pursuant to this Agreement.

(d) Reservation of Shares. From and after the date of this Agreement, the Company will reserve shares of Common Stock from its authorized and unissued shares of Common Stock in such amount as may then be required to provide for all issuances of shares of Common Stock under the Purchased Notes (the "***Share Reserve***"). The Company shall require its transfer agent to hold the shares of Common Stock reserved pursuant to the Share Reserve exclusively for the benefit of the holder(s) of the Purchased Notes and to issue the corresponding shares of Common Stock to each such holder promptly upon such holder's delivery of a conversion notice under a Purchased Note in accordance with the terms thereof.

7. MISCELLANEOUS.

(a) Specific Performance. The parties hereto agree that irreparable damage could occur and that a party may not have any adequate remedy at law in the event that any of the provisions of this Agreement are not performed in accordance with their terms or were otherwise breached. Accordingly, each party shall without the necessity of proving the inadequacy of money damages or posting a bond be entitled to seek an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms, provisions and covenants contained therein, this being in addition to any other remedy to which they are entitled at law or in equity.

(b) Governing Law; Jurisdiction; Jury Trial. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CHOICE OF LAW PROVISIONS WHICH WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. BY ITS EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH

PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES FOR ITSELF THAT ANY LEGAL ACTION, SUIT, OR PROCEEDING AGAINST IT WITH RESPECT TO ANY MATTER ARISING UNDER OR ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT RENDERED IN ANY SUCH ACTION, SUIT, OR PROCEEDING, MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH OF THE PARTIES IRREVOCABLY ACCEPTS AND SUBMITS ITSELF TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, GENERALLY AND UNCONDITIONALLY, WITH RESPECT TO ANY SUCH ACTION, SUIT OR PROCEEDING. THE PARTIES HEREBY AGREE THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING TO AN ADDRESS PROVIDED IN WRITING BY THE RECIPIENT OF SUCH MAILING, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE THEREOF AND HEREBY WAIVE ANY OBJECTIONS TO SERVICE ACCOMPLISHED IN THE MANNER HEREIN PROVIDED. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE, AND AGREES NOT TO REQUEST, A JURY TRIAL FOR THE ADJUDICATION OF ANY DISPUTE HEREUNDER OR IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY TRANSACTION CONTEMPLATED HEREBY.

(c) Counterparts. This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile, .pdf or electronic (e.g., DocuSign) signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile, .pdf or electronic signature.

(d) Headings. The headings of this Agreement are for convenience of reference and shall not form part of, or affect the interpretation of, this Agreement.

(e) Severability. If any provision of this Agreement is prohibited by law or otherwise determined to be invalid or unenforceable by a court of competent jurisdiction, the provision that would otherwise be prohibited, invalid or unenforceable shall be deemed amended to apply to the broadest extent that it would be valid and enforceable, and the invalidity or unenforceability of such provision shall not affect the validity of the remaining provisions of this Agreement. The parties will endeavor in good faith negotiations to replace the prohibited, invalid or unenforceable provision(s) with a valid provision(s), the effect of which comes as close as possible to that of the prohibited, invalid or unenforceable provision(s).

(f) Entire Agreement; Amendment and Waiver. This Agreement, the Registration Rights Agreement, the Purchased Notes and the Credit Agreement contain the entire agreement by and among the parties with respect to the subject matter hereof and all prior negotiations, writings and understandings relating to the subject matter of this Agreement. This Agreement may not be modified or amended except by an instrument or instruments in writing

signed by each party hereto. Any party hereto may, only by an instrument in writing, waive compliance by any other party hereto with any term or provision hereof on the part of such other party hereto to be performed or complied with. No failure or delay of any party in exercising any right or remedy hereunder shall operate as a waiver thereof, nor will any single or partial exercise of any right or power, or any abandonment or discontinuance of steps to enforce such right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The waiver by any party hereto of a breach of any term or provision hereof shall not be construed as a waiver of any subsequent breach. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by law.

(g) Notices. Any notices, consents, waivers or other communications required or permitted to be given under the terms of this Agreement must be in writing and will be deemed to have been delivered: (i) upon receipt, when delivered personally; (ii) upon delivery, when sent by electronic mail; or (iii) one business day after deposit with an overnight courier service, in each case properly addressed to the party to receive the same. The addresses and e-mail addresses for such communications shall be:

If to the Company:

Eastman Kodak Company
343 State Street
Rochester, New York 14650
Attention: General Counsel
Email: roger.byrd@kodak.com

with a copy (for informational purposes only) to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Neal McKnight
Email: McKnightN@sullcrom.com

If to the Buyers:

Kennedy Lewis Capital Partners Master Fund LP
Kennedy Lewis Capital Partners Master Fund II LP
111 West 33rd Street, 19th Floor
New York, New York 10001
Attention: Anthony Pasqua
Email: anthony.pasqua@klimllc.com>

with a copy (for informational purposes only) to:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Attention: Daniel Fisher
Email: dfisher@akingump.com

or to such other address and/or e-mail address and/or to the attention of such other Person as the recipient party has specified by written notice given to each other party five (5) days prior to the effectiveness of such change.

(h) Successors and Assigns. The terms and conditions of this Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, heirs, and permitted assigns. Neither party shall assign this Agreement or any rights or obligations hereunder without the prior written consent of other party; provided that each Buyer may assign its rights hereunder to its Affiliate(s).

(i) No Third Party Beneficiaries. This Agreement is intended solely for the benefit of the parties hereto and their respective successors, heirs and permitted assigns, and is not for the benefit of, nor may any provision hereof be enforced by, any other Person.

(j) Survival. Except in the case of intentional and actual fraud, the representations and warranties of the parties contained in Section 4 and Section 5 hereof shall not survive, and shall terminate automatically as of, the Closing, and there shall be no liability in respect thereof, whether such liability has accrued prior to or after the Closing, on the part of any party or any of their respective representatives. The covenants and agreements of the parties set forth in Section 6 and this Section 7 shall survive the Closing in accordance with their terms.

(k) Further Assurances. Each party shall do and perform, or cause to be done and performed, all such further acts and things, and shall execute and deliver all such other agreements, certificates, instruments and documents, as any other party may reasonably request in order to carry out the intent and accomplish the purposes of this Agreement and the consummation of the transactions contemplated hereby.

(l) Interpretation.

(i) When a reference is made in this Agreement to an Article, Section, Schedule or Exhibit, such reference shall be to an Article, Section, Schedule or Exhibit of this Agreement unless otherwise indicated.

(ii) Whenever the words "include," "includes" or "including" are used in this Agreement, they shall be deemed to be followed by the words "without limitation."

(iii) The words "hereof," "herein," and "herewith" and words of similar import shall, unless otherwise stated, be construed to refer to this Agreement as a whole (including all of the Schedules and Exhibits) and not to any particular provision of this Agreement.

(iv) The definitions contained in this Agreement are applicable to the singular as well as the plural forms of such terms and to the masculine as well as to the feminine and neuter genders of such term.

(v) Any agreement, instrument or statute defined or referred to in this Agreement means such agreement, instrument or statute as from time to time amended, modified or supplemented, including (in the case of agreements or instruments) by waiver or consent and (in the case of statutes) by succession of comparable successor statutes.

(vi) Each of the parties has participated in the drafting and negotiation of this Agreement. If an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if it is drafted by each of the parties, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement.

(vii) As used in this Agreement, "***Person***" means an individual, a limited liability company, a partnership, a joint venture, a corporation, a trust, an unincorporated organization, any other entity and any governmental entity or any department or agency thereof.

(viii) As used in this Agreement, "***Affiliate***" of any Person means any other Person directly or indirectly controlling or controlled by or under direct or indirect common control with such Person as of the date which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, "control," when used with respect to any Person, has the meaning specified in Rule 12b-2 under the Exchange Act; and the terms "controlling" and "controlled" have meanings correlative to the foregoing.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the Company and the Buyers have caused their respective signature page to this Stock Purchase Agreement to be duly executed as of the date first written above.

COMPANY

EASTMAN KODAK COMPANY

By: /s/ David E. Bullwinkle
Name: David E. Bullwinkle
Title: Chief Financial Officer and Senior Vice President

BUYER

KENNEDY LEWIS CAPITAL PARTNERS MASTER FUND LP

By: /s/ Anthony Pasqua
Name: Anthony Pasqua
Title: Authorized Signatory

[Signature Page to Securities Purchase Agreement]

BUYER

KENNEDY LEWIS CAPITAL PARTNERS MASTER FUND II LP

By: /s/ Anthony Pasqua
Name: Anthony Pasqua
Title: Authorized Signatory

Exhibit 10.9

EXECUTION VERSION

NEITHER THESE SECURITIES NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION. THESE SECURITIES AND THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE ARE BEING ISSUED IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THIS NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1272 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). UPON WRITTEN REQUEST, THE ISSUER WILL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THIS NOTE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND DATE OF THE NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE NOTE AND (3) THE YIELD TO MATURITY OF THE NOTE. HOLDERS SHOULD CONTACT THE CHIEF FINANCIAL OFFICER OF THE COMPANY AT 343 STATE STREET, ROCHESTER NEW YORK 14650.

CONVERTIBLE PROMISSORY NOTE

Effective Date: February 26, 2021 U.S. $4,930,000

FOR VALUE RECEIVED, EASTMAN KODAK COMPANY, a New Jersey corporation ("**Company**"), promises to pay to Kennedy Lewis Capital Partners Master Fund LP, or its successors or assigns ("**Holder**"), $4,930,000 and any interest (including any default interest), fees and charges, accrued hereunder on the Maturity Date in accordance with the terms set forth herein.

This Convertible Promissory Note (this "**Note**") is issued and made effective as of February 26, 2021 (the "**Effective Date**"). This Note has been issued pursuant to that certain Securities Purchase Agreement dated February 26, 2021 (the "**Purchase Agreement**"), as the same may be amended from time to time, by and between the Company and the Holder.

Certain capitalized terms used herein are defined in Attachment 1 hereto and incorporated herein by reference.

The purchase price for this Note shall be $4,930,000 (the "**Purchase Price**"). The Purchase Price shall be payable by the Holder by wire transfer of immediately available funds on the Effective Date in accordance with the Purchase Agreement.

This Note is subject to the following additional provisions:

1. Payment; Prepayment.

1.1 Payment of Interest.

(a) The Company shall pay interest on the Outstanding Balance at the rate of five percent (5%) per annum (the "**Interest Rate**") from the Effective Date until the Outstanding Balance is paid in full. Interest shall be payable in cash on each Conversion Date (as to that portion of the Outstanding Balance being converted), on any Prepayment Date (as to that portion of the Outstanding Balance being prepaid) and on the Maturity Date; provided that (i) any interest payable by the Company on a Conversion Date (as to that portion of the Outstanding Balance being converted) shall, in accordance with Section 5 or Section 6, as applicable, be paid in the form of Conversion Shares (as defined below) at the then-applicable Conversion Rate and (ii) pending any such payment, interest shall accrue and not be payable and no interest shall be payable on accrued interest. All interest calculations hereunder shall be computed on the basis of a 365-day year and shall be payable in accordance with the terms of this Note. Interest will be paid to the person in whose name this Note is registered on the records of the Company regarding registration and transfers of this Note (the "**Note Register**").

(b) Upon the occurrence and during the continuance of any Event of Default, at the election of the Holder by written notice to the Company, this Note shall bear interest at the Default Rate.

1.2 Payments Generally. All payments owing hereunder shall be in lawful money of the United States of America or to the extent provided for herein upon a Conversion, in Conversion Shares, and delivered to the Holder at the address or bank account furnished to the Company for that purpose. All payments in cash shall be applied first to (i) costs of collection, if any, then to (ii) fees and charges and any other portion of the Outstanding Balance (other than interest or principal), if any, then to (iii) accrued and unpaid interest, and thereafter, to (iv) principal.

1.3 Prepayment.

(a) Notwithstanding the foregoing, in the event of a Fundamental Change, for a period of thirty (30) days immediately following the consummation of the Fundamental Change (the "**Holder Fundamental Change Election Period**"), the Holder shall have the right, at the Holder's option, to require prepayment by the Company of all or any portion of the Outstanding Balance in cash at 100% of the Outstanding Balance being prepaid by delivering written notice to the Company in accordance with Section 21 of this Agreement requesting prepayment in accordance with this Section 1.3 and specifying the amount of the Outstanding Balance to be prepaid. The Company shall make such prepayment promptly but in no event more than

five (5) Business Days after receipt of such notice (such prepayment date, a "**Prepayment Date**"). In the event that the Holder has elected prepayment of less than the entire Outstanding Balance of this Note, the Company shall execute and deliver to the Holder, without charge, a new Note or Notes in authorized denominations having an aggregate Outstanding Balance equal to the portion of the Outstanding Balance of this Note not being prepaid.

(b) For a period of thirty (30) days immediately following the expiration of the Holder Fundamental Change Election Period (the "**Company Fundamental Change Prepayment Election Period**"), the Company shall have the right, but not the obligation, to prepay all of the Outstanding Balance then outstanding in cash at 100% of the Outstanding Balance.

2. [Reserved].

3. Registration of Transfers and Exchanges.

3.1 Different Denominations. This Note is exchangeable for an equal aggregate principal amount of Notes of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange. The authorized denominations of the Notes shall be $1,000 and integral multiples in excess thereof.

3.2 Investment Representations. This Note has been issued subject to certain investment representations of the original Holder set forth in the Purchase Agreement and may be transferred or exchanged only in compliance with the terms of this Note and applicable federal and state securities laws and regulations.

3.3 Reliance on Note Register. Prior to due presentment for transfer to the Company of this Note, the Company and any agent of the Company may treat the person in whose name this Note is duly registered on the Note Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note is overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

4. Company Covenants. Following the Effective Date, and until all of the Company's obligations under all of the Transaction Documents in respect of this Note are paid and performed in full or until the Outstanding Balance of the Note has been converted into Common Stock (other than contingent obligations for which no claim has been made), or within the time frames otherwise specifically set forth below, the Company will at all times comply with the following covenants:

4.1 Dividends and Distributions. Except as permitted under the Term Loan Credit Agreement, the Company shall not, directly or indirectly, (i) declare or pay any dividend or distribution (whether in cash, securities or other property) on, or (ii) redeem, repurchase or otherwise acquire, or pay or make any monies available for a sinking fund for, any Common

Stock without the prior written consent of the Required Holders; provided that the foregoing limitations shall not apply to (x) redemptions, purchases or other acquisitions of shares of Common Stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, managers or consultants of, or to, the Company or any of its subsidiaries; (y) an exchange, redemption, reclassification or conversion of any class or series of Common Stock for any class or series of Common Stock that ranks equal or junior to the applicable class or series of Common Stock; or (z) any dividend in the form of stock, warrants, options or other rights where the dividended stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equal or junior to the applicable stock on which the dividend is being paid.

4.2 Additional Debt. Other than Permitted Debt, the Company shall not, and shall not permit any of its Restricted Subsidiaries to, enter into, create, incur or otherwise assume, any debt for borrowed money, without the prior written consent of the Required Holders.

4.3 Additional Liens. Other than Permitted Liens, the Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly enter into, create, incur, assume or suffer to exist any Liens on or with respect to any of any of its property or assets now owned or hereafter acquired, to secure debt for borrowed money of the Company or any other person, without the prior written consent of the Required Holders.

4.4 Reporting.

(a) So long as any Holder beneficially owns any portion of this Note (and the Notes are convertible into Common Stock of the Company and not Alternate Consideration), the Company will timely file on the applicable deadline all reports required to be filed with the U.S. Securities and Exchange Commission pursuant to Sections 13 or 15(d) of the Exchange Act, and will take all reasonable action under its control to ensure that adequate current public information with respect to the Company, as required in accordance with Rule 144 promulgated under the Securities Act (or a successor rule thereto) ("**Rule 144**"), is publicly available, and will not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would permit such termination.

(b) As soon as practicable and in any event within five (5) Business Days after the Company has knowledge of the occurrence of any Event of Default, the Company shall furnish to the Holder a statement of an officer of the Company setting forth details of such Event of Default and the action that the Company has taken and/or proposes to take with respect thereto.

4.5 Dispositions. The Company shall not Dispose of any assets, or permit any of its Restricted Subsidiaries to dispose of any assets, in each case, without the prior written consent of the Required Holders, other than as permitted pursuant to the Term Loan Credit Agreement.

5. Holder Optional Conversions.

5.1 Holder Conversions. Subject to Section 5.2 below, the Holder has the right at any time after the Effective Date until the Outstanding Balance has been paid in full, at its election, to convert (a "**Holder Conversion**") all or any portion of the Outstanding Balance into shares (the shares receivable in each instance of Conversion, including any Additional Shares, being referred to herein as "**Conversion Shares**") of fully paid and non-assessable common stock, $0.01 par value per share ("**Common Stock**"), of the Company as per the following conversion formula: the number of Conversion Shares equals the portion of the Outstanding Balance being converted divided by $1,000 (the "**Conversion Amount**") multiplied by the Conversion Rate. In the event that the Holder has elected to convert less than the entire Outstanding Balance of this Note, the Company shall execute and deliver to the Holder, without charge, a new Note or Notes in authorized denominations having an aggregate Outstanding Balance equal to the unconverted portion of the Outstanding Balance of this Note. Each Holder Conversion shall be for at least $10,000,000 of the Outstanding Balance or, if less than $10,000,000, the remaining Outstanding Balance.

5.2 Fundamental Exchange Transaction Adjustment.

(a) Upon occurrence of a Fundamental Exchange Transaction, at the effective time of the Fundamental Exchange Transaction, the right to convert each $1,000 of the Outstanding Balance of this Note based on a number of shares of Common Stock equal to the Conversion Rate will be changed into the right to convert $1,000 of the Outstanding Balance of this Note based on the kind and amount of shares of capital stock, other securities or other property or assets (including cash) or any combination thereof of the successor or acquiring corporation or of the Company, if it is the surviving corporation, that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Fundamental Exchange Transaction would have owned or been entitled to receive in such Fundamental Exchange Transaction (the "**Alternate Consideration,**" with each "**unit of Alternate Consideration**" meaning the kind and amount of Alternate Consideration that a holder of one share of Common Stock would have owned or been entitled to receive).

(b) If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Exchange Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Note following such Fundamental Exchange Transaction. The Company shall cause any successor entity in a Fundamental Exchange Transaction in which the Company is not the survivor (the "**Successor Entity**") to assume in writing on or prior to the effective date of the Fundamental Exchange Transaction all of the obligations of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5.2(b)

pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Exchange Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Note a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Note which is convertible for a corresponding number of units of Alternate Consideration equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Note prior to such Fundamental Exchange Transaction. Such written agreements described in the previous sentence shall provide for anti-dilution and other adjustments, and covenants for protection of the interests of the Holder, in respect of the Alternate Consideration that shall be as nearly equivalent as is practicable to the adjustments and covenants provided for in Section 8 and this Section 5.2 and Section 6 of the Purchase Agreement in respect of shares of Common Stock and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Exchange Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Exchange Transaction, the provisions of this Note and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(c) The Company shall give notice (a "Fundamental Exchange Transaction Notice") of each Fundamental Exchange Transaction to the Holder in accordance with Section 21 by the later of 20 days prior to the anticipated effective date of such Fundamental Exchange Transaction (as determined in good faith by the Board of Directors of the Company) and the first public disclosure by the Company of the anticipated Fundamental Exchange Transaction, if practicable, and otherwise by the earliest practicable date, but in no event later than the effective date thereof. Each such Fundamental Exchange Transaction Notice shall state (i) the anticipated effective date of such Fundamental Exchange Transaction, (ii) the kind or amount of cash, securities or property or assets that will comprise the consideration into which shares of Common Stock will be exchanged or converted for such Fundamental Exchange Transaction, if applicable. Notwithstanding the Conversion Rate adjustment provisions described in Section 8.1 through 8.6, no adjustment to the Conversion Rate shall be made pursuant to such provisions in the event of any dividend, distribution, share split, share combination or issuance upon a Fundamental Exchange Transaction to which the provisions under this Section 5.2 apply.

5.3 Conversion Notices. Conversion notices in the form attached hereto as Exhibit A (each, a "**Holder Conversion Notice**") may be effectively delivered to the Company by any method set forth in the "Notices" section of the Purchase Agreement, and all Holder Conversions shall be cashless and not require further payment from the Holder. The Company shall deliver the Conversion Shares from any Holder Conversion to the Holder in accordance with Section 10 below.

5.4 Conversion Rate. The Conversion Rate shall be 100 shares of Common Stock per each $1,000 of the Outstanding Balance of Notes, as such number may be adjusted (including by an increase for Additional Shares upon a Made-Whole Fundamental Change in accordance with Section 8.12) as set forth in this Note (such number of shares, as so adjusted, the "**Conversion Rate**"). For illustrative purposes, based upon an Outstanding Balance of $25,000,000 as of the Effective Date, the Notes would be convertible into 2,500,000 Conversion Shares based upon the Conversion Rate as of the Effective Date.

5.5 Effective Time of Conversion. Each conversion (whether a Holder Conversion pursuant to Section 5.1 or 5.2 or a mandatory conversion pursuant to 6.1) shall be deemed to have been effected immediately prior to the close of business on the relevant Conversion Date; provided, however, that, regardless of when Conversion Shares are delivered in accordance with Section 10, the Holder shall be treated as the holder of record of such Conversion Shares as of the close of business on the Conversion Date. On and after the Conversion Date, interest shall cease to accrue on the Notes subject to conversion pursuant to this Section 5 and all rights of the Holder with respect to such Notes shall terminate except for the right to receive the whole shares of Common Stock issuable upon conversion thereof with a cash payment in lieu of any fractional share of Common Stock in accordance with Section 9.

6. Mandatory Conversions.

6.1 Subject to Section 6.5, the Company shall have the right, at its option, to cause all (but not less than all) of the Outstanding Balance to be converted into fully paid and non-assessable shares of Common Stock at the Conversion Rate then in effect, with the number of shares of Common Stock to be issued being equal to the Outstanding Balance divided by $1,000 and multiplied by the Conversion Rate, and with cash being paid in lieu of any fractional share pursuant to Section 9. The Company may exercise its right to cause a mandatory conversion pursuant to this Section 6 only if the Closing Sale Price of the Common Stock equals or exceeds $14.50 (subject to adjustment in the same manner as the Conversion Price) for at least 45 Trading Days (whether or not consecutive) in a period of sixty (60) consecutive Trading Days, including the last Trading Day of such sixty (60) day period, ending on, and including, the Trading Day immediately preceding the Business Day on which the Company issues a press release announcing the mandatory conversion as described in Section 6.2.

6.2 To exercise the mandatory conversion right described in Section 6.1, the Company shall publish a press release on the Company's website or through such other public medium as the Company may use at that time, prior to the open of business on the first Trading Day following any date on which the Company makes a conversion election pursuant to Section 6.1, announcing such a mandatory conversion and including the information specified in Section 6.3. The Company shall also give notice to the Holder pursuant to Section 21 hereof (not later than three Business Days after the date of the press release) of the mandatory conversion announcing the Company's intention to convert all of the Outstanding Balance. The conversion date with respect to such mandatory conversion will be a date selected by the Company (the "**Mandatory Conversion Date**") and will be no later than 30 calendar days after the date on which the Company issues the press release described in this Section 6.2.

6.3 In addition to any information required by applicable law or regulation, the press release and notice of mandatory conversion described in Section 6.2 shall state, as appropriate: (i) the Mandatory Conversion Date; (ii) the number of shares of Common Stock (including any Additional Shares) to be issued upon conversion of each $1,000 of the Outstanding Balance of the Notes; and (iii) that interest on the Notes will cease to accrue on the Mandatory Conversion Date.

6.4 The Company shall deliver the shares from any mandatory conversion to the Holder in accordance with Section 10. On and after the Mandatory Conversion Date, interest shall cease to accrue on the Notes called for a mandatory conversion pursuant to this Section 6 and all rights of the Holder with respect to such Notes shall terminate except for the right to receive the whole shares of Common Stock issuable upon conversion thereof with a cash payment in lieu of any fractional share of Common Stock in accordance with Section 9.

6.5 The Company may not exercise its right to cause a mandatory conversion pursuant to this Section 6 unless a Resale Registration Statement has been filed by the Company pursuant to the Registration Rights Agreement that includes the Conversion Shares and is effective at such Mandatory Conversion Date.

7. Defaults and Remedies.

7.1 Defaults. The following are events of default under this Note (each, an "**Event of Default**"): (a) (i) the Company fails to pay any principal due under this Note when the same becomes due and payable, (ii) the Company fails to pay any interest, fees, charges, or any other amount when due and payable hereunder and such failure is not cured within three (3) Business Days, or (iii) the Company fails to pay fees, charges or any other amount when due and payable hereunder and such failure is not cured within three (3) Business Days after notice of such failure is given by the Holder to the Company; (b) the Company fails to deliver any Conversion Shares in accordance with the terms hereof and such failure is not cured within three (3) Trading Days; (c) a receiver, trustee or other similar official shall be appointed over the Company or a material part of its assets and such appointment shall remain uncontested for twenty (20) days or shall not be dismissed or discharged within sixty (60) days; (d) the Company becomes insolvent or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any; (e) the Company makes a general assignment for the benefit of creditors; (f) the Company files a petition for relief under any bankruptcy, insolvency or similar law (domestic or foreign); (g) an involuntary bankruptcy proceeding is commenced or filed against the Company and is not dismissed within sixty (60) days; (h) (i) the Company defaults or otherwise fails to observe or perform any term, covenant or agreement contained in Section 4 hereof (other than Section 4.4); or (ii) the Company or any defaults or otherwise fails to observe or perform any other covenant, obligation, condition or agreement of the Company contained herein or in any other Transaction Document, other than those specifically set forth in this Section 7.1 and such default or failure remains uncured for a period of ten (10) days after written notice to the Company by the Holder of such default or failure; (i) any representation, warranty or other statement made or furnished by or on behalf of the Company to the Holder herein, in any Transaction Document, or otherwise in connection with the issuance of this Note is false, incorrect, incomplete or misleading in any material respect when made or furnished; (j) the Company fails to maintain the Share Reserve and such failure

continues for five (5) days after written notice to the Company by the Holder of such failure; (k) a final and non-appealable judgment is entered against the Company or any of its property or other assets for more than $25,000,000 and such judgment shall remain unvacated, unbonded or unstayed for a period of sixty (60) days, unless otherwise consented to by the Holder or would not provide the basis for an "Event of Default" under and as defined in the Term Loan Credit Agreement; (l) the Company fails to be DWAC Eligible at any time after the six (6) month anniversary of the Closing Date or the Mandatory Conversion Date; (m) the Company or any Restricted Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable and such failure continues after the expiration of any applicable grace periods or cure periods and such Material Indebtedness is, or is permitted to be, accelerated such that all obligations thereunder shall become immediately due and payable; provided that the Event of Default shall be deemed to have been cured if the Company enters into a waiver, amendment or extension with the requisite holders of such Material Indebtedness with respect to such failure or event or condition or such demand, acceleration or mandatory repurchase, prepayment, defeasance or redemption of such debt; and provided further that this clause (m) shall not apply to any of the following events: (1) any change of control offer made within 60 days after an acquisition with respect to the Company or an acquired business, and effectuated pursuant to the applicable debt instrument, (2) any default under debt of an acquired business if such default is cured, or such debt is repaid, within 60 days after the acquisition of such business so long as no other creditor accelerates or commences any kind of enforcement action in respect of such debt, (3) mandatory prepayment requirements arising from the receipt of net cash proceeds from debt, dispositions (including casualty losses, governmental takings and other involuntary dispositions), equity issuances or excess cash flow, (4) prepayments required by the terms of debt as a result of customary provisions in respect of illegality, replacement of lenders and gross-up provisions for taxes, increased costs, capital adequacy and other similar customary requirements and (5) any voluntary prepayment, redemption or other satisfaction of debt that becomes mandatory in accordance with the terms of such debt solely as the result of the Company or any subsidiary delivering a prepayment, redemption or similar notice with respect to such prepayment, redemption or other satisfaction; or (n) any material provision of the any Transaction Document shall for any reason cease to be valid and binding on or enforceable against the Company, or the Company shall so state in writing.

7.2 Remedies. At any time and from time to time after the Holder becomes aware of the occurrence of any Event of Default, the Required Holders may accelerate this Note by written notice to the Company, with the Outstanding Balance becoming immediately due and payable in cash. Notwithstanding the foregoing, upon the occurrence of any Event of Default described in clauses (c), (d), (e), (f) or (g) of Section 7.1, the Outstanding Balance as of the date of acceleration shall become immediately and automatically due and payable in cash, without any written notice required by the Required Holders. For the avoidance of doubt, the Holder may continue making Holder Conversions at any time following an Event of Default until such time as the Outstanding Balance is paid in full. In connection with acceleration as described herein, the Required Holders need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind, and the Required Holders may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder

and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by the Required Holders at any time prior to payment hereunder and the Holder shall have all rights as holder of the Note until such time, if any, as the Holder receives full payment pursuant to this Section 7.2. No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon. Nothing herein shall limit the right of the Required Holders to pursue any other remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Conversion Shares upon Conversion of the Note as required pursuant to the terms hereof.

8. Certain Conversion Rate Adjustments. The Conversion Rate shall be adjusted, without duplication, upon the occurrence of any of the following events:

8.1 If the Company exclusively issues shares of Common Stock as a dividend or distribution on all shares of its Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the open of business on the Adjustment Effective Date of such share split or share combination, as the case may be;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Adjustment Effective Date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the open of business on the Adjustment Effective Date of such share split or share combination, as the case may be; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this Section 8.1 shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Adjustment Effective Date for such share split or share combination, as the case may be. If any dividend or distribution of the type described in this Section 8.1 is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors of the Company determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

8.2 If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period expiring not more than 45 days immediately following the announcement date of such distribution, to purchase or subscribe for shares of its Common Stock at a price per share that is less than the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the close of business on the Record Date for such distribution;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution.

Any increase made under this Section 8.2 shall be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the close of business on the Record Date for such distribution. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted, effective as of the date of such expiration, to the Conversion Rate that would then be in effect had the increase with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Rate shall be decreased, effective as of the date the Board of Directors of the Company determines not to make such distribution, to be the Conversion Rate that would then be in effect if such Record Date for such distribution had not occurred. If such rights, options or warrants are only exercisable upon the occurrence of certain triggering events, then the Conversion Rate shall not be adjusted until the triggering events occur.

For purposes of this Section 8.2, in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Closing Sale Prices of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors of the Company.

8.3 If the Company makes distributions to all or substantially all holders of its Common Stock consisting of shares of its capital stock, evidence of debt or other assets or properties ("**Distributed Property**"), excluding:

(1) dividends or other distributions (including share splits), rights, options or warrants as to which an adjustment is effected in Section 8.1 or 8.2 above or in Section 8.4 below;

(2) dividends or other distributions covered by Section 8.4 below; and

(3) Spin-offs (as defined below) to which the provisions set forth below in this Section 8.3 shall apply,

the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{M}{M - F}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such distribution;

M = the average of the Closing Sale Prices of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such distribution; and

F = the fair market value, as determined by the Board of Directors of the Company, of the portion of the Distributed Property to be distributed in respect of each share of Common Stock immediately prior to the open of business on the Ex-Date for such distribution.

Any increase pursuant to this Section 8.3 shall become effective immediately after the close of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased, effective as of the date the Board of Directors of the Company determines not to pay or make such distribution, to be the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if "F" (as defined above) is equal to or greater than "M" (as defined above), in lieu of the foregoing increase, the Holder shall receive, at the same time and upon the same terms as holders of the Common Stock, solely as a result of holding this Note, without having to convert this Note, the amount and kind of Distributed Property that such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such distribution times the Outstanding Balance of this Note divided by $1,000.

With respect to an adjustment pursuant to this Section 8.3 where there has been a payment of a dividend or other distribution of the Common Stock in shares of capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, where such capital stock or similar equity interest is listed or quoted (or will be listed or quoted upon consummation of the spin-off) on a U.S. national securities exchange, which is referred to herein as a "**Spin-off**," the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{F + MP}{MP}$$

where:

CR_1 = the Conversion Rate in effect immediately after the open of business on the effective date for the Spin-off;

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the effective date for the Spin-off;

F = the average of the Closing Sale Prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the first ten (10) consecutive Trading Day period immediately following, and including, the effective date for the Spin-off (such period, the "**Valuation Period**"); and

MP = the average of the Closing Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 8.3 will become effective immediately after the open of business on the day after the last day of the Valuation Period. For purposes of determining the Conversion Rate in respect of any Conversion during the ten (10) Trading Days commencing on the effective date for any Spin-off, references within the portion of this Section 8.3 related to Spin-offs to ten (10) consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the effective date for such Spin-off to, but excluding, the relevant Conversion Date.

8.4 If the Company makes any cash dividend or distribution to all or substantially all holders of its Common Stock, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the applicable Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or other distribution;

CR_1 = the applicable Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or other distribution;

SP_0 = the average of the Closing Sale Prices of the Company's Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such dividend or other distribution; and

C = the amount in cash per share the Company pays or distributes to holders of its Common Stock.

An adjustment on the Conversion Rate made pursuant to Section 8.4 shall become effective immediately after the close of business on the Record Date for the applicable dividend or other distribution. If any dividend or other distribution described in this Section 8.4 is declared but not so paid or made, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or other distribution had not been declared.

If "C" as set forth above is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing adjustment, the Holder shall receive, at the same time and upon the same terms as holders of the Company's Common Stock, solely as a result of holding this Note, without having to convert this Note, the amount and kind of Distributed Property that the Holder would have received if such Holder owned a number of shares of the Company's Common Stock equal to the applicable Conversion Rate in effect immediately prior to the close of business on the Record Date for such cash dividend or other distribution times the Outstanding Balance of this Note divided by $1,000.

8.5 If the Company or any of its subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock and the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Closing Sale Price of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CR_1 = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors of the Company) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The increase to the Conversion Rate under this Section 8.5 shall occur at the close of business on the tenth (10^{th}) Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided that, for purposes of determining the Conversion Rate, in respect of any Conversion during the ten (10) Trading Days immediately following, and including, the Trading Day next succeeding the date that any such tender or exchange offer expires, references within this Section 8.5 to ten (10) consecutive Trading Days shall be deemed to be replaced with such lesser number of consecutive Trading Days as have elapsed between the date such tender or exchange offer expires and the relevant Conversion Date.

In the event that the Company or one of its subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall be readjusted to be such Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made. For the avoidance of doubt, this Section 8.5 shall not apply if the Company acquires shares of Common Stock other than through a tender or exchange offer, including, but not limited to, through an open market purchase in compliance with Rule 10b-18 promulgated under the Exchange Act or through an "accelerated share repurchase" on customary terms.

8.6 Without limiting any provision hereof, if the Company at any time on or after the Effective Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Rate in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision hereof, if the Company at any time on or after the Effective Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Rate in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 8.6 shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 8.6 occurs during the period that a Conversion Rate is calculated hereunder, then the calculation of such Conversion Rate shall be adjusted appropriately to reflect such event.

8.7 In addition to those adjustments required by Section 8.1 through Section 8.6, and to the extent permitted by applicable law and subject to the applicable rules of the NYSE, the Company from time to time may (but is not required to) increase the Conversion Rate by any amount for a period of at least 20 Business Days or any longer period permitted or required by law if the increase is irrevocable during that period and the Board of Directors of the Company determines that such increase would be in the Company's best interest. In addition, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to any of the preceding two sentences, the Company shall deliver to the Holder in accordance with Section 21 hereof a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

8.8 Calculations. All calculations and other determinations under the foregoing Section 8.1 through Section 8.6 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. No adjustment to the Conversion Rate shall be made if it results in a Conversion Price that is less than the par value (if any) of the Common Stock. The Company shall not take any action that would result in the Conversion Price being less than the par value (if any) of the Common Stock without giving effect to the previous sentence.

8.9 Increase of Conversion Rate Upon Conversion in Connection with a Make-Whole Fundamental Change.

(a) If the Holder elects to convert all or any portion of this Note during any Holder Fundamental Change Election Period, then the Company shall increase the Conversion Rate for the Outstanding Balance being converted by a number of additional shares of Common Stock (the "**Additional Shares**") under the circumstances and as set forth below.

(b) The number of Additional Shares, if any, per $1,000 of the Outstanding Balance by which the Conversion Rate shall be increased for a Holder Conversion during a Holder Fundamental Change Election Period shall be determined by reference to the table attached as Schedule A hereto (for purposes of this Section 8.12, the "**table**"), based on the Make-Whole Effective Date and the Stock Price.

(i) If the exact Stock Price and Make-Whole Effective Date is between two prices or effective dates in the table, the number of Additional Shares by which the Conversion Rate shall be increased shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later effective dates, as applicable, based on a 365-day year;

(ii) if the Stock Price is greater than $14.50 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table pursuant to subsection (d) below), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than $8.25 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table pursuant to subsection (d) below), 21.2121 Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event will the Conversion Rate after being so increased exceed 121.2121 shares of Common Stock (the "**Maximum Conversion Rate**") per $1,000 in Outstanding Balance of Notes, subject to adjustment in the same manner as the Conversion Rate is adjusted pursuant to Section 8.

(c) The Stock Prices set forth in the first row of the table (i.e., the column headers) and the number of Additional Shares in the table shall be adjusted as of the time at which the Conversion Rate of the Notes is adjusted as set forth in Section 8. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The numbers of Additional Shares within the table shall each be adjusted in the same manner and at the same time as the Conversion Rate is adjusted as set forth in Section 8.

8.10 Rights Plan. Notwithstanding Section 8.2, if the Company has a rights plan (including the distribution of rights pursuant thereto to all holders of the Common Stock) in effect while this Note remains outstanding, the Holder of this Note will receive, upon conversion of this Note, in addition to the Common Stock to which such Holder is entitled, a corresponding number of rights in accordance with the rights plan. If, prior to any conversion, such rights have separated from the shares of Common Stock in accordance with the provisions of the applicable rights plan so that the Holder of this Note would not be entitled to receive any rights in respect of the Common Stock delivered upon conversion of this Note, the Conversion Rate will be adjusted at the time of separation as if the Company had distributed to all holders of its Common Stock, shares of capital stock covered by the separated rights, subject to readjustment in the event of the expiration, termination or redemption of such rights.

9. No Fractional Shares. No fractional shares of Common Stock or securities representing fractional shares of Common Stock shall be delivered upon Conversion, whether voluntary or mandatory, of the Notes. Instead, the Company will make a cash payment to each Holder that would otherwise be entitled to a fractional share based on the Closing Sale Price of the Common Stock on the relevant Conversion Date.

10. Method of Conversion Share Delivery. On or before the close of business on the fifth (5th) Trading Day following (x) the date of delivery of a Holder Conversion Notice or (y) the Mandatory Conversion Date, as applicable (such Trading Day, the "**Delivery Date**"), the Company shall, provided it is DWAC Eligible at such time and such Conversion Shares are eligible for delivery via DWAC, deliver or cause its transfer agent to deliver the applicable Conversion Shares electronically via DWAC to the account designated by the Holder in the applicable Holder Conversion Notice. If the Company is not DWAC Eligible or such Conversion Shares are not eligible for delivery via DWAC, it shall deliver to the Holder or its broker (as designated in the Holder Conversion Notice), via reputable overnight courier, a certificate representing the number of shares of Common Stock equal to the number of Conversion Shares to which the Holder shall be entitled, registered in the name of the Holder or its designee. For the avoidance of doubt, the Company has not met its obligation to deliver Conversion Shares by the Delivery Date unless the Holder or its broker, as applicable, has actually received the certificate representing the applicable Conversion Shares no later than the close of business on the relevant Delivery Date pursuant to the terms set forth above. Moreover, and notwithstanding anything to the contrary herein (other than Section 6.5) or in any other Transaction Document, in the event the Company or its transfer agent refuses to deliver any Conversion Shares upon a Holder Conversion without a restrictive securities legend to the Holder on grounds that such issuance is in violation of Rule 144, the Company shall deliver or cause its transfer agent to deliver the applicable Conversion Shares to the Holder with a restricted securities legend, but otherwise in accordance with the provisions of this Section 10. In conjunction therewith, the Company will also deliver to the Holder a written explanation from its counsel or its transfer agent's counsel opining as to why the issuance of the applicable Conversion Shares violates Rule 144; provided, that subject to Section 6.5, the Holder acknowledges that any Conversion Shares issued prior to

the six (6) month anniversary of the Effective Date will bear a restrictive securities legend, and the Company shall have no obligation to deliver any such opinion letter for any Conversion occurring prior to the six (6) month anniversary of the Effective Date. For the avoidance of doubt, any Conversion Shares issued pursuant to a mandatory conversion in accordance with Section 6 of this Agreement shall not bear a restrictive securities legend unless otherwise required by applicable law or regulation.

11. Conversion Delays. If the Company fails to deliver Conversion Shares in accordance with the timeframe stated in Section 10, the Holder may at any time prior to receiving the applicable Conversion Shares rescind in whole or in part such Conversion, with a corresponding increase to the Outstanding Balance (any returned amount will tack back to the Effective Date for purposes of determining the holding period under Rule 144).

12. [Reserved].

13. Taxes on Conversions. The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable in respect of the issuance of shares of Common Stock to the initial Holder (or any Affiliate thereof) upon any Conversion of this Note; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such shares to any person other than to the initial Holder (or any Affiliate thereof), and the Company shall not be required to issue or deliver such shares to any such person unless or until the person requesting delivery thereof shall have paid to the Company the amount of such tax or shall have established to the reasonable satisfaction of the Company that such tax has been paid.

14. Opinion of Counsel. In the event that an opinion of counsel is needed for any matter related to this Note, the Holder has the right to have any such opinion provided by its counsel.

15. Absolute Obligation. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and accrued interest, as applicable, on and any other portion of the Outstanding Balance of this Note at the time, place and rate and in the currency herein prescribed. This Note is a direct debt obligation of the Company.

16. Governing Law; Venue. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. The provisions set forth in the Purchase Agreement to determine the proper venue for any disputes are incorporated herein by this reference.

17. Cancellation. After repayment, prepayment or Conversion of the entire Outstanding Balance, this Note shall be deemed paid in full, shall automatically be deemed canceled, and shall not be reissued.

18. Amendments; Waivers. The prior written consent of each of the parties hereto shall be required for any amendment to, or waiver of any provision of, this Note. No waiver of any provision or consent to any prohibited action shall constitute a waiver of any other provision or consent to any other prohibited action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver or consent in the future except to the extent specifically set forth in writing.

19. Assignments. Except as provided herein, the Company may not assign or transfer this Note or any interest herein without the prior written consent of the Holder (and any purported transfer without such consent shall be null and void). The Holder may not assign this Note or a portion hereof unless (x) the Company has provided its prior written consent to such assignment (not to be unreasonably withheld) (provided that such consent shall not be required in the case of an assignment by the Holder to any Affiliate of the Holder, provided such Affiliate becomes a party hereto and subject to the terms hereof) and (y) such transfer complies with applicable securities laws. If at the time of any transfer of this Note or any shares of Common Stock issued upon Holder Conversion of this Note, the transfer of such Securities shall not be either (a) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (b) eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee, as the case may be, to comply with the transfer restrictions set forth on the restrictive legend on the face of such Security. Any assignee or transferee of the Holder who acquires this Note in accordance with the terms hereof shall be deemed to be the "Holder" hereunder and shall be deemed to have agreed to be bound by the terms of this Note as "Holder".

20. [Reserved].

21. Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with the subsection of the Purchase Agreement titled "Notices."

22. Severability. If any part of this Note is construed to be in violation of any law, such part shall be modified to achieve the objective of the Company and the Holder to the fullest extent permitted by law and the balance of this Note shall remain in full force and effect.

[*Remainder of page intentionally left blank; signature page follows*]

IN WITNESS WHEREOF, Company has caused this Note to be duly executed as of the Effective Date.

COMPANY:

EASTMAN KODAK COMPANY

By: /s/ David E. Bullwinkle
Name: David E. Bullwinkle
Title: Chief Financial Officer and Senior Vice President

[Signature Page to Convertible Promissory Note]

ACKNOWLEDGED, ACCEPTED AND AGREED:

HOLDER:

Kennedy Lewis Capital Partners Master Fund LP

By: /s/ Anthony Pasqua
Name: Anthony Pasqua
Title: Authorized Signatory

[Signature Page to Convertible Promissory Note]

ATTACHMENT 1
DEFINITIONS

For purposes of this Note, the following terms shall have the following meanings:

"**ABL Agreement**" means that certain Amended and Restated Credit Agreement, dated as of May 26, 2016 among the Company, the lenders party thereto from time to time and Bank of America, N.A., as administrative and collateral agent, as amended through that certain Amendment No. 4, dated as of February 26, 2021, and as further amended, amended and restated, modified, supplemented, extended, replaced or refinanced from time to time (whether through one or more credit facilities or other debt issuances pursuant to the ABL Agreement or any other agreement, contract or indenture).

"**Additional Shares**" has the meaning set forth in Section 8.12(a) of this Note.

"**Adjustment Effective Date**" means the first date on which the shares of the Common Stock trade on the applicable exchange or market, regular way, reflecting the relevant share split or share combination, as applicable.

"**Alternate Consideration**" and "**unit of Alternate Consideration**" each has the meaning set forth in Section 5.2(a) of this Note.

"**Bankruptcy Code**" means the United States Bankruptcy Code (11 U.S.C. §101 et seq.), as amended from time to time.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

"**Closing Sale Price**" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported in composite transactions for the principal United States national or regional securities exchange on which the Common Stock is traded or, if the Common Stock is not listed for trading on a United States national or regional securities exchange on the relevant date, the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date, as reported by OTC Markets Group Inc. or a similar organization. In the absence of such a quotation, the Closing Sale Price shall be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

"**Common Stock**" has the meaning set forth in Section 5.1 of this Note.

"**Company**" has the meaning set forth in the preamble to this Note.

"**Company Fundamental Change Prepayment Election Period**" has the meaning set forth in Section 1.3(b) of this Note.

"**Conversion**" means a Holder Conversion under Section 5 or a mandatory conversion pursuant to Section 6.

"**Conversion Amount**" has the meaning set forth in Section 5.1 of this Note.

"**Conversion Date**" means with respect to any Holder Conversion, the date on which a Conversion shall be effected as set forth in the applicable Holder Conversion Notice, and with respect to any mandatory conversion pursuant to Section 6, the Mandatory Conversion Date.

"**Conversion Price**" means, at any time, an amount equal to $1,000 divided by the Conversion Rate in effect at such time.

"**Conversion Rate**" has the meaning set forth in Section 5.4 of this Note.

"**Conversion Shares**" has the meaning set forth in Section 5.1 of this Note.

"**Default Rate**" means, at any time, the Interest Rate plus two percent (2%).

"**Delivery Date**" has the meaning set forth in Section 10 of this Note.

"**Disposition**" or "**Dispose**" has the meaning set forth in the Term Loan Credit Agreement.

"**DTC**" means the Depository Trust Company or any successor thereto.

"**DTC/FAST Program**" means the DTC's Fast Automated Securities Transfer program.

"**DWAC**" means the DTC's Deposit/Withdrawal at Custodian system.

"**DWAC Eligible**" means that (a) the Company's Common Stock is eligible at DTC for full services pursuant to DTC's operational arrangements, including without limitation transfer through DTC's DWAC system; (b) the Company has been approved (without revocation) by DTC's underwriting department; (c) the Company's transfer agent is approved as an agent in the DTC/FAST Program; (d) the Conversion Shares are otherwise eligible for delivery via DWAC other than due to the actions or status of the Holder; and (e) the Company's transfer agent does not have a policy prohibiting or limiting delivery of the Conversion Shares via DWAC.

"**Effective Date**" has the meaning set forth in the preamble to this Note.

"**Event of Default**" has the meaning set forth in Section 7.1 of this Note.

"**Ex-Date**" when used with respect to any issuance, dividend or distribution on the Common Stock, means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Fundamental Change**" shall be deemed to have occurred at any time after the original issuance of this Note, if any of the following occurs:

(i) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than (1) the Company, its subsidiaries or the employee benefit plans of the Company and its subsidiaries and (2) Permitted Holders, becomes the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of more than 50% of the Voting Stock, provided that a Fundamental Change will be deemed to have occurred if a Permitted Holder Group becomes the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of more than 70% of the Voting Stock;

(ii) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its subsidiaries, taken as a whole, to any person other than one of the Company's Restricted Subsidiaries; provided, however, that any merger solely for the purpose of changing the Company's jurisdiction of incorporation to the United States of America, any State thereof or the District of Columbia, and resulting in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of Common Stock of the surviving entity, shall not be a Fundamental Change; provided further that any transaction described in (A) or (B) of this clause (ii) in which the holders of the Company's Common Stock immediately prior to such transaction own, directly or indirectly, more than 50% of the common stock of the continuing corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (ii);

(iii) the Common Stock ceases to be listed or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors); or

(iv) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;

provided, however, that a transaction or transactions described in clause (i) or (ii) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the Common Stock of the Company, excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions this Note becomes convertible into such consideration pursuant to the terms hereof.

"**Fundamental Exchange Transaction**" means the occurrence of any of the following: (i) any recapitalization or reclassification of the Common Stock (other than changes resulting from a subdivision or combination); (ii) any consolidation, merger or combination involving the Company; (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's subsidiaries substantially as an entirety; or (iv) any statutory share exchange, in each case, as a result of which the Common Stock is converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof).

"**Fundamental Transaction**" means a Fundamental Change or a Fundamental Exchange Transaction, as applicable.

"**Holder**" has the meaning set forth in the preamble to this Note.

"**Holder Conversion**" has the meaning set forth in Section 5.1 of this Note.

"**Holder Conversion Notice**" has the meaning set forth in Section 5.3 of this Note.

"**Holder Fundamental Change Election Period**" has the meaning set forth in Section 1.3(a) of this Note.

"**L/C Facility Agreement**" means that certain Letter of Credit Facility Agreement, dated as of February 26, 2021 among the Company, the lenders party thereto from time to time and Bank of America, N.A., as administrative and collateral agent, as amended, amended and restated, modified, supplemented, extended, replaced or refinanced from time to time (whether through one or more credit facilities or other debt issuances pursuant to the L/C Facility Agreement or any other agreement, contract or indenture).

"**Lien**" has the meaning set forth in the Term Loan Credit Agreement.

"**Make-Whole Effective Date" means the date on which such Make-Whole Fundamental Change is consummated.**

"**Make-Whole Fundamental Change**" means any Fundamental Change.

"**Mandatory Conversion Date**" has the meaning set forth in Section 6.2 of this Note.

"**Material Indebtedness**" has the meaning set forth in the Term Loan Credit Agreement.

"**Maturity Date**" means May 28, 2026.

"**Maximum Conversion Rate**" has the meaning set forth in Section 8.12(c) of this Note.

"**Note Register**" has the meaning set forth in Section 1.1 of this Note.

"**Notes**" means this Note, together with each other note issued pursuant to Section 1.3, Section 3.1 or Section 5.1 of this Note.

"**NYSE**" means the New York Stock Exchange.

"**Outstanding Balance**" means as of any date of determination, the Purchase Price, as reduced or increased, as the case may be, pursuant to the terms hereof for payment, Conversion, offset, or otherwise, accrued but unpaid interest, collection and enforcements costs (including attorneys' fees) incurred by the Holder, transfer, stamp, issuance and similar taxes and fees related to Conversions, and any other fees or charges incurred under this Note.

"**Permitted Debt**" means (i) debt incurred under the Term Loan Credit Agreement, (ii) intercompany debt between or among the Company and its subsidiaries, to the extent permitted pursuant to the terms of the Term Loan Credit Agreement, (iii) debt incurred in connection with acquisitions of any property, assets or line of business by the Company or its subsidiaries that is permitted pursuant to the terms of the Term Loan Credit Agreement, (iv) debt that is subordinated to the obligations of the Company under the Transaction Documents on terms that are reasonably satisfactory to the Required Holders, (v) debt otherwise permitted in accordance with the terms of the Term Loan Credit Agreement, including for avoidance of doubt, debt incurred by subsidiaries of the Company organized under the laws of any jurisdiction outside of the United States and debt pursuant to the ABL Agreement and the L/C Facility Agreement and (vi) any modification, refinancing, refunding, renewal, replacement, exchange or extension of the foregoing.

"**Permitted Holders**" shall mean, at any time, each of Grand Oaks Investors, LLC, Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited, Deseret Mutual Pension Trust, George Karfunkel, Renee Karfunkel, GKarfunkel Family LLC, Congregation Chemdas Yisroel, Chesed Foundation of America, Marneu Holding Company, Moses Marx, Phillippe Katz, K.F. Investors LLC, United Equities Commodities Company, Momar Corporation, 111 John Realty

Corporation, Kennedy Lewis Investment Management LLC and any Affiliate of any of the foregoing and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) the members of which include any of the Permitted Holders specified above and that, directly or indirectly, hold or acquire beneficial ownership of the Voting Stock (a "Permitted Holder Group"), so long as (1) each member of the Permitted Holder Group has voting rights proportional to the percentage of ownership interests held or acquired by such member and (2) no Person or other "group" (other than Permitted Holders specified above) beneficially owns more than 50% on a fully diluted basis of the Voting Stock held by the Permitted Holder Group (without giving effect to any attribution rules).

"**Permitted Liens**" means (i) Liens created under the Term Loan Credit Agreement, (ii) Liens relating to intercompany borrowings between or among the Company and its subsidiaries to the extent permitted pursuant to the terms of the Term Loan Credit Agreement, (iii) any Lien on any property or asset of the Company or any of its subsidiaries existing as of the Effective Date; provided that (x) such Lien shall not apply to any other property or asset of the Company or any subsidiary (other than proceeds thereof and extensions or improvements to any such property) unless otherwise permitted by the Holders and (y) such Lien shall secure only those obligations which it secures on the Effective Date and extensions, refinancings, restructurings, renewals and replacements thereof that do not increase the outstanding principal amount thereof (other than by an amount equal to accrued interest and any fees, costs and expenses incurred in connection therewith), the obligations thereunder or the property or assets securing such obligations and (iv) Liens permitted in accordance with the terms of the Term Loan Credit Agreement, including for avoidance of doubt, Liens to secure debt incurred by subsidiaries of the Company organized under the laws of any jurisdiction outside of the United States and debt pursuant to the ABL Agreement and the L/C Facility Agreement.

"**Purchase Agreement**" has the meaning set forth in the preamble to this Note.

"**Purchase Price**" has the meaning set forth in the preamble to this Note.

"**Record Date**" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors of the Company, statute, contract or otherwise).

"**Registration Rights Agreement**" mean the Registration Rights Agreement dated as of even date herewith among the Company and the Holder.

"**Required Holders**" means the Holder, or, if the Holder and its affiliates cease to own all of the Notes, holders of at least a majority of aggregate principal amount of Notes then outstanding.

"**Restricted Subsidiary**" has the meaning set forth in the Term Loan Credit Agreement.

"**Rule 144**" has the meaning set forth in Section 4.4 of this Note.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Share Reserve**" has the meaning set forth in the Purchase Agreement.

"**Spin-off**" has the meaning set forth in Section 8.3 of this Note.

"**Stock Price**" means, with respect to any Make-Whole Fundamental Change, (i) if a holder of shares of Common Stock receives only cash in exchange for such holder's shares of Common Stock in such Make-Whole Fundamental Change, the cash amount paid per share of Common Stock; or (ii) in all other cases, the average of the Closing Sale Prices of the shares of Common Stock over the 10 consecutive Trading Days prior to (but excluding) the Make-Whole Effective Date of such Make-Whole Fundamental Change.

"**Successor Entity**" has the meaning set forth in Section 5.2(b) of this Note.

"**table**" has the meaning set forth in Section 8.12(b) of this Note.

"**Term Loan Credit Agreement**" means that certain Credit Agreement, dated as of the date hereof among the Company, the Lenders party thereto from time to time and Alter Domus (US) LLC, as administrative and collateral agent as amended, amended and restated, modified, supplemented, extended, replaced or refinanced from time to time (whether through one or more credit facilities or other debt issuances pursuant to the Term Loan Credit Agreement or any other agreement, contract or indenture); provided that, in the event the Term Loan Credit Agreement has been terminated, any reference herein to a transaction or matter being permitted under the terms of the Term Loan Credit Agreement (or similar language) shall be deemed to refer to the terms of the Term Loan Credit Agreement as in effect immediately prior to the termination thereof.

"Trading Day" means any day on which the New York Stock Exchange (or such other principal market for the Common Stock) is open for trading.

"**Transaction Documents**" has the meaning set forth in the Purchase Agreement.

"**Valuation Period**" has the meaning set forth in Section 8.3 of this Note.

"**Voting Stock**" of any person as of any date means the Capital Stock of such person that is at the time entitled to vote in the election of the Board of Directors or other appropriate governing body of such person.

[Remainder of page intentionally left blank]

EXHIBIT A

[•] Date:

Eastman Kodak Company.
Attn: General Counsel
343 State Street
Rochester, NY 14650

HOLDER CONVERSION NOTICE

The above-captioned Holder hereby gives notice to Eastman Kodak Company, a New Jersey corporation (the "**Company**"), pursuant to that certain Convertible Promissory Note made by the Company in favor of the Holder on February 26, 2021 (the "**Note**"), that the Holder elects to convert all or such portion of the Outstanding Balance of the Note set forth below into fully paid and non-assessable shares of Common Stock of the Company as of the Conversion Date specified below. Said conversion shall be based on the Conversion Rate in effect immediately prior to the close of business on the Conversion Date as provided in the Note. In the event of a conflict between this Holder Conversion Notice and the Note, the Note shall govern, or, in the alternative, at the election of the Holder in its sole discretion, the Holder may provide a new form of Holder Conversion Notice to conform to the Note. Capitalized terms used in this notice without definition shall have the meanings given to them in the Note.

A. Conversion Date: _____

B. Conversion Amount: Check one:

☐ Entire Outstanding Balance

☐ $_____

Please transfer the Conversion Shares electronically (via DWAC) to the following account:

Broker: _____ Address: _____
DTC#: _____ _____
Account #: _____ _____
Account Name: _____ _____

To the extent the Conversion Shares are not able to be delivered to the Holder electronically via the DWAC system, deliver all such certificated shares to the Holder via reputable overnight courier after receipt of this Holder Conversion Notice (by facsimile transmission or otherwise) to:

_____

[Signature Page Follows]

Sincerely,

Holder:

KENNEDY LEWIS CAPITAL PARTNERS MASTER FUND LP

By: _____
Name:
Title:

Schedule A

The following table sets forth the number of Additional Shares of Common Stock per $1,000 of Outstanding Balance of Notes by which the Conversion Rate shall be increased pursuant to Section 8.12 for each Stock Price and Make-Whole Effective Date set forth below:

Fundamental Change	Fundamental Change Stock Price				
Effective Date	$ 8.25	$ 9.25	$ 10.00	$ 12.50	$ 14.50
February 26, 2021	21.2121	15.9384	12.7990	5.5256	0.0000
February 26, 2022	21.2121	15.9384	12.7990	5.2552	0.0000
February 26, 2023	21.2121	15.9384	12.7990	5.1904	0.0000
February 26, 2024	21.2121	15.9384	12.5140	4.9208	0.0000
February 26, 2025	21.2121	14.6097	10.9680	3.9040	0.0000
February 26, 2026	21.2121	8.1081	0.0000	0.0000	0.0000

Exhibit 10.10

EXECUTION VERSION

NEITHER THESE SECURITIES NOR THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE HAVE BEEN REGISTERED WITH THE SECURITIES AND EXCHANGE COMMISSION. THESE SECURITIES AND THE SECURITIES INTO WHICH THESE SECURITIES ARE CONVERTIBLE ARE BEING ISSUED IN RELIANCE UPON AN EXEMPTION FROM REGISTRATION UNDER THE SECURITIES ACT, AND ACCORDINGLY, MAY NOT BE OFFERED OR SOLD EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT OR PURSUANT TO AN AVAILABLE EXEMPTION FROM, OR IN A TRANSACTION NOT SUBJECT TO, THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT.

THIS NOTE HAS BEEN ISSUED WITH "ORIGINAL ISSUE DISCOUNT" (WITHIN THE MEANING OF SECTION 1272 OF THE INTERNAL REVENUE CODE OF 1986, AS AMENDED). UPON WRITTEN REQUEST, THE ISSUER WILL PROMPTLY MAKE AVAILABLE TO ANY HOLDER OF THIS NOTE THE FOLLOWING INFORMATION: (1) THE ISSUE PRICE AND DATE OF THE NOTE, (2) THE AMOUNT OF ORIGINAL ISSUE DISCOUNT ON THE NOTE AND (3) THE YIELD TO MATURITY OF THE NOTE. HOLDERS SHOULD CONTACT THE CHIEF FINANCIAL OFFICER OF THE COMPANY AT 343 STATE STREET, ROCHESTER NEW YORK 14650.

CONVERTIBLE PROMISSORY NOTE

Effective Date: February 26, 2021 U.S. $20,070,000

FOR VALUE RECEIVED, EASTMAN KODAK COMPANY, a New Jersey corporation ("**Company**"), promises to pay to Kennedy Lewis Capital Partners Master Fund II LP, or its successors or assigns ("**Holder**"), $20,070,000 and any interest (including any default interest), fees and charges, accrued hereunder on the Maturity Date in accordance with the terms set forth herein.

This Convertible Promissory Note (this "**Note**") is issued and made effective as of February 26, 2021 (the "**Effective Date**"). This Note has been issued pursuant to that certain Securities Purchase Agreement dated February 26, 2021 (the "**Purchase Agreement**"), as the same may be amended from time to time, by and between the Company and the Holder.

Certain capitalized terms used herein are defined in Attachment 1 hereto and incorporated herein by reference.

The purchase price for this Note shall be $20,070,000 (the "**Purchase Price**"). The Purchase Price shall be payable by the Holder by wire transfer of immediately available funds on the Effective Date in accordance with the Purchase Agreement.

This Note is subject to the following additional provisions:

1. Payment; Prepayment.

1.1 Payment of Interest.

(a) The Company shall pay interest on the Outstanding Balance at the rate of five percent (5%) per annum (the "**Interest Rate**") from the Effective Date until the Outstanding Balance is paid in full. Interest shall be payable in cash on each Conversion Date (as to that portion of the Outstanding Balance being converted), on any Prepayment Date (as to that portion of the Outstanding Balance being prepaid) and on the Maturity Date; provided that (i) any interest payable by the Company on a Conversion Date (as to that portion of the Outstanding Balance being converted) shall, in accordance with Section 5 or Section 6, as applicable, be paid in the form of Conversion Shares (as defined below) at the then-applicable Conversion Rate and (ii) pending any such payment, interest shall accrue and not be payable and no interest shall be payable on accrued interest. All interest calculations hereunder shall be computed on the basis of a 365-day year and shall be payable in accordance with the terms of this Note. Interest will be paid to the person in whose name this Note is registered on the records of the Company regarding registration and transfers of this Note (the "**Note Register**").

(b) Upon the occurrence and during the continuance of any Event of Default, at the election of the Holder by written notice to the Company, this Note shall bear interest at the Default Rate.

1.2 Payments Generally. All payments owing hereunder shall be in lawful money of the United States of America or to the extent provided for herein upon a Conversion, in Conversion Shares, and delivered to the Holder at the address or bank account furnished to the Company for that purpose. All payments in cash shall be applied first to (i) costs of collection, if any, then to (ii) fees and charges and any other portion of the Outstanding Balance (other than interest or principal), if any, then to (iii) accrued and unpaid interest, and thereafter, to (iv) principal.

1.3 Prepayment.

(a) Notwithstanding the foregoing, in the event of a Fundamental Change, for a period of thirty (30) days immediately following the consummation of the Fundamental Change (the "**Holder Fundamental Change Election Period**"), the Holder shall have the right, at the Holder's option, to require prepayment by the Company of all or any portion of the Outstanding Balance in cash at 100% of the Outstanding Balance being prepaid by delivering written notice to the Company in accordance with Section 21 of this Agreement requesting prepayment in accordance with this Section 1.3 and specifying the amount of the Outstanding Balance to be prepaid. The Company shall make such prepayment promptly but in no event more than

five (5) Business Days after receipt of such notice (such prepayment date, a "**Prepayment Date**"). In the event that the Holder has elected prepayment of less than the entire Outstanding Balance of this Note, the Company shall execute and deliver to the Holder, without charge, a new Note or Notes in authorized denominations having an aggregate Outstanding Balance equal to the portion of the Outstanding Balance of this Note not being prepaid.

(b) For a period of thirty (30) days immediately following the expiration of the Holder Fundamental Change Election Period (the "**Company Fundamental Change Prepayment Election Period**"), the Company shall have the right, but not the obligation, to prepay all of the Outstanding Balance then outstanding in cash at 100% of the Outstanding Balance.

2. [Reserved].

3. Registration of Transfers and Exchanges.

3.1 Different Denominations. This Note is exchangeable for an equal aggregate principal amount of Notes of different authorized denominations, as requested by the Holder surrendering the same. No service charge will be payable for such registration of transfer or exchange. The authorized denominations of the Notes shall be $1,000 and integral multiples in excess thereof.

3.2 Investment Representations. This Note has been issued subject to certain investment representations of the original Holder set forth in the Purchase Agreement and may be transferred or exchanged only in compliance with the terms of this Note and applicable federal and state securities laws and regulations.

3.3 Reliance on Note Register. Prior to due presentment for transfer to the Company of this Note, the Company and any agent of the Company may treat the person in whose name this Note is duly registered on the Note Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Note is overdue, and neither the Company nor any such agent shall be affected by notice to the contrary.

4. Company Covenants. Following the Effective Date, and until all of the Company's obligations under all of the Transaction Documents in respect of this Note are paid and performed in full or until the Outstanding Balance of the Note has been converted into Common Stock (other than contingent obligations for which no claim has been made), or within the time frames otherwise specifically set forth below, the Company will at all times comply with the following covenants:

4.1 Dividends and Distributions. Except as permitted under the Term Loan Credit Agreement, the Company shall not, directly or indirectly, (i) declare or pay any dividend or distribution (whether in cash, securities or other property) on, or (ii) redeem, repurchase or otherwise acquire, or pay or make any monies available for a sinking fund for, any Common

Stock without the prior written consent of the Required Holders; provided that the foregoing limitations shall not apply to (x) redemptions, purchases or other acquisitions of shares of Common Stock in connection with any employment contract, benefit plan or other similar arrangement with or for the benefit of any one or more employees, officers, directors, managers or consultants of, or to, the Company or any of its subsidiaries; (y) an exchange, redemption, reclassification or conversion of any class or series of Common Stock for any class or series of Common Stock that ranks equal or junior to the applicable class or series of Common Stock; or (z) any dividend in the form of stock, warrants, options or other rights where the dividended stock or the stock issuable upon exercise of such warrants, options or other rights is the same stock as that on which the dividend is being paid or ranks equal or junior to the applicable stock on which the dividend is being paid.

4.2 Additional Debt. Other than Permitted Debt, the Company shall not, and shall not permit any of its Restricted Subsidiaries to, enter into, create, incur or otherwise assume, any debt for borrowed money, without the prior written consent of the Required Holders.

4.3 Additional Liens. Other than Permitted Liens, the Company shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly enter into, create, incur, assume or suffer to exist any Liens on or with respect to any of any of its property or assets now owned or hereafter acquired, to secure debt for borrowed money of the Company or any other person, without the prior written consent of the Required Holders.

4.4 Reporting.

(a) So long as any Holder beneficially owns any portion of this Note (and the Notes are convertible into Common Stock of the Company and not Alternate Consideration), the Company will timely file on the applicable deadline all reports required to be filed with the U.S. Securities and Exchange Commission pursuant to Sections 13 or 15(d) of the Exchange Act, and will take all reasonable action under its control to ensure that adequate current public information with respect to the Company, as required in accordance with Rule 144 promulgated under the Securities Act (or a successor rule thereto) ("**Rule 144**"), is publicly available, and will not terminate its status as an issuer required to file reports under the Exchange Act even if the Exchange Act or the rules and regulations thereunder would permit such termination.

(b) As soon as practicable and in any event within five (5) Business Days after the Company has knowledge of the occurrence of any Event of Default, the Company shall furnish to the Holder a statement of an officer of the Company setting forth details of such Event of Default and the action that the Company has taken and/or proposes to take with respect thereto.

4.5 Dispositions. The Company shall not Dispose of any assets, or permit any of its Restricted Subsidiaries to dispose of any assets, in each case, without the prior written consent of the Required Holders, other than as permitted pursuant to the Term Loan Credit Agreement.

5. Holder Optional Conversions.

5.1 Holder Conversions. Subject to Section 5.2 below, the Holder has the right at any time after the Effective Date until the Outstanding Balance has been paid in full, at its election, to convert (a "**Holder Conversion**") all or any portion of the Outstanding Balance into shares (the shares receivable in each instance of Conversion, including any Additional Shares, being referred to herein as "**Conversion Shares**") of fully paid and non-assessable common stock, $0.01 par value per share ("**Common Stock**"), of the Company as per the following conversion formula: the number of Conversion Shares equals the portion of the Outstanding Balance being converted divided by $1,000 (the "**Conversion Amount**") multiplied by the Conversion Rate. In the event that the Holder has elected to convert less than the entire Outstanding Balance of this Note, the Company shall execute and deliver to the Holder, without charge, a new Note or Notes in authorized denominations having an aggregate Outstanding Balance equal to the unconverted portion of the Outstanding Balance of this Note. Each Holder Conversion shall be for at least $10,000,000 of the Outstanding Balance or, if less than $10,000,000, the remaining Outstanding Balance.

5.2 Fundamental Exchange Transaction Adjustment.

(a) Upon occurrence of a Fundamental Exchange Transaction, at the effective time of the Fundamental Exchange Transaction, the right to convert each $1,000 of the Outstanding Balance of this Note based on a number of shares of Common Stock equal to the Conversion Rate will be changed into the right to convert $1,000 of the Outstanding Balance of this Note based on the kind and amount of shares of capital stock, other securities or other property or assets (including cash) or any combination thereof of the successor or acquiring corporation or of the Company, if it is the surviving corporation, that a holder of a number of shares of Common Stock equal to the Conversion Rate immediately prior to such Fundamental Exchange Transaction would have owned or been entitled to receive in such Fundamental Exchange Transaction (the "**Alternate Consideration,**" with each "**unit of Alternate Consideration**" meaning the kind and amount of Alternate Consideration that a holder of one share of Common Stock would have owned or been entitled to receive).

(b) If holders of Common Stock are given any choice as to the securities, cash or property to be received in a Fundamental Exchange Transaction, then the Holder shall be given the same choice as to the Alternate Consideration it receives upon any conversion of this Note following such Fundamental Exchange Transaction. The Company shall cause any successor entity in a Fundamental Exchange Transaction in which the Company is not the survivor (the "**Successor Entity**") to assume in writing on or prior to the effective date of the Fundamental Exchange Transaction all of the obligations of the Company under this Note and the other Transaction Documents in accordance with the provisions of this Section 5.2(b)

pursuant to written agreements in form and substance reasonably satisfactory to the Holder and approved by the Holder (without unreasonable delay) prior to such Fundamental Exchange Transaction and shall, at the option of the Holder, deliver to the Holder in exchange for this Note a security of the Successor Entity evidenced by a written instrument substantially similar in form and substance to this Note which is convertible for a corresponding number of units of Alternate Consideration equivalent to the shares of Common Stock acquirable and receivable upon conversion of this Note prior to such Fundamental Exchange Transaction. Such written agreements described in the previous sentence shall provide for anti-dilution and other adjustments, and covenants for protection of the interests of the Holder, in respect of the Alternate Consideration that shall be as nearly equivalent as is practicable to the adjustments and covenants provided for in Section 8 and this Section 5.2 and Section 6 of the Purchase Agreement in respect of shares of Common Stock and which is reasonably satisfactory in form and substance to the Holder. Upon the occurrence of any such Fundamental Exchange Transaction, the Successor Entity shall succeed to, and be substituted for (so that from and after the date of such Fundamental Exchange Transaction, the provisions of this Note and the other Transaction Documents referring to the "Company" shall refer instead to the Successor Entity), and may exercise every right and power of the Company and shall assume all of the obligations of the Company under this Note and the other Transaction Documents with the same effect as if such Successor Entity had been named as the Company herein.

(c) The Company shall give notice (a "Fundamental Exchange Transaction Notice") of each Fundamental Exchange Transaction to the Holder in accordance with Section 21 by the later of 20 days prior to the anticipated effective date of such Fundamental Exchange Transaction (as determined in good faith by the Board of Directors of the Company) and the first public disclosure by the Company of the anticipated Fundamental Exchange Transaction, if practicable, and otherwise by the earliest practicable date, but in no event later than the effective date thereof. Each such Fundamental Exchange Transaction Notice shall state (i) the anticipated effective date of such Fundamental Exchange Transaction, (ii) the kind or amount of cash, securities or property or assets that will comprise the consideration into which shares of Common Stock will be exchanged or converted for such Fundamental Exchange Transaction, if applicable. Notwithstanding the Conversion Rate adjustment provisions described in Section 8.1 through 8.6, no adjustment to the Conversion Rate shall be made pursuant to such provisions in the event of any dividend, distribution, share split, share combination or issuance upon a Fundamental Exchange Transaction to which the provisions under this Section 5.2 apply.

5.3 Conversion Notices. Conversion notices in the form attached hereto as Exhibit A (each, a "**Holder Conversion Notice**") may be effectively delivered to the Company by any method set forth in the "Notices" section of the Purchase Agreement, and all Holder Conversions shall be cashless and not require further payment from the Holder. The Company shall deliver the Conversion Shares from any Holder Conversion to the Holder in accordance with Section 10 below.

5.4 Conversion Rate. The Conversion Rate shall be 100 shares of Common Stock per each $1,000 of the Outstanding Balance of Notes, as such number may be adjusted (including by an increase for Additional Shares upon a Made-Whole Fundamental Change in accordance with Section 8.12) as set forth in this Note (such number of shares, as so adjusted, the "**Conversion Rate**"). For illustrative purposes, based upon an Outstanding Balance of $25,000,000 as of the Effective Date, the Notes would be convertible into 2,500,000 Conversion Shares based upon the Conversion Rate as of the Effective Date.

5.5 Effective Time of Conversion. Each conversion (whether a Holder Conversion pursuant to Section 5.1 or 5.2 or a mandatory conversion pursuant to 6.1) shall be deemed to have been effected immediately prior to the close of business on the relevant Conversion Date; provided, however, that, regardless of when Conversion Shares are delivered in accordance with Section 10, the Holder shall be treated as the holder of record of such Conversion Shares as of the close of business on the Conversion Date. On and after the Conversion Date, interest shall cease to accrue on the Notes subject to conversion pursuant to this Section 5 and all rights of the Holder with respect to such Notes shall terminate except for the right to receive the whole shares of Common Stock issuable upon conversion thereof with a cash payment in lieu of any fractional share of Common Stock in accordance with Section 9.

6. Mandatory Conversions.

6.1 Subject to Section 6.5, the Company shall have the right, at its option, to cause all (but not less than all) of the Outstanding Balance to be converted into fully paid and non-assessable shares of Common Stock at the Conversion Rate then in effect, with the number of shares of Common Stock to be issued being equal to the Outstanding Balance divided by $1,000 and multiplied by the Conversion Rate, and with cash being paid in lieu of any fractional share pursuant to Section 9. The Company may exercise its right to cause a mandatory conversion pursuant to this Section 6 only if the Closing Sale Price of the Common Stock equals or exceeds $14.50 (subject to adjustment in the same manner as the Conversion Price) for at least 45 Trading Days (whether or not consecutive) in a period of sixty (60) consecutive Trading Days, including the last Trading Day of such sixty (60) day period, ending on, and including, the Trading Day immediately preceding the Business Day on which the Company issues a press release announcing the mandatory conversion as described in Section 6.2.

6.2 To exercise the mandatory conversion right described in Section 6.1, the Company shall publish a press release on the Company's website or through such other public medium as the Company may use at that time, prior to the open of business on the first Trading Day following any date on which the Company makes a conversion election pursuant to Section 6.1, announcing such a mandatory conversion and including the information specified in Section 6.3. The Company shall also give notice to the Holder pursuant to Section 21 hereof (not later than three Business Days after the date of the press release) of the mandatory conversion announcing the Company's intention to convert all of the Outstanding Balance. The conversion date with respect to such mandatory conversion will be a date selected by the Company (the "**Mandatory Conversion Date**") and will be no later than 30 calendar days after the date on which the Company issues the press release described in this Section 6.2.

6.3 In addition to any information required by applicable law or regulation, the press release and notice of mandatory conversion described in Section 6.2 shall state, as appropriate: (i) the Mandatory Conversion Date; (ii) the number of shares of Common Stock (including any Additional Shares) to be issued upon conversion of each $1,000 of the Outstanding Balance of the Notes; and (iii) that interest on the Notes will cease to accrue on the Mandatory Conversion Date.

6.4 The Company shall deliver the shares from any mandatory conversion to the Holder in accordance with Section 10. On and after the Mandatory Conversion Date, interest shall cease to accrue on the Notes called for a mandatory conversion pursuant to this Section 6 and all rights of the Holder with respect to such Notes shall terminate except for the right to receive the whole shares of Common Stock issuable upon conversion thereof with a cash payment in lieu of any fractional share of Common Stock in accordance with Section 9.

6.5 The Company may not exercise its right to cause a mandatory conversion pursuant to this Section 6 unless a Resale Registration Statement has been filed by the Company pursuant to the Registration Rights Agreement that includes the Conversion Shares and is effective at such Mandatory Conversion Date.

7. Defaults and Remedies.

7.1 Defaults. The following are events of default under this Note (each, an "**Event of Default**"): (a) (i) the Company fails to pay any principal due under this Note when the same becomes due and payable, (ii) the Company fails to pay any interest, fees, charges, or any other amount when due and payable hereunder and such failure is not cured within three (3) Business Days, or (iii) the Company fails to pay fees, charges or any other amount when due and payable hereunder and such failure is not cured within three (3) Business Days after notice of such failure is given by the Holder to the Company; (b) the Company fails to deliver any Conversion Shares in accordance with the terms hereof and such failure is not cured within three (3) Trading Days; (c) a receiver, trustee or other similar official shall be appointed over the Company or a material part of its assets and such appointment shall remain uncontested for twenty (20) days or shall not be dismissed or discharged within sixty (60) days; (d) the Company becomes insolvent or generally fails to pay, or admits in writing its inability to pay, its debts as they become due, subject to applicable grace periods, if any; (e) the Company makes a general assignment for the benefit of creditors; (f) the Company files a petition for relief under any bankruptcy, insolvency or similar law (domestic or foreign); (g) an involuntary bankruptcy proceeding is commenced or filed against the Company and is not dismissed within sixty (60) days; (h) (i) the Company defaults or otherwise fails to observe or perform any term, covenant or agreement contained in Section 4 hereof (other than Section 4.4); or (ii) the Company or any defaults or otherwise fails to observe or perform any other covenant, obligation, condition or agreement of the Company contained herein or in any other Transaction Document, other than those specifically set forth in this Section 7.1 and such default or failure remains uncured for a period of ten (10) days after written notice to the Company by the Holder of such default or failure; (i) any representation, warranty or other statement made or furnished by or on behalf of the Company to the Holder herein, in any Transaction Document, or otherwise in connection with the issuance of this Note is false, incorrect, incomplete or misleading in any material respect when made or furnished; (j) the Company fails to maintain the Share Reserve and such failure

continues for five (5) days after written notice to the Company by the Holder of such failure; (k) a final and non-appealable judgment is entered against the Company or any of its property or other assets for more than $25,000,000 and such judgment shall remain unvacated, unbonded or unstayed for a period of sixty (60) days, unless otherwise consented to by the Holder or would not provide the basis for an "Event of Default" under and as defined in the Term Loan Credit Agreement; (l) the Company fails to be DWAC Eligible at any time after the six (6) month anniversary of the Closing Date or the Mandatory Conversion Date; (m) the Company or any Restricted Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable and such failure continues after the expiration of any applicable grace periods or cure periods and such Material Indebtedness is, or is permitted to be, accelerated such that all obligations thereunder shall become immediately due and payable; provided that the Event of Default shall be deemed to have been cured if the Company enters into a waiver, amendment or extension with the requisite holders of such Material Indebtedness with respect to such failure or event or condition or such demand, acceleration or mandatory repurchase, prepayment, defeasance or redemption of such debt; and provided further that this clause (m) shall not apply to any of the following events: (1) any change of control offer made within 60 days after an acquisition with respect to the Company or an acquired business, and effectuated pursuant to the applicable debt instrument, (2) any default under debt of an acquired business if such default is cured, or such debt is repaid, within 60 days after the acquisition of such business so long as no other creditor accelerates or commences any kind of enforcement action in respect of such debt, (3) mandatory prepayment requirements arising from the receipt of net cash proceeds from debt, dispositions (including casualty losses, governmental takings and other involuntary dispositions), equity issuances or excess cash flow, (4) prepayments required by the terms of debt as a result of customary provisions in respect of illegality, replacement of lenders and gross-up provisions for taxes, increased costs, capital adequacy and other similar customary requirements and (5) any voluntary prepayment, redemption or other satisfaction of debt that becomes mandatory in accordance with the terms of such debt solely as the result of the Company or any subsidiary delivering a prepayment, redemption or similar notice with respect to such prepayment, redemption or other satisfaction; or (n) any material provision of the any Transaction Document shall for any reason cease to be valid and binding on or enforceable against the Company, or the Company shall so state in writing.

7.2 Remedies. At any time and from time to time after the Holder becomes aware of the occurrence of any Event of Default, the Required Holders may accelerate this Note by written notice to the Company, with the Outstanding Balance becoming immediately due and payable in cash. Notwithstanding the foregoing, upon the occurrence of any Event of Default described in clauses (c), (d), (e), (f) or (g) of Section 7.1, the Outstanding Balance as of the date of acceleration shall become immediately and automatically due and payable in cash, without any written notice required by the Required Holders. For the avoidance of doubt, the Holder may continue making Holder Conversions at any time following an Event of Default until such time as the Outstanding Balance is paid in full. In connection with acceleration as described herein, the Required Holders need not provide, and the Company hereby waives, any presentment, demand, protest or other notice of any kind, and the Required Holders may immediately and without expiration of any grace period enforce any and all of its rights and remedies hereunder

and all other remedies available to it under applicable law. Such acceleration may be rescinded and annulled by the Required Holders at any time prior to payment hereunder and the Holder shall have all rights as holder of the Note until such time, if any, as the Holder receives full payment pursuant to this Section 7.2. No such rescission or annulment shall affect any subsequent Event of Default or impair any right consequent thereon. Nothing herein shall limit the right of the Required Holders to pursue any other remedies available to it at law or in equity including, without limitation, a decree of specific performance and/or injunctive relief with respect to the Company's failure to timely deliver Conversion Shares upon Conversion of the Note as required pursuant to the terms hereof.

8. Certain Conversion Rate Adjustments. The Conversion Rate shall be adjusted, without duplication, upon the occurrence of any of the following events:

8.1 If the Company exclusively issues shares of Common Stock as a dividend or distribution on all shares of its Common Stock, or if the Company effects a share split or share combination, the Conversion Rate shall be adjusted based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_1}{OS_0}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the open of business on the Adjustment Effective Date of such share split or share combination, as the case may be;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Adjustment Effective Date of such share split or share combination, as the case may be;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the close of business on the Record Date for such dividend or distribution, or immediately prior to the open of business on the Adjustment Effective Date of such share split or share combination, as the case may be; and

OS_1 = the number of shares of Common Stock outstanding immediately after giving effect to such dividend or distribution, or such share split or share combination, as the case may be.

Any adjustment made under this Section 8.1 shall become effective immediately after the close of business on the Record Date for such dividend or distribution, or immediately after the open of business on the Adjustment Effective Date for such share split or share combination, as the case may be. If any dividend or distribution of the type described in this Section 8.1 is declared but not so paid or made, the Conversion Rate shall be immediately readjusted, effective as of the date the Board of Directors of the Company determines not to pay such dividend or distribution, to the Conversion Rate that would then be in effect if such dividend or distribution had not been declared.

8.2 If the Company distributes to all or substantially all holders of its Common Stock any rights, options or warrants entitling them, for a period expiring not more than 45 days immediately following the announcement date of such distribution, to purchase or subscribe for shares of its Common Stock at a price per share that is less than the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{OS_0 + X}{OS_0 + Y}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such distribution;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the close of business on the Record Date for such distribution;

X = the total number of shares of Common Stock issuable pursuant to such rights, options or warrants; and

Y = the number of shares of Common Stock equal to the aggregate price payable to exercise such rights, options or warrants, divided by the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution.

Any increase made under this Section 8.2 shall be made successively whenever any such rights, options or warrants are distributed and shall become effective immediately after the close of business on the Record Date for such distribution. To the extent that shares of Common Stock are not delivered after the expiration of such rights, options or warrants, the Conversion Rate shall be readjusted, effective as of the date of such expiration, to the Conversion Rate that would then be in effect had the increase with respect to the distribution of such rights, options or warrants been made on the basis of delivery of only the number of shares of Common Stock actually delivered. If such rights, options or warrants are not so distributed, the Conversion Rate shall be decreased, effective as of the date the Board of Directors of the Company determines not to make such distribution, to be the Conversion Rate that would then be in effect if such Record Date for such distribution had not occurred. If such rights, options or warrants are only exercisable upon the occurrence of certain triggering events, then the Conversion Rate shall not be adjusted until the triggering events occur.

For purposes of this Section 8.2, in determining whether any rights, options or warrants entitle the holders to subscribe for or purchase shares of Common Stock at less than such average of the Closing Sale Prices of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date of such distribution, and in determining the aggregate offering price of such shares of Common Stock, there shall be taken into account any consideration received by the Company for such rights, options or warrants and any amount payable on exercise or conversion thereof, the value of such consideration, if other than cash, to be determined by the Board of Directors of the Company.

8.3 If the Company makes distributions to all or substantially all holders of its Common Stock consisting of shares of its capital stock, evidence of debt or other assets or properties ("**Distributed Property**"), excluding:

(1) dividends or other distributions (including share splits), rights, options or warrants as to which an adjustment is effected in Section 8.1 or 8.2 above or in Section 8.4 below;

(2) dividends or other distributions covered by Section 8.4 below; and

(3) Spin-offs (as defined below) to which the provisions set forth below in this Section 8.3 shall apply,

the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{M}{M - F}$$

where:

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the Record Date for such distribution;

CR_1 = the Conversion Rate in effect immediately after the close of business on the Record Date for such distribution;

M = the average of the Closing Sale Prices of the Common Stock for the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such distribution; and

F = the fair market value, as determined by the Board of Directors of the Company, of the portion of the Distributed Property to be distributed in respect of each share of Common Stock immediately prior to the open of business on the Ex-Date for such distribution.

Any increase pursuant to this Section 8.3 shall become effective immediately after the close of business on the Record Date for such distribution. If such distribution is not so paid or made, the Conversion Rate shall be decreased, effective as of the date the Board of Directors of the Company determines not to pay or make such distribution, to be the Conversion Rate that would then be in effect if such distribution had not been declared.

Notwithstanding the foregoing, if "F" (as defined above) is equal to or greater than "M" (as defined above), in lieu of the foregoing increase, the Holder shall receive, at the same time and upon the same terms as holders of the Common Stock, solely as a result of holding this Note, without having to convert this Note, the amount and kind of Distributed Property that such Holder would have received as if such Holder owned a number of shares of Common Stock equal to the Conversion Rate on the Record Date for such distribution times the Outstanding Balance of this Note divided by $1,000.

With respect to an adjustment pursuant to this Section 8.3 where there has been a payment of a dividend or other distribution of the Common Stock in shares of capital stock of any class or series, or similar equity interest, of or relating to a subsidiary or other business unit, where such capital stock or similar equity interest is listed or quoted (or will be listed or quoted upon consummation of the spin-off) on a U.S. national securities exchange, which is referred to herein as a "**Spin-off**," the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{F + MP}{MP}$$

where:

CR_1 = the Conversion Rate in effect immediately after the open of business on the effective date for the Spin-off;

CR_0 = the Conversion Rate in effect immediately prior to the open of business on the effective date for the Spin-off;

F = the average of the Closing Sale Prices of the capital stock or similar equity interest distributed to holders of Common Stock applicable to one share of Common Stock over the first ten (10) consecutive Trading Day period immediately following, and including, the effective date for the Spin-off (such period, the "**Valuation Period**"); and

MP = the average of the Closing Sale Prices of the Common Stock over the Valuation Period.

The adjustment to the Conversion Rate under the preceding paragraph of this Section 8.3 will become effective immediately after the open of business on the day after the last day of the Valuation Period. For purposes of determining the Conversion Rate in respect of any Conversion during the ten (10) Trading Days commencing on the effective date for any Spin-off, references within the portion of this Section 8.3 related to Spin-offs to ten (10) consecutive Trading Days shall be deemed replaced with such lesser number of Trading Days as have elapsed from, and including, the effective date for such Spin-off to, but excluding, the relevant Conversion Date.

8.4 If the Company makes any cash dividend or distribution to all or substantially all holders of its Common Stock, the Conversion Rate will be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{SP_0}{SP_0 - C}$$

where,

CR_0 = the applicable Conversion Rate in effect immediately prior to the close of business on the Record Date for such dividend or other distribution;

CR_1 = the applicable Conversion Rate in effect immediately after the close of business on the Record Date for such dividend or other distribution;

SP_0 = the average of the Closing Sale Prices of the Company's Common Stock over the ten (10) consecutive Trading Day period ending on, and including, the Trading Day immediately preceding the Ex-Date for such dividend or other distribution; and

C = the amount in cash per share the Company pays or distributes to holders of its Common Stock.

An adjustment on the Conversion Rate made pursuant to Section 8.4 shall become effective immediately after the close of business on the Record Date for the applicable dividend or other distribution. If any dividend or other distribution described in this Section 8.4 is declared but not so paid or made, the new Conversion Rate shall be readjusted to the Conversion Rate that would then be in effect if such dividend or other distribution had not been declared.

If "C" as set forth above is equal to or greater than "SP_0" as set forth above, in lieu of the foregoing adjustment, the Holder shall receive, at the same time and upon the same terms as holders of the Company's Common Stock, solely as a result of holding this Note, without having to convert this Note, the amount and kind of Distributed Property that the Holder would have received if such Holder owned a number of shares of the Company's Common Stock equal to the applicable Conversion Rate in effect immediately prior to the close of business on the Record Date for such cash dividend or other distribution times the Outstanding Balance of this Note divided by $1,000.

8.5 If the Company or any of its subsidiaries makes a payment in respect of a tender offer or exchange offer for the Common Stock and the cash and value of any other consideration included in the payment per share of the Common Stock exceeds the average of the Closing Sale Price of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the last date on which tenders

or exchanges may be made pursuant to such tender or exchange offer, the Conversion Rate shall be increased based on the following formula:

$$CR_1 = CR_0 \times \frac{AC + (SP_1 \times OS_1)}{OS_0 \times SP_1}$$

where,

CR_0 = the Conversion Rate in effect immediately prior to the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

CR_1 = the Conversion Rate in effect immediately after the close of business on the last Trading Day of the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires;

AC = the aggregate value of all cash and any other consideration (as determined by the Board of Directors of the Company) paid or payable for shares of Common Stock purchased in such tender or exchange offer;

OS_0 = the number of shares of Common Stock outstanding immediately prior to the date such tender or exchange offer expires (prior to giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer);

OS_1 = the number of shares of Common Stock outstanding immediately after the date such tender or exchange offer expires (after giving effect to the purchase of all shares of Common Stock accepted for purchase or exchange in such tender or exchange offer); and

SP_1 = the average of the Closing Sale Prices of the Common Stock over the ten (10) consecutive Trading Day period commencing on, and including, the Trading Day next succeeding the date such tender or exchange offer expires.

The increase to the Conversion Rate under this Section 8.5 shall occur at the close of business on the tenth (10^{th}) Trading Day immediately following, and including, the Trading Day next succeeding the date such tender or exchange offer expires; provided that, for purposes of determining the Conversion Rate, in respect of any Conversion during the ten (10) Trading Days immediately following, and including, the Trading Day next succeeding the date that any such tender or exchange offer expires, references within this Section 8.5 to ten (10) consecutive Trading Days shall be deemed to be replaced with such lesser number of consecutive Trading Days as have elapsed between the date such tender or exchange offer expires and the relevant Conversion Date.

In the event that the Company or one of its subsidiaries is obligated to purchase shares of Common Stock pursuant to any such tender offer or exchange offer, but the Company or such subsidiary is permanently prevented by applicable law from effecting any such purchases, or all such purchases are rescinded, then the Conversion Rate shall be readjusted to be such Conversion Rate that would then be in effect if such tender offer or exchange offer had not been made. For the avoidance of doubt, this Section 8.5 shall not apply if the Company acquires shares of Common Stock other than through a tender or exchange offer, including, but not limited to, through an open market purchase in compliance with Rule 10b-18 promulgated under the Exchange Act or through an "accelerated share repurchase" on customary terms.

8.6 Without limiting any provision hereof, if the Company at any time on or after the Effective Date subdivides (by any stock split, stock dividend, recapitalization or otherwise) one or more classes of its outstanding shares of Common Stock into a greater number of shares, the Conversion Rate in effect immediately prior to such subdivision will be proportionately reduced. Without limiting any provision hereof, if the Company at any time on or after the Effective Date combines (by combination, reverse stock split or otherwise) one or more classes of its outstanding shares of Common Stock into a smaller number of shares, the Conversion Rate in effect immediately prior to such combination will be proportionately increased. Any adjustment pursuant to this Section 8.6 shall become effective immediately after the effective date of such subdivision or combination. If any event requiring an adjustment under this Section 8.6 occurs during the period that a Conversion Rate is calculated hereunder, then the calculation of such Conversion Rate shall be adjusted appropriately to reflect such event.

8.7 In addition to those adjustments required by Section 8.1 through Section 8.6, and to the extent permitted by applicable law and subject to the applicable rules of the NYSE, the Company from time to time may (but is not required to) increase the Conversion Rate by any amount for a period of at least 20 Business Days or any longer period permitted or required by law if the increase is irrevocable during that period and the Board of Directors of the Company determines that such increase would be in the Company's best interest. In addition, the Company may (but is not required to) increase the Conversion Rate to avoid or diminish any income tax to holders of the Common Stock or rights to purchase Common Stock in connection with a dividend or distribution of shares (or rights to acquire shares) or similar event. Whenever the Conversion Rate is increased pursuant to any of the preceding two sentences, the Company shall deliver to the Holder in accordance with Section 21 hereof a notice of the increase at least 15 days prior to the date the increased Conversion Rate takes effect, and such notice shall state the increased Conversion Rate and the period during which it will be in effect.

8.8 Calculations. All calculations and other determinations under the foregoing Section 8.1 through Section 8.6 shall be made by the Company and shall be made to the nearest one-ten thousandth (1/10,000th) of a share. No adjustment to the Conversion Rate shall be made if it results in a Conversion Price that is less than the par value (if any) of the Common Stock. The Company shall not take any action that would result in the Conversion Price being less than the par value (if any) of the Common Stock without giving effect to the previous sentence.

8.9 Increase of Conversion Rate Upon Conversion in Connection with a Make-Whole Fundamental Change.

(a) If the Holder elects to convert all or any portion of this Note during any Holder Fundamental Change Election Period, then the Company shall increase the Conversion Rate for the Outstanding Balance being converted by a number of additional shares of Common Stock (the "**Additional Shares**") under the circumstances and as set forth below.

(b) The number of Additional Shares, if any, per $1,000 of the Outstanding Balance by which the Conversion Rate shall be increased for a Holder Conversion during a Holder Fundamental Change Election Period shall be determined by reference to the table attached as Schedule A hereto (for purposes of this Section 8.12, the "**table**"), based on the Make-Whole Effective Date and the Stock Price.

(i) If the exact Stock Price and Make-Whole Effective Date is between two prices or effective dates in the table, the number of Additional Shares by which the Conversion Rate shall be increased shall be determined by a straight-line interpolation between the number of Additional Shares set forth for the higher and lower Stock Prices and the earlier and later effective dates, as applicable, based on a 365-day year;

(ii) if the Stock Price is greater than $14.50 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table pursuant to subsection (d) below), no Additional Shares shall be added to the Conversion Rate; and

(iii) if the Stock Price is less than $8.25 per share (subject to adjustment in the same manner as the Stock Prices set forth in the column headings of the table pursuant to subsection (d) below), 21.2121 Additional Shares shall be added to the Conversion Rate.

Notwithstanding the foregoing, in no event will the Conversion Rate after being so increased exceed 121.2121 shares of Common Stock (the "**Maximum Conversion Rate**") per $1,000 in Outstanding Balance of Notes, subject to adjustment in the same manner as the Conversion Rate is adjusted pursuant to Section 8.

(c) The Stock Prices set forth in the first row of the table (i.e., the column headers) and the number of Additional Shares in the table shall be adjusted as of the time at which the Conversion Rate of the Notes is adjusted as set forth in Section 8. The adjusted Stock Prices shall equal the Stock Prices applicable immediately prior to such adjustment, multiplied by a fraction, the numerator of which is the Conversion Rate in effect immediately prior to the adjustment giving rise to the Stock Price adjustment and the denominator of which is the Conversion Rate as so adjusted. The numbers of Additional Shares within the table shall each be adjusted in the same manner and at the same time as the Conversion Rate is adjusted as set forth in Section 8.

8.10 Rights Plan. Notwithstanding Section 8.2, if the Company has a rights plan (including the distribution of rights pursuant thereto to all holders of the Common Stock) in effect while this Note remains outstanding, the Holder of this Note will receive, upon conversion of this Note, in addition to the Common Stock to which such Holder is entitled, a corresponding number of rights in accordance with the rights plan. If, prior to any conversion, such rights have separated from the shares of Common Stock in accordance with the provisions of the applicable rights plan so that the Holder of this Note would not be entitled to receive any rights in respect of the Common Stock delivered upon conversion of this Note, the Conversion Rate will be adjusted at the time of separation as if the Company had distributed to all holders of its Common Stock, shares of capital stock covered by the separated rights, subject to readjustment in the event of the expiration, termination or redemption of such rights.

9. No Fractional Shares. No fractional shares of Common Stock or securities representing fractional shares of Common Stock shall be delivered upon Conversion, whether voluntary or mandatory, of the Notes. Instead, the Company will make a cash payment to each Holder that would otherwise be entitled to a fractional share based on the Closing Sale Price of the Common Stock on the relevant Conversion Date.

10. Method of Conversion Share Delivery. On or before the close of business on the fifth (5th) Trading Day following (x) the date of delivery of a Holder Conversion Notice or (y) the Mandatory Conversion Date, as applicable (such Trading Day, the "**Delivery Date**"), the Company shall, provided it is DWAC Eligible at such time and such Conversion Shares are eligible for delivery via DWAC, deliver or cause its transfer agent to deliver the applicable Conversion Shares electronically via DWAC to the account designated by the Holder in the applicable Holder Conversion Notice. If the Company is not DWAC Eligible or such Conversion Shares are not eligible for delivery via DWAC, it shall deliver to the Holder or its broker (as designated in the Holder Conversion Notice), via reputable overnight courier, a certificate representing the number of shares of Common Stock equal to the number of Conversion Shares to which the Holder shall be entitled, registered in the name of the Holder or its designee. For the avoidance of doubt, the Company has not met its obligation to deliver Conversion Shares by the Delivery Date unless the Holder or its broker, as applicable, has actually received the certificate representing the applicable Conversion Shares no later than the close of business on the relevant Delivery Date pursuant to the terms set forth above. Moreover, and notwithstanding anything to the contrary herein (other than Section 6.5) or in any other Transaction Document, in the event the Company or its transfer agent refuses to deliver any Conversion Shares upon a Holder Conversion without a restrictive securities legend to the Holder on grounds that such issuance is in violation of Rule 144, the Company shall deliver or cause its transfer agent to deliver the applicable Conversion Shares to the Holder with a restricted securities legend, but otherwise in accordance with the provisions of this Section 10. In conjunction therewith, the Company will also deliver to the Holder a written explanation from its counsel or its transfer agent's counsel opining as to why the issuance of the applicable Conversion Shares violates Rule 144; provided, that subject to Section 6.5, the Holder acknowledges that any Conversion Shares issued prior to

the six (6) month anniversary of the Effective Date will bear a restrictive securities legend, and the Company shall have no obligation to deliver any such opinion letter for any Conversion occurring prior to the six (6) month anniversary of the Effective Date. For the avoidance of doubt, any Conversion Shares issued pursuant to a mandatory conversion in accordance with Section 6 of this Agreement shall not bear a restrictive securities legend unless otherwise required by applicable law or regulation.

11. Conversion Delays. If the Company fails to deliver Conversion Shares in accordance with the timeframe stated in Section 10, the Holder may at any time prior to receiving the applicable Conversion Shares rescind in whole or in part such Conversion, with a corresponding increase to the Outstanding Balance (any returned amount will tack back to the Effective Date for purposes of determining the holding period under Rule 144).

12. [Reserved].

13. Taxes on Conversions. The Company shall pay any and all documentary, stamp or similar issue or transfer taxes that may be payable in respect of the issuance of shares of Common Stock to the initial Holder (or any Affiliate thereof) upon any Conversion of this Note; provided, however, that the Company shall not be required to pay any tax which may be payable in respect of any transfer involved in the issuance and delivery of any such shares to any person other than to the initial Holder (or any Affiliate thereof), and the Company shall not be required to issue or deliver such shares to any such person unless or until the person requesting delivery thereof shall have paid to the Company the amount of such tax or shall have established to the reasonable satisfaction of the Company that such tax has been paid.

14. Opinion of Counsel. In the event that an opinion of counsel is needed for any matter related to this Note, the Holder has the right to have any such opinion provided by its counsel.

15. Absolute Obligation. Except as expressly provided herein, no provision of this Note shall alter or impair the obligation of the Company, which is absolute and unconditional, to pay the principal of and accrued interest, as applicable, on and any other portion of the Outstanding Balance of this Note at the time, place and rate and in the currency herein prescribed. This Note is a direct debt obligation of the Company.

16. Governing Law; Venue. This Note shall be construed and enforced in accordance with, and all questions concerning the construction, validity, interpretation and performance of this Note shall be governed by, the internal laws of the State of New York, without giving effect to any choice of law or conflict of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of New York. The provisions set forth in the Purchase Agreement to determine the proper venue for any disputes are incorporated herein by this reference.

17. Cancellation. After repayment, prepayment or Conversion of the entire Outstanding Balance, this Note shall be deemed paid in full, shall automatically be deemed canceled, and shall not be reissued.

18. Amendments; Waivers. The prior written consent of each of the parties hereto shall be required for any amendment to, or waiver of any provision of, this Note. No waiver of any provision or consent to any prohibited action shall constitute a waiver of any other provision or consent to any other prohibited action, whether or not similar. No waiver or consent shall constitute a continuing waiver or consent or commit a party to provide a waiver or consent in the future except to the extent specifically set forth in writing.

19. Assignments. Except as provided herein, the Company may not assign or transfer this Note or any interest herein without the prior written consent of the Holder (and any purported transfer without such consent shall be null and void). The Holder may not assign this Note or a portion hereof unless (x) the Company has provided its prior written consent to such assignment (not to be unreasonably withheld) (provided that such consent shall not be required in the case of an assignment by the Holder to any Affiliate of the Holder, provided such Affiliate becomes a party hereto and subject to the terms hereof) and (y) such transfer complies with applicable securities laws. If at the time of any transfer of this Note or any shares of Common Stock issued upon Holder Conversion of this Note, the transfer of such Securities shall not be either (a) registered pursuant to an effective registration statement under the Securities Act and under applicable state securities or blue sky laws or (b) eligible for resale without volume or manner-of-sale restrictions or current public information requirements pursuant to Rule 144, the Company may require, as a condition of allowing such transfer, that the Holder or transferee, as the case may be, to comply with the transfer restrictions set forth on the restrictive legend on the face of such Security. Any assignee or transferee of the Holder who acquires this Note in accordance with the terms hereof shall be deemed to be the "Holder" hereunder and shall be deemed to have agreed to be bound by the terms of this Note as "Holder".

20. [Reserved].

21. Notices. Whenever notice is required to be given under this Note, unless otherwise provided herein, such notice shall be given in accordance with the subsection of the Purchase Agreement titled "Notices."

22. Severability. If any part of this Note is construed to be in violation of any law, such part shall be modified to achieve the objective of the Company and the Holder to the fullest extent permitted by law and the balance of this Note shall remain in full force and effect.

[*Remainder of page intentionally left blank; signature page follows*]

IN WITNESS WHEREOF, Company has caused this Note to be duly executed as of the Effective Date.

COMPANY:

EASTMAN KODAK COMPANY

By: /s/ David E. Bullwinkle
Name: David E. Bullwinkle
Title: Chief Financial Officer and Senior Vice President

[Signature Page to Convertible Promissory Note]

ACKNOWLEDGED, ACCEPTED AND AGREED:

HOLDER:

Kennedy Lewis Capital Partners Master Fund II LP

By: /s/ Anthony Pasqua
Name: Anthony Pasqua
Title: Authorized Signatory

[Signature Page to Convertible Promissory Note]

ATTACHMENT 1
DEFINITIONS

For purposes of this Note, the following terms shall have the following meanings:

"**ABL Agreement**" means that certain Amended and Restated Credit Agreement, dated as of May 26, 2016 among the Company, the lenders party thereto from time to time and Bank of America, N.A., as administrative and collateral agent, as amended through that certain Amendment No. 4, dated as of February 26, 2021, and as further amended, amended and restated, modified, supplemented, extended, replaced or refinanced from time to time (whether through one or more credit facilities or other debt issuances pursuant to the ABL Agreement or any other agreement, contract or indenture).

"**Additional Shares**" has the meaning set forth in Section 8.12(a) of this Note.

"**Adjustment Effective Date**" means the first date on which the shares of the Common Stock trade on the applicable exchange or market, regular way, reflecting the relevant share split or share combination, as applicable.

"**Alternate Consideration**" and "**unit of Alternate Consideration**" each has the meaning set forth in Section 5.2(a) of this Note.

"**Bankruptcy Code**" means the United States Bankruptcy Code (11 U.S.C. §101 et seq.), as amended from time to time.

"**Business Day**" means any day other than a Saturday, Sunday or other day on which commercial banks in New York, New York are authorized or required by law to remain closed.

"**Closing Sale Price**" of the Common Stock on any date means the closing sale price per share (or if no closing sale price is reported, the average of the closing bid and ask prices or, if more than one in either case, the average of the average closing bid and the average closing ask prices) on such date as reported in composite transactions for the principal United States national or regional securities exchange on which the Common Stock is traded or, if the Common Stock is not listed for trading on a United States national or regional securities exchange on the relevant date, the last quoted bid price for the Common Stock in the over-the-counter market on the relevant date, as reported by OTC Markets Group Inc. or a similar organization. In the absence of such a quotation, the Closing Sale Price shall be the average of the mid-point of the last bid and ask prices for the Common Stock on the relevant date from each of at least three nationally recognized independent investment banking firms selected by the Company for this purpose.

"**Common Stock**" has the meaning set forth in Section 5.1 of this Note.

"**Company**" has the meaning set forth in the preamble to this Note.

"**Company Fundamental Change Prepayment Election Period**" has the meaning set forth in Section 1.3(b) of this Note.

"**Conversion**" means a Holder Conversion under Section 5 or a mandatory conversion pursuant to Section 6.

"**Conversion Amount**" has the meaning set forth in Section 5.1 of this Note.

"**Conversion Date**" means with respect to any Holder Conversion, the date on which a Conversion shall be effected as set forth in the applicable Holder Conversion Notice, and with respect to any mandatory conversion pursuant to Section 6, the Mandatory Conversion Date.

"**Conversion Price**" means, at any time, an amount equal to $1,000 divided by the Conversion Rate in effect at such time.

"**Conversion Rate**" has the meaning set forth in Section 5.4 of this Note.

"**Conversion Shares**" has the meaning set forth in Section 5.1 of this Note.

"**Default Rate**" means, at any time, the Interest Rate plus two percent (2%).

"**Delivery Date**" has the meaning set forth in Section 10 of this Note.

"**Disposition**" or "**Dispose**" has the meaning set forth in the Term Loan Credit Agreement.

"**DTC**" means the Depository Trust Company or any successor thereto.

"**DTC/FAST Program**" means the DTC's Fast Automated Securities Transfer program.

"**DWAC**" means the DTC's Deposit/Withdrawal at Custodian system.

"**DWAC Eligible**" means that (a) the Company's Common Stock is eligible at DTC for full services pursuant to DTC's operational arrangements, including without limitation transfer through DTC's DWAC system; (b) the Company has been approved (without revocation) by DTC's underwriting department; (c) the Company's transfer agent is approved as an agent in the DTC/FAST Program; (d) the Conversion Shares are otherwise eligible for delivery via DWAC other than due to the actions or status of the Holder; and (e) the Company's transfer agent does not have a policy prohibiting or limiting delivery of the Conversion Shares via DWAC.

"**Effective Date**" has the meaning set forth in the preamble to this Note.

"**Event of Default**" has the meaning set forth in Section 7.1 of this Note.

"**Ex-Date**" when used with respect to any issuance, dividend or distribution on the Common Stock, means the first date on which the Common Stock trades on the applicable exchange or in the applicable market, regular way, without the right to receive such issuance, dividend or distribution from the Company or, if applicable, from the seller of the Common Stock on such exchange or market (in the form of due bills or otherwise) as determined by such exchange or market.

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended.

"**Fundamental Change**" shall be deemed to have occurred at any time after the original issuance of this Note, if any of the following occurs:

(i) a "person" or "group" within the meaning of Section 13(d) of the Exchange Act, other than (1) the Company, its subsidiaries or the employee benefit plans of the Company and its subsidiaries and (2) Permitted Holders, becomes the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of more than 50% of the Voting Stock, provided that a Fundamental Change will be deemed to have occurred if a Permitted Holder Group becomes the direct or indirect "beneficial owner," as defined in Rule 13d-3 under the Exchange Act, of more than 70% of the Voting Stock;

(ii) the consummation of (A) any recapitalization, reclassification or change of the Common Stock (other than changes resulting from a subdivision or combination) as a result of which the Common Stock would be converted into, or exchanged for, stock, other securities, other property or assets; (B) any share exchange, consolidation or merger of the Company pursuant to which the Common Stock will be converted into cash, securities or other property; or (C) any sale, lease or other transfer in one transaction or a series of transactions of all or substantially all of the consolidated assets of the Company and its subsidiaries, taken as a whole, to any person other than one of the Company's Restricted Subsidiaries; provided, however, that any merger solely for the purpose of changing the Company's jurisdiction of incorporation to the United States of America, any State thereof or the District of Columbia, and resulting in a reclassification, conversion or exchange of outstanding shares of Common Stock solely into shares of Common Stock of the surviving entity, shall not be a Fundamental Change; provided further that any transaction described in (A) or (B) of this clause (ii) in which the holders of the Company's Common Stock immediately prior to such transaction own, directly or indirectly, more than 50% of the common stock of the continuing corporation or transferee or the parent thereof immediately after such transaction in substantially the same proportions as such ownership immediately prior to such transaction shall not be a Fundamental Change pursuant to this clause (ii);

(iii) the Common Stock ceases to be listed or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors); or

(iv) the stockholders of the Company approve any plan or proposal for the liquidation or dissolution of the Company;

provided, however, that a transaction or transactions described in clause (i) or (ii) above shall not constitute a Fundamental Change, if at least 90% of the consideration received or to be received by holders of the Common Stock of the Company, excluding cash payments for fractional shares and cash payments made pursuant to dissenters' appraisal rights, in connection with such transaction or transactions consists of shares of common stock that are listed or quoted on any of the New York Stock Exchange, the NASDAQ Global Select Market or the NASDAQ Global Market (or any of their respective successors) or will be so listed or quoted when issued or exchanged in connection with such transaction or transactions and as a result of such transaction or transactions this Note becomes convertible into such consideration pursuant to the terms hereof.

"**Fundamental Exchange Transaction**" means the occurrence of any of the following: (i) any recapitalization or reclassification of the Common Stock (other than changes resulting from a subdivision or combination); (ii) any consolidation, merger or combination involving the Company; (iii) any sale, lease or other transfer to a third party of the consolidated assets of the Company and the Company's subsidiaries substantially as an entirety; or (iv) any statutory share exchange, in each case, as a result of which the Common Stock is converted into, or exchanged for, stock, other securities, other property or assets (including cash or any combination thereof).

"**Fundamental Transaction**" means a Fundamental Change or a Fundamental Exchange Transaction, as applicable.

"**Holder**" has the meaning set forth in the preamble to this Note.

"**Holder Conversion**" has the meaning set forth in Section 5.1 of this Note.

"**Holder Conversion Notice**" has the meaning set forth in Section 5.3 of this Note.

"**Holder Fundamental Change Election Period**" has the meaning set forth in Section 1.3(a) of this Note.

"**L/C Facility Agreement**" means that certain Letter of Credit Facility Agreement, dated as of February 26, 2021 among the Company, the lenders party thereto from time to time and Bank of America, N.A., as administrative and collateral agent, as amended, amended and restated, modified, supplemented, extended, replaced or refinanced from time to time (whether through one or more credit facilities or other debt issuances pursuant to the L/C Facility Agreement or any other agreement, contract or indenture).

"**Lien**" has the meaning set forth in the Term Loan Credit Agreement.

"**Make-Whole Effective Date**" means the date on which such Make-Whole Fundamental Change is consummated.

"**Make-Whole Fundamental Change**" means any Fundamental Change.

"**Mandatory Conversion Date**" has the meaning set forth in Section 6.2 of this Note.

"**Material Indebtedness**" has the meaning set forth in the Term Loan Credit Agreement.

"**Maturity Date**" means May 28, 2026.

"**Maximum Conversion Rate**" has the meaning set forth in Section 8.12(c) of this Note.

"**Note Register**" has the meaning set forth in Section 1.1 of this Note.

"**Notes**" means this Note, together with each other note issued pursuant to Section 1.3, Section 3.1 or Section 5.1 of this Note.

"**NYSE**" means the New York Stock Exchange.

"**Outstanding Balance**" means as of any date of determination, the Purchase Price, as reduced or increased, as the case may be, pursuant to the terms hereof for payment, Conversion, offset, or otherwise, accrued but unpaid interest, collection and enforcements costs (including attorneys' fees) incurred by the Holder, transfer, stamp, issuance and similar taxes and fees related to Conversions, and any other fees or charges incurred under this Note.

"**Permitted Debt**" means (i) debt incurred under the Term Loan Credit Agreement, (ii) intercompany debt between or among the Company and its subsidiaries, to the extent permitted pursuant to the terms of the Term Loan Credit Agreement, (iii) debt incurred in connection with acquisitions of any property, assets or line of business by the Company or its subsidiaries that is permitted pursuant to the terms of the Term Loan Credit Agreement, (iv) debt that is subordinated to the obligations of the Company under the Transaction Documents on terms that are reasonably satisfactory to the Required Holders, (v) debt otherwise permitted in accordance with the terms of the Term Loan Credit Agreement, including for avoidance of doubt, debt incurred by subsidiaries of the Company organized under the laws of any jurisdiction outside of the United States and debt pursuant to the ABL Agreement and the L/C Facility Agreement and (vi) any modification, refinancing, refunding, renewal, replacement, exchange or extension of the foregoing.

"**Permitted Holders**" shall mean, at any time, each of Grand Oaks Investors, LLC, Longleaf Partners Small-Cap Fund, C2W Partners Master Fund Limited, Deseret Mutual Pension Trust, George Karfunkel, Renee Karfunkel, GKarfunkel Family LLC, Congregation Chemdas Yisroel, Chesed Foundation of America, Marneu Holding Company, Moses Marx, Phillippe Katz, K.F. Investors LLC, United Equities Commodities Company, Momar Corporation, 111 John Realty

Corporation, Kennedy Lewis Investment Management LLC and any Affiliate of any of the foregoing and any group (within the meaning of Section 13(d)(3) or Section 14(d)(2) of the Exchange Act, or any successor provision) the members of which include any of the Permitted Holders specified above and that, directly or indirectly, hold or acquire beneficial ownership of the Voting Stock (a "Permitted Holder Group"), so long as (1) each member of the Permitted Holder Group has voting rights proportional to the percentage of ownership interests held or acquired by such member and (2) no Person or other "group" (other than Permitted Holders specified above) beneficially owns more than 50% on a fully diluted basis of the Voting Stock held by the Permitted Holder Group (without giving effect to any attribution rules).

"**Permitted Liens**" means (i) Liens created under the Term Loan Credit Agreement, (ii) Liens relating to intercompany borrowings between or among the Company and its subsidiaries to the extent permitted pursuant to the terms of the Term Loan Credit Agreement, (iii) any Lien on any property or asset of the Company or any of its subsidiaries existing as of the Effective Date; provided that (x) such Lien shall not apply to any other property or asset of the Company or any subsidiary (other than proceeds thereof and extensions or improvements to any such property) unless otherwise permitted by the Holders and (y) such Lien shall secure only those obligations which it secures on the Effective Date and extensions, refinancings, restructurings, renewals and replacements thereof that do not increase the outstanding principal amount thereof (other than by an amount equal to accrued interest and any fees, costs and expenses incurred in connection therewith), the obligations thereunder or the property or assets securing such obligations and (iv) Liens permitted in accordance with the terms of the Term Loan Credit Agreement, including for avoidance of doubt, Liens to secure debt incurred by subsidiaries of the Company organized under the laws of any jurisdiction outside of the United States and debt pursuant to the ABL Agreement and the L/C Facility Agreement.

"**Purchase Agreement**" has the meaning set forth in the preamble to this Note.

"**Purchase Price**" has the meaning set forth in the preamble to this Note.

"**Record Date**" shall mean, with respect to any dividend, distribution or other transaction or event in which the holders of the Common Stock (or other applicable security) have the right to receive any cash, securities or other property or in which the Common Stock (or such other security) is exchanged for or converted into any combination of cash, securities or other property, the date fixed for determination of holders of the Common Stock (or such other security) entitled to receive such cash, securities or other property (whether such date is fixed by the Board of Directors of the Company, statute, contract or otherwise).

"**Registration Rights Agreement**" mean the Registration Rights Agreement dated as of even date herewith among the Company and the Holder.

"**Required Holders**" means the Holder, or, if the Holder and its affiliates cease to own all of the Notes, holders of at least a majority of aggregate principal amount of Notes then outstanding.

"**Restricted Subsidiary**" has the meaning set forth in the Term Loan Credit Agreement.

"**Rule 144**" has the meaning set forth in Section 4.4 of this Note.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Share Reserve**" has the meaning set forth in the Purchase Agreement.

"**Spin-off**" has the meaning set forth in Section 8.3 of this Note.

"**Stock Price**" means, with respect to any Make-Whole Fundamental Change, (i) if a holder of shares of Common Stock receives only cash in exchange for such holder's shares of Common Stock in such Make-Whole Fundamental Change, the cash amount paid per share of Common Stock; or (ii) in all other cases, the average of the Closing Sale Prices of the shares of Common Stock over the 10 consecutive Trading Days prior to (but excluding) the Make-Whole Effective Date of such Make-Whole Fundamental Change.

"**Successor Entity**" has the meaning set forth in Section 5.2(b) of this Note.

"**table**" has the meaning set forth in Section 8.12(b) of this Note.

"**Term Loan Credit Agreement**" means that certain Credit Agreement, dated as of the date hereof among the Company, the Lenders party thereto from time to time and Alter Domus (US) LLC, as administrative and collateral agent as amended, amended and restated, modified, supplemented, extended, replaced or refinanced from time to time (whether through one or more credit facilities or other debt issuances pursuant to the Term Loan Credit Agreement or any other agreement, contract or indenture); provided that, in the event the Term Loan Credit Agreement has been terminated, any reference herein to a transaction or matter being permitted under the terms of the Term Loan Credit Agreement (or similar language) shall be deemed to refer to the terms of the Term Loan Credit Agreement as in effect immediately prior to the termination thereof.

"Trading Day" means any day on which the New York Stock Exchange (or such other principal market for the Common Stock) is open for trading.

"**Transaction Documents**" has the meaning set forth in the Purchase Agreement.

"**Valuation Period**" has the meaning set forth in Section 8.3 of this Note.

"**Voting Stock**" of any person as of any date means the Capital Stock of such person that is at the time entitled to vote in the election of the Board of Directors or other appropriate governing body of such person.

[Remainder of page intentionally left blank]

EXHIBIT A

[•] Date:

Eastman Kodak Company.
Attn: General Counsel
343 State Street
Rochester, NY 14650

HOLDER CONVERSION NOTICE

The above-captioned Holder hereby gives notice to Eastman Kodak Company, a New Jersey corporation (the "**Company**"), pursuant to that certain Convertible Promissory Note made by the Company in favor of the Holder on February 26, 2021 (the "**Note**"), that the Holder elects to convert all or such portion of the Outstanding Balance of the Note set forth below into fully paid and non-assessable shares of Common Stock of the Company as of the Conversion Date specified below. Said conversion shall be based on the Conversion Rate in effect immediately prior to the close of business on the Conversion Date as provided in the Note. In the event of a conflict between this Holder Conversion Notice and the Note, the Note shall govern, or, in the alternative, at the election of the Holder in its sole discretion, the Holder may provide a new form of Holder Conversion Notice to conform to the Note. Capitalized terms used in this notice without definition shall have the meanings given to them in the Note.

A. Conversion Date: _____

B. Conversion Amount: Check one:

☐ Entire Outstanding Balance

☐ $_____

Please transfer the Conversion Shares electronically (via DWAC) to the following account:

Broker: _____ Address: _____
DTC#: _____ _____
Account #: _____ _____
Account Name: _____ _____

To the extent the Conversion Shares are not able to be delivered to the Holder electronically via the DWAC system, deliver all such certificated shares to the Holder via reputable overnight courier after receipt of this Holder Conversion Notice (by facsimile transmission or otherwise) to:

[Signature Page Follows]

Sincerely,

Holder:

KENNEDY LEWIS CAPITAL PARTNERS MASTER II FUND LP

By: _____
Name:
Title:

Schedule A

The following table sets forth the number of Additional Shares of Common Stock per $1,000 of Outstanding Balance of Notes by which the Conversion Rate shall be increased pursuant to Section 8.12 for each Stock Price and Make-Whole Effective Date set forth below:

Fundamental Change Stock Price

Fundamental Change Effective Date	$ 8.25	$ 9.25	$ 10.00	$ 12.50	$ 14.50
February 26, 2021	21.2121	15.9384	12.7990	5.5256	0.0000
February 26, 2022	21.2121	15.9384	12.7990	5.2552	0.0000
February 26, 2023	21.2121	15.9384	12.7990	5.1904	0.0000
February 26, 2024	21.2121	15.9384	12.5140	4.9208	0.0000
February 26, 2025	21.2121	14.6097	10.9680	3.9040	0.0000
February 26, 2026	21.2121	8.1081	0.0000	0.0000	0.0000

Exhibit 10.11

EXECUTION VERSION

REGISTRATION RIGHTS AGREEMENT

THIS REGISTRATION RIGHTS AGREEMENT (the "**Agreement**"), dated as of February 26, 2021, by and between **EASTMAN KODAK COMPANY** a New Jersey corporation (the "**Company**") Kennedy Lewis Capital Partners Master Fund LP, a Delaware limited partnership ("**Fund I**"), and Kennedy Lewis Capital Partners Master Fund II LP ("**Fund II**, and together with Fund I, each a "**Buyer**" and collectively, the "**Buyers**").

WITNESSETH:

WHEREAS, the Company and the Buyers have entered into a Stock and Notes Purchase Agreement, dated as of February 26, 2021 (the "**Purchase Agreement**"), pursuant to which, among other things, each Buyer has agreed to purchase the Purchased Shares and the Purchased Notes (as defined in the Purchase Agreement) from the Company;

WHEREAS, as a condition to each of the parties' obligations under the Purchase Agreement, the Company and the Buyers are entering into this Agreement for the purpose of granting certain registration and other rights to the Buyers; and

NOW THEREFORE, in consideration of the premises and the covenants and agreements set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which the parties hereto acknowledge, the parties agree as follows:

ARTICLE 1. DEFINITIONS

Capitalized terms used and not otherwise defined herein shall have the meanings given such terms in the Purchase Agreement. As used in this Agreement, the following terms shall have the following meanings:

"**Commission**" means the United States Securities and Exchange Commission.

"**Filing Date**" means the date on which the Registration Statement is initially filed.

"**Indemnified Party**" shall have the meaning set forth in Section 5.3.

"**Indemnifying Party**" shall have the meaning set forth in Section 5.3.

"**Losses**" shall have the meaning set forth in Section 5.1.

"**Proceeding**" means an action, claim, suit, investigation or proceeding (including, without limitation, an investigation or partial proceeding, such as a deposition), whether commenced or threatened.

"**Prospectus**" means the prospectus included in the Registration Statement (including, without limitation, a prospectus that includes any information previously omitted from a prospectus filed as part of an effective registration statement in reliance upon Rule 430A promulgated under the Securities Act), as amended or supplemented by any prospectus supplement, with respect to the terms of the offering of any portion of the Registrable Securities covered by the Registration Statement, and all other amendments and supplements to the Prospectus, including post-effective amendments, and all material incorporated by reference in such Prospectus.

"**Purchase Agreement**" has the meaning set forth in the Recitations.

"**Registrable Securities**" means the Purchased Shares and the Conversion Shares (and any Common Stock actually issued in respect of such securities upon any stock splits, stock dividends, or similar transactions); provided, that any such securities shall cease to constitute "Registrable Securities" upon the earliest to occur of: (A) the date on which such securities are disposed of pursuant to the Registration Statement; (B) the date on which such securities become eligible for sale under Rule 144 (or any successor rule then in effect), without restriction thereunder and either (1) restrictive legends have been removed from all book entry positions or certificates representing the applicable Registrable Securities, or (2) if any Buyer reasonably determines that it is unable to deliver an opinion that it is not then an affiliate of the Company and such Buyer and its affiliates own in the aggregate a number of Registrable Securities that may at such time be disposed of in a single transaction under Rule 144, the Company has committed to remove such restrictive legends from the applicable Registrable Securities covered by a Form 144 that has been filed with the Commission pursuant to Rule 144 upon the disposition of the applicable Registrable Securities; and (C) the date on which such securities cease to be outstanding (provided, that if any Buyer or its respective affiliates hold any Purchased Notes on such date, the Conversion Shares shall be deemed outstanding for purposes of this definition).

"**Registration Statement**" means any registration statement contemplated by this Agreement, including (in each case) the Prospectus, amendments and supplements to such registration statement or Prospectus, including pre- and post-effective amendments, all exhibits thereto, and all material incorporated by reference in such registration statement.

"**Rule 144**" means Rule 144 promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"**Rule 158**" means Rule 158 promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"**Rule 415**" means Rule 415 promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"**Rule 424**" means Rule 424 promulgated by the Commission under the Securities Act, as such Rule may be amended from time to time, or any similar rule or regulation hereafter adopted by the Commission having substantially the same effect as such Rule.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

ARTICLE 2. RESALE REGISTRATION STATEMENT

2.1 **Registration Statement**. Within sixty (60) days after the Closing Date and subject to Section 2.2, the Company shall prepare and file with the Commission the Registration Statement, which shall be a "resale" registration statement providing for the resale of the Registrable Securities pursuant to an offering to be made on a continuous basis under Rule 415. The Registration Statement shall be on Form S-3 and shall cover to the extent allowable under the Securities Act and the rules promulgated thereunder, such indeterminate number of additional shares of Common Stock and Conversion Shares resulting from stock splits, stock dividends or similar transactions of and/or from the Registrable Securities and adjustments in the number of Conversion Shares into which each Purchased Note is convertible pursuant to the terms of the Purchased Notes. The Registration Statement may include only the Registrable Securities. The Registration Statement shall not contemplate an underwritten offering of the Registrable Securities. The Company shall use its commercially reasonable efforts to cause the Registration Statement to be declared effective under the Securities Act and to keep the Registration Statement continuously effective under the Securities Act until the earlier of (x) the date when all Registrable Securities covered by such Registration Statement have been sold or (y) the date on which all Registrable Securities then held by the Buyers may be sold without restriction pursuant to Rule 144, as determined by counsel satisfactory to the Company in a written opinion addressed to the Company and its transfer agent.

2.2 **Blackout Period**. The Company may postpone the filing or effectiveness of any Registration Statement (or amendment or supplement thereto) or suspend the use or effectiveness of any Registration Statement (and in each case suspend any other related action otherwise contemplated hereunder) for a reasonable "blackout period" if the board of directors of the Company determines in good faith that such registration or the sale by the Buyers of Registrable Securities under such Registration Statement at such time (i) would adversely affect a pending or proposed significant corporate event, proposed financing or negotiations, proposed offering of Common Stock by the Company on its behalf or pursuant to the Registration Rights Agreement dated September 3, 2013 between the Company and stockholders specified in such agreement, the Registration Rights Agreement dated November 15, 2016 between the Company and stockholders specified in such agreement, or the Registration Rights Agreement dated February 26, 2021 between the Company and stockholders specified in such agreement, or discussions or pending proposals with respect thereto or (ii) would require the disclosure of material non-public information the disclosure of which at such time would, in the good faith judgment of the board of directors of the Company, be materially adverse to the interests of the Company; provided that the filing or effectiveness of a Registration Statement (or amendment or supplement thereto) by the Company may not be postponed and the use or effectiveness of any Registration Statement may not be suspended (A) in the case of clause (i) above, for more than ten (10) days after the abandonment or consummation of any of the pending or proposed significant corporate event, proposed financing or the negotiations, discussions or pending proposals with respect thereto; (B) in the case of clause (ii) above, until the earlier to occur of the filing by the Company of its next succeeding Form 10-K or Form 10-Q or the date upon which such information is otherwise publicly disclosed by the Company; or (C) in any event, in the case of either clause (i) or (ii) above, for more than 90 days after the date of the determination of the board of directors of the Company; provided further that the Company may not postpone the filing or effectiveness of a Registration Statement (or amendment or supplement thereto) or suspend the use or effectiveness of any

Registration Statement for more than an aggregate of 90 days in any 365-day period. In addition to the foregoing, the Company shall have the right to suspend the Buyers' ability to use a Prospectus in connection with sales off of a Registration Statement during each of its regular quarterly blackout periods applicable to directors and senior officers under the Company's policies in existence from time to time.

ARTICLE 3. FACILITATING REGISTRATIONS AND OFFERINGS

3.1 **Registration Statements**. In connection with any Registration Statement, the Company will:

(a) (i) prepare and file with the Commission the Registration Statement covering the applicable Registrable Securities pursuant to Section 2.1 of this Agreement, (ii) file amendments thereto as warranted, (iii) seek the effectiveness thereof, and (iv) file with the Commission such Prospectuses as may be required, all in consultation with the Buyers (or their respective representatives) and as reasonably necessary in order to permit the offer and sale of such Registrable Securities in accordance with the applicable plan of distribution;

(b) within a reasonable time prior to the filing of any Registration Statement, any Prospectus, any amendment to any Registration Statement, any amendment or supplement to a Prospectus or any issuer free writing prospectus covering Registrable Securities, provide copies of such documents to the Buyers (or their respective representatives) and to its counsel, fairly consider such reasonable changes in any such documents prior to the filing thereof as the counsel to each Buyer may request, and make such of the representatives of the Company as shall be reasonably requested by each Buyer available for discussion of such documents;

(c) use its commercially reasonable efforts to cause any Registration Statement and the related Prospectus and any amendment or supplement thereto, as of the effective date of such Registration Statement, amendment or supplement and during the distribution of the registered Registrable Securities (x) to comply in all material respects with the requirements of the Securities Act and the rules and regulations of the Commission and (y) not to contain any untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading;

(d) notify each Buyer promptly, and, if requested by each Buyer, confirm such advice in writing, (i) when any Registration Statement has become effective and when any post-effective amendments and supplements thereto become effective if such Registration Statement or post-effective amendment is not automatically effective upon filing pursuant to Rule 462, (ii) of the issuance by the Commission or any U.S. state securities authority of any stop order, injunction or other order or requirement suspending the effectiveness of any Registration Statement or the initiation of any proceedings for that purpose, (iii) if, between the effective date of any Registration Statement and the closing of any sale of securities covered thereby pursuant to any agreement to which the Company is a party, the representations and warranties of the Company contained in such agreement cease to be true and correct in all material respects or if the Company receives any notification with respect to the suspension of the qualification of the Registrable Securities for sale in any jurisdiction or the initiation of any proceeding for such purpose, and (iv) of the happening of any event during the period any Registration Statement is effective as a result of which such

Registration Statement or the related Prospectus contains any untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading; provided that each Buyer, upon receiving written notice of an event described in clauses (ii) to (iv) of this Section 3.1(d), shall discontinue (and direct any other person making offers and sales of Registrable Securities on its behalf to discontinue) offers and sales of Registrable Securities pursuant to any Registration Statement (other than those pursuant to a plan in effect prior to such event and that complies with Rule 10b5-1 under the Exchange Act) until it is advised in writing by the Company that the use of the applicable Prospectus may be resumed and is furnished with an amended or supplemented Prospectus;

(e) furnish counsel for each Buyer with copies of any written correspondence with the Commission or any state securities authority relating to the Registration Statement or Prospectus;

(f) use its commercially reasonable efforts to cause all Registrable Securities being offered and sold pursuant to this Agreement to be qualified for inclusion in or listed on The New York Stock Exchange or any securities exchange on which the Common Stock and the Conversion Shares into which the Purchased Notes are convertible are then so qualified or listed if so requested by each Buyer;

(g) otherwise use its commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, including making available to its security holders an earnings statement covering at least 12 months which shall satisfy the provisions of Section 11(a) of the Securities Act and Rule 158 thereunder (or any similar provision then in force); and

(h) use its commercially reasonable efforts to obtain the withdrawal of any order suspending the effectiveness of any Registration Statement at the earliest possible time.

3.2 **Information from the Buyers**. The Buyers shall furnish to the Company such information regarding itself as is required to be included in any Registration Statement, the ownership of Registrable Securities by each Buyer and the proposed distribution by the Buyers of such Registrable Securities as the Company may from time to time reasonably request in writing. The Buyers participating in a registered offering hereunder shall do so on the terms and conditions applicable to such offering and the applicable plan of distribution; provided that the Buyers shall not be required to make any representations or warranties to or agreements with the Company other than representations, warranties or agreements regarding the Buyers and each Buyer's Registrable Securities. Notwithstanding any other provision of this Agreement, the Company shall not be required to file any Registration Statement or include Registrable Securities therein unless it has received from each Buyer, within a reasonable period of time prior to the anticipated filing date of such Registration Statement, all requested information required to be included in the Registration Statement.

ARTICLE 4. REGISTRATION EXPENSES

All fees and expenses incident to the performance of or compliance with this Agreement by the Company, except as and to the extent specified in this Article 4, shall be borne by the Company whether or not the Registration Statement is filed or becomes effective and whether or not any Registrable Securities are sold pursuant to the Registration Statement. The fees and expenses

referred to in the foregoing sentence shall include, without limitation, and to the extent applicable (i) all registration and filing fees (including, without limitation, fees and expenses (A) with respect to filings required to be made with each securities exchange or market on which Registrable Securities are required hereunder to be listed, if any, (B) with respect to filing fees required to be paid to the Financial Industry Regulatory Authority and (C) in compliance with state securities or "blue sky" laws), (ii) printing expenses (including, without limitation, expenses of printing certificates for Registrable Securities and of printing prospectuses if the printing of prospectuses is requested by the Company), (iii) messenger, telephone and delivery expenses, (iv) Securities Act liability insurance, if the Company elects to purchase such insurance, (v) fees and expenses of all other Persons retained by the Company in connection with the consummation of the transactions contemplated by this Agreement, including, without limitation, the Company's independent public accountants and (vi) the reasonable and documented fees and expenses of one counsel to each Buyer; provided, however, that, in the case of this clause (vi), such fees and expenses shall not exceed $15,000. In addition, the Company shall be responsible for all of its internal expenses incurred in connection with the consummation of the transactions contemplated by this Agreement (including, without limitation, all salaries and expenses of its officers and employees performing legal or accounting duties), the expense of any annual audit, the fees and expenses incurred in connection with the listing of the Registrable Securities on any securities exchange if required hereunder. The Company shall not be responsible for any brokers' and dealers' discounts and commissions, transfer taxes or other similar fees incurred by each Buyer in connection with the sale of the Registrable Securities.

ARTICLE 5. INDEMNIFICATION

5.1 **Indemnification by the Company**. The Company shall, notwithstanding any termination of this Agreement, indemnify and hold harmless each Buyer, its officers, directors, employees and affiliates, each Person who controls each Buyer (within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act) and the officers, directors and employees of each such controlling Person (collectively, the "**Buyer Indemnified Parties**"), to the full extent permitted by applicable law, from and against any and all losses, claims, damages, liabilities, costs (including, without limitation, costs of preparation and attorneys' and expert witnesses' fees) and expenses (collectively, "**Losses**") (as determined by a court of competent jurisdiction in a final judgment not subject to appeal or review), to which such Buyer Indemnified Parties may become subject under the Securities Act or otherwise, arising out of or relating to any violation of securities laws or untrue or alleged untrue statement of a material fact contained in any Registration Statement, any Prospectus or any form of prospectus or in any amendment or supplement thereto or in any preliminary prospectus, or arising out of or relating to any omission or alleged omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, except to the extent, but only to the extent, that such untrue statements or omissions are based solely upon information regarding each Buyer furnished in writing to the Company by each Buyer expressly for use therein. The Company shall notify each Buyer promptly of the institution, threat or assertion of any Proceeding of which the Company is aware in connection with the transactions contemplated by this Agreement. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of each Buyer, the directors and officers of each Buyer, or controlling Person of each Buyer, and shall survive the transfer of such securities held by each Buyer.

5.2 **Indemnification by Buyers**. The Buyers shall, severally and not jointly, indemnify and hold harmless the Company, its directors, officers and employees, each Person who controls the Company (within the meaning of Section 15 of the Securities Act and Section 20 of the Exchange Act), and the directors, officers and employees of such controlling Persons (collectively, the "**Company Indemnified Parties**"), to the full extent permitted by applicable law, from and against all Losses (as determined by a court of competent jurisdiction in a final judgment not subject to appeal or review), to which the Company Indemnified Parties may become subject under the Securities Act or otherwise, arising solely out of or based solely upon any untrue statement of a material fact contained in any Registration Statement, any Prospectus, or any form of prospectus, or in any amendment or supplement thereto, or arising solely out of or based solely upon any omission of a material fact required to be stated therein or necessary to make the statements therein (in the case of any Prospectus or form of prospectus or supplement thereto, in the light of the circumstances under which they were made) not misleading, to the extent, but only to the extent, that such untrue statement or omission is contained in any information so furnished in writing by each Buyer to the Company specifically for inclusion in the Registration Statement or such Prospectus. Notwithstanding anything to the contrary contained herein, the Buyers shall be liable severally and not jointly under this Section 5.2 for only that amount as does not exceed the net proceeds to each Buyer as a result of the sale of Registrable Securities pursuant to such Registration Statement. The Buyers shall not be liable for any Losses under this Section 5.2 where the Buyers furnished in writing to the Company, information expressly for use in, and within a reasonable period of time prior to the effectiveness of, the Registration Statement or any amendments or supplements thereto which corrected or made not misleading information previously provided to the Company.

5.3 **Conduct of Indemnification Proceedings**.

(a) If any Proceeding shall be brought or asserted against any Person entitled to indemnity hereunder (an "**Indemnified Party**"), such Indemnified Party promptly shall notify the Person from whom indemnity is sought (the "**Indemnifying Party**") in writing, and the Indemnifying Party shall be entitled to assume the defense thereof, including the employment of counsel reasonably satisfactory to the Indemnified Party and the payment of all fees and expenses incurred in connection with defense thereof; provided, that the failure of any Indemnified Party to give such notice shall not relieve the Indemnifying Party of its obligations or liabilities pursuant to this Agreement, except (and only) to the extent that it shall be finally determined by a court of competent jurisdiction (which determination is not subject to appeal or further review) that such failure shall have proximately and materially adversely prejudiced the Indemnifying Party.

(b) An Indemnified Party shall have the right to employ separate counsel in any such Proceeding and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Party or Parties unless: (1) the Indemnifying Party has agreed in writing to pay such fees and expenses; or (2) the Indemnifying Party shall have failed promptly to assume the defense of such Proceeding and to employ counsel reasonably satisfactory to such Indemnified Party in any such Proceeding; or (3) the named parties to any such Proceeding (including any impleaded parties) include both such Indemnified Party and the Indemnifying Party, and such parties shall have been advised by counsel that a conflict of interest is likely to exist if the same counsel were to represent such Indemnified Party and the Indemnifying Party (in which case, if such Indemnified Party notifies the Indemnifying Party in writing that it elects to employ

separate counsel at the expense of the Indemnifying Party, the Indemnifying Party shall not have the right to assume the defense thereof and such counsel shall be at the expense of the Indemnifying Party). The Indemnifying Party shall not be liable for any settlement of any such Proceeding effected without its written consent, which consent shall not be unreasonably withheld or delayed. No Indemnifying Party shall, without the prior written consent of the Indemnified Party, effect any settlement of any pending or threatened Proceeding in respect of which any Indemnified Party is a party and indemnity has been sought hereunder, unless such settlement includes an unconditional release of such Indemnified Party from all liability on claims that are the subject matter of such Proceeding.

(c) All fees and expenses of the Indemnified Party (including reasonable fees and expenses to the extent incurred in connection with investigating or preparing to defend such Proceeding in a manner not inconsistent with this Section) shall be paid to the Indemnified Party, as incurred, within thirty (30) Business Days of written notice thereof to the Indemnifying Party (regardless of whether it is ultimately determined that an Indemnified Party is not entitled to indemnification hereunder; provided, that the Indemnified Party shall reimburse all such fees and expenses to the extent it is finally judicially determined that such Indemnified Party is not entitled to indemnification hereunder).

5.4 **Contribution**.

(a) If a claim for indemnification under Sections 5.1 or 5.2 is due but unavailable to an Indemnified Party, then each Indemnifying Party, in lieu of indemnifying such Indemnified Party, shall contribute to the amount paid or payable by such Indemnified Party as a result of such Losses, in such proportion as is appropriate to reflect the relative fault of the Indemnifying Party on the one hand and the Indemnified Party on the other in connection with the actions, statements or omissions that resulted in such Losses as well as any other relevant equitable considerations. The relative fault of such Indemnifying Party and Indemnified Party shall be determined by reference to, among other things, whether any action in question, including any untrue or alleged untrue statement of a material fact or omission or alleged omission of a material fact, has been taken or made by, or relates to information supplied by, such Indemnifying Party or Indemnified Party, and the parties' relative intent, knowledge, access to information and opportunity to correct or prevent such action, statement or omission.

(b) The amount paid or payable by a party as a result of any Losses shall be deemed to include, subject to the limitations set forth in Section 5.3, any reasonable attorneys' or other reasonable fees or expenses incurred by such party in connection with any Proceeding to the extent such party would have been indemnified for such fees or expenses if the indemnification provided for in this Section was available to such party in accordance with its terms. In no event shall the Company be required to contribute an amount under this Section 5.4 in excess of the net proceeds received by it upon the sale of its Registrable Securities pursuant to a Registration Statement giving rise to such contribution obligation.

(c) The parties hereto agree that it would not be just and equitable if contribution pursuant to this Section 5.4 were determined by pro rata allocation or by any other method of allocation that does not take into account the equitable considerations referred to in the immediately preceding paragraph. No Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person who was not also guilty of such fraudulent misrepresentation.

(d) The indemnity and contribution agreements contained in this Article 5 are in addition to any liability that the Indemnifying Parties may have to the Indemnified Parties pursuant to the law.

5.5 **Survival**. The agreements contained in this Article 5 shall survive the transfer of the Registered Securities by each Buyer and sale of all of the Registrable Securities pursuant to any registration statement and shall remain in full force and effect, regardless of any investigation made by or on behalf of any Buyer Indemnified Party.

ARTICLE 6. RULE 144

If the Company is subject to the requirements of Section 13, 14 or 15(d) of the Exchange Act, the Company covenants that it will file any reports required to be filed by it under the Securities Act and the Exchange Act, so as to enable each Buyer to sell Registrable Securities without registration under the Securities Act within the limitation of the exemptions provided by (a) Rule 144 or (b) any successor rule or regulation hereafter adopted by the Commission. Upon the request of any Buyer, the Company will deliver to such Buyer a written statement as to whether it has complied with such requirements. Notwithstanding anything in this Agreement, the Company shall not be required to register any of its equity securities under Section 12 of the Exchange Act in order to enable any Buyer to dispose of Registrable Securities under Rule 144.

ARTICLE 7. MISCELLANEOUS

7.1 **Remedies**. In the event of a breach by the Company or the Buyers of any of their respective obligations under this Agreement, the Company or the Buyers, as the case may be, in addition to being entitled to exercise all rights granted by law and under this Agreement, including recovery of damages, will be entitled to specific performance of its rights under this Agreement. The Company and the Buyers acknowledge and agree that monetary damages would not provide adequate compensation for any losses incurred by reason of a breach by either of them of any of the provisions of this Agreement and each hereby further agrees that, in the event of any action for specific performance in respect of such breach, it shall waive the defense that a remedy at law would be adequate.

7.2 **No Inconsistent Agreements**. The Company shall not enter into any such agreement with respect to its securities that is inconsistent with or violates the rights granted to the Buyers in this Agreement.

7.3 **Amendments and Waivers**. The provisions of this Agreement, including the provisions of this sentence, may not be amended, modified or supplemented, and waivers or consents to departures from the provisions hereof may not be given, unless the same shall be in writing and signed by the Company and the Buyers shall have consented thereto.

7.4 **Termination of Registration Rights**. This Agreement to register Registrable Securities for sale under the Securities Act shall terminate on the first date on which all outstanding Registrable Securities are eligible for sale under Rule 144 and (a) restrictive legends have been removed from all book entry positions or certificates representing the applicable Registrable Securities, or (b) if any Buyer reasonably determines that it is unable to deliver an opinion that it is not then an affiliate of the Company and such Buyer and its affiliates own in the aggregate a number of Registrable Securities that may at such time be disposed of in a single transaction under Rule 144, the Company has committed to remove such restrictive legends from the applicable Registrable Securities covered by a Form 144 that has been filed with the Commission pursuant to Rule 144 upon the disposition of the applicable Registrable Securities. Notwithstanding any termination of this Agreement pursuant to this Section 7.4, the parties' rights and obligations under Article 5 hereof shall continue in full force and effect in accordance with their respective terms.

7.5 **Notices**. Any notice, demand, request, waiver or other communication required or permitted to be given hereunder shall be in writing and shall be delivered by a recognized courier service, fully prepaid and properly addressed upon the earlier of (i) actual receipt thereof, as shown by the records of such courier or (ii) five days after the receipt thereof by the courier from the party giving it. The addresses for such notice, demand, request, waiver or other communication shall be:

If to the Company:

Eastman Kodak Company
343 State Street
Rochester, NY 14650
Attention: General Counsel

with a copy (for informational purposes only) to:

Sullivan & Cromwell LLP
125 Broad Street
New York, New York 10004
Attention: Neal McKnight
Email: McKnightN@sullcrom.com

If to the Buyers:

Kennedy Lewis Capital Partners Master Fund LP
111 West 33rd Street, 19th Floor
New York, New York 10001
Attention: Anthony Pasqua
Email: anthony.pasqua@klimllc.com

with a copy (for informational purposes only) to:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Attention: Daniel Fisher
Email: dfisher@akingump.com

Either party may from time to time change its address for notice by giving at least five (5) days written notice of such changed address to the other party.

7.6 **Successors and Assigns**.

(a) This Agreement shall be binding upon and inure to the benefit of the parties and their successors and permitted assigns and shall inure to the benefit of each Buyer and its respective successors and permitted assigns. Neither party may assign this Agreement nor any of its rights or obligations hereunder without the prior written consent of the other party.

(b) In the event the Company engages in a merger or consolidation in which the Registrable Securities are converted into securities of another company, or if there are any changes in the Common Stock and the Common Stock into which the Conversion Shares are convertible by way of share split, stock dividend, combination or reclassification, appropriate arrangements will be made so that the registration rights provided under this Agreement continue to be provided to the Buyers by the issuer of such securities. To the extent any new issuer, or any other company acquired by the Company in a merger or consolidation, was bound by registration rights obligations that would conflict with the provisions of this Agreement, the Company will, unless each Buyer otherwise agrees, use commercially reasonable efforts to modify any such "inherited" registration rights obligations so as not to interfere in any material respects with the rights provided under this Agreement.

7.7 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and, all of which taken together shall constitute one and the same Agreement and shall become effective when counterparts have been signed by each party and delivered to the other parties hereto, it being understood that all parties need not sign the same counterpart. In the event that any signature is delivered by facsimile transmission, such signature shall create a valid binding obligation of the party executing (or on whose behalf such signature is executed) with the same force and effect as if such facsimile signature were the original thereof.

7.8 **Governing Law; Jurisdiction;**. THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO ANY CHOICE OF LAW PROVISIONS WHICH WOULD REQUIRE THE APPLICATION OF THE LAW OF ANY OTHER JURISDICTION. BY ITS EXECUTION AND DELIVERY OF THIS AGREEMENT, EACH PARTY IRREVOCABLY AND UNCONDITIONALLY AGREES FOR ITSELF THAT ANY LEGAL ACTION, SUIT, OR PROCEEDING AGAINST IT WITH RESPECT TO ANY MATTER ARISING UNDER OR

ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT RENDERED IN ANY SUCH ACTION, SUIT, OR PROCEEDING, MAY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK LOCATED IN THE CITY OF NEW YORK, BOROUGH OF MANHATTAN, OR OF THE UNITED STATES OF AMERICA FOR THE SOUTHERN DISTRICT OF NEW YORK, AND BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH OF THE PARTIES IRREVOCABLY ACCEPTS AND SUBMITS ITSELF TO THE EXCLUSIVE JURISDICTION OF SUCH COURT, GENERALLY AND UNCONDITIONALLY, WITH RESPECT TO ANY SUCH ACTION, SUIT OR PROCEEDING. THE PARTIES HEREBY AGREE THAT MAILING OF PROCESS OR OTHER PAPERS IN CONNECTION WITH ANY SUCH ACTION OR PROCEEDING TO AN ADDRESS PROVIDED IN WRITING BY THE RECIPIENT OF SUCH MAILING, OR IN SUCH OTHER MANNER AS MAY BE PERMITTED BY LAW, SHALL BE VALID AND SUFFICIENT SERVICE THEREOF AND HEREBY WAIVE ANY OBJECTIONS TO SERVICE ACCOMPLISHED IN THE MANNER HEREIN PROVIDED.

7.9 **Waiver of Jury Trial**. Each of the parties to this Agreement hereby unconditionally agrees to waive, to the fullest extent permitted by applicable law, its respective rights to a jury trial of any claim or cause of action (whether based on contract, tort or otherwise) based upon, arising out of or relating to this Agreement or the transactions contemplated hereby. The scope of this waiver is intended to be all-encompassing of any and all disputes that may be filed in any court and that relate to the subject matter of this Agreement, including contract claims, tort claims and all other common law and statutory claims. Each party hereto: (i) acknowledges that this waiver is a material inducement to enter into this Agreement, that each has already relied on this waiver in entering into this Agreement, and that each will continue to rely on this waiver in their related future dealings, (ii) acknowledges 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 any action or proceeding, seek to enforce the foregoing waiver and (iii) warrants and represents that it has reviewed this waiver with its legal counsel and that it knowingly and voluntarily waives its jury trial rights following consultation with legal counsel. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 7.9 AND EXECUTED BY EACH OF THE PARTIES HERETO), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

7.10 **Cumulative Remedies**. The remedies provided herein are cumulative and not exclusive of any remedies provided by law.

7.11 **Counterparts.** This Agreement may be executed in two or more identical counterparts, all of which shall be considered one and the same agreement and shall become effective when counterparts have been signed by each party and delivered to the other party; provided that a facsimile, .pdf or electronic (e.g., DocuSign) signature shall be considered due execution and shall be binding upon the signatory thereto with the same force and effect as if the signature were an original, not a facsimile, .pdf or electronic signature.

7.12 **Severability**. If any term, provision, covenant or restriction of this Agreement is held to be invalid, illegal, void or unenforceable in any respect, the remainder of the terms, provisions, covenants and restrictions set forth herein shall remain in full force and effect and shall in no way be affected, impaired or invalidated, and the parties hereto shall use their reasonable efforts to find and employ an alternative means to achieve the same or substantially the same result as that contemplated by such term, provision, covenant or restriction. It is hereby stipulated and declared to be the intention of the parties that they would have executed the remaining terms, provisions, covenants and restrictions without including any of such that may be hereafter declared invalid, illegal, void or unenforceable.

7.13 **Section Headings**. The Section headings herein are for convenience only, do not constitute a part of this Agreement and shall not be deemed to limit or affect any of the provisions hereof.

IN WITNESS WHEREOF, the parties hereto have caused this Registration Rights Agreement to be duly executed by a person thereunto authorized as of the date first indicated above.

COMPANY:

EASTMAN KODAK COMPANY

By: /s/ David E. Bullwinkle
Name: David E. Bullwinkle
Title: Chief Financial Officer and Senior Vice President

[*Signature Page to Registration Rights Agreement*]

BUYER:

KENNEDY LEWIS CAPITAL PARTNERS MASTER FUND LP

By: /s/ Anthony Pasqua
Name: Anthony Pasqua
Title: Authorized Signatory

[*Signature Page to Registration Rights Agreement*]

BUYER:

KENNEDY LEWIS CAPITAL PARTNERS MASTER FUND II LP

By: /s/ Anthony Pasqua
Name: Anthony Pasqua
Title: Authorized Signatory

[*Signature Page to Registration Rights Agreement*]

Exhibit 99.1

PRESS RELEASE:

Kodak Announces New Capital Sources & Debt Structure to Further Strengthen Financial Position

ROCHESTER, N.Y., MARCH 1, 2021—Eastman Kodak Company (NYSE:KODK) today announced a series of financial transactions that provide access to new capital, address maturing obligations, and strengthen the Company's ability to invest in strategic growth opportunities in print, advanced materials and chemicals. The transactions reflect investors' confidence in Jim Continenza's leadership and the Company's strategy and technologies, placing Kodak in its best financial position in years.

Kennedy Lewis Investment Management LLC has provided Kodak with an initial $225 million term loan and a commitment to provide delayed-draw term loans of up to an additional $50 million which may be drawn on or before February 26, 2023. The term loans have a five-year maturity and are non-amortizing. Additionally, Kennedy Lewis has purchased one million shares of the Company's common stock at a purchase price of $10 per share, as well as $25 million of the Company's newly issued 5.00% unsecured convertible promissory notes due May 28, 2026. As part of the agreement, Kennedy Lewis will have the right (subject to certain conditions), for three years or until they hold less than 50% of the initial principal amount of the term loans, to nominate one person to be elected to the Company's board of directors.

"Kodak has made tremendous strides over the last few years under Jim Continenza's leadership. We are pleased to support the Company in its continued efforts to fortify its balance sheet and provide the capital assistance needed to enable Kodak to pivot forward to pursue its strategic growth initiatives. We feel strongly that the Company is well positioned for the future," said Darren L. Richman, co-founder of Kennedy Lewis.

Grand Oaks Capital, an investment firm founded by businessman and Paychex founder Tom Golisano, has committed to invest a total of $100 million in the Company. The firm purchased $75 million of Kodak's 5.0% Series C Convertible Preferred Stock and has agreed to purchase an additional $25 million of this series of preferred stock subject to HSR Act clearance. As part of the agreement, Grand Oaks Capital will have the right (subject to certain conditions), for three years or until they hold less than 50% of the initial amount of the preferred shares or common stock into which it is converted, to nominate one person to be elected to the Company's board of directors.

"Grand Oaks Capital is excited about the long-term future of Kodak," said Tom Golisano of Grand Oaks Capital. "We are very confident in the Company's leadership, vision and new growth opportunities and are proud to be investing in a global company headquartered in Rochester, New York."

With the proceeds from these transactions, Kodak repurchased one million shares of the Company's 5.50% Series A Convertible Preferred Stock due to mature on November 15, 2021, from funds managed by Southeastern Asset Management for $100 million plus accrued and unpaid dividends. In addition, Kodak has issued the Southeastern-managed funds one million shares of Series B Preferred Stock in exchange for the remaining Series A Preferred Stock held by the funds, plus payment of accrued and unpaid dividends.

“Since Jim Continenza and his team took over at Kodak, there have been dramatic improvements in operating costs and the balance sheet, as well as new product introductions. Jim’s team has also opened up the possibility of new business lines which would build on legacy assets and institutional strengths,” said G. Staley Cates, CFA, vice-chairman of Southeastern Asset Management.

Kodak also entered into a cash collateralized Letter of Credit Facility Agreement for up to $50 million and amended its ABL Credit Agreement to extend the maturity date to February 26, 2024 and decrease the aggregate commitments from $110 million to $90 million.

These transactions together provide the Company with up to $310 million of incremental cash to invest in growth opportunities in Kodak’s core businesses of print and advanced materials and chemicals. Furthermore, the transactions address the mandatory redemption of the Series A Preferred Stock that was required in November 2021, extend the maturity date of the Company’s ABL, and limit the amount of cash needed to service capital.

“Over the past two years, we have taken a number of significant steps to strengthen our financial position,” said Jim Continenza, Kodak’s executive chairman and CEO. “Financing secured through Kennedy Lewis and investments made by Grand Oaks Capital and funds managed by Southeastern Asset Management represent the next step in our strategy for returning the Company to growth and help position us to invest in expanding our core businesses in print and advanced materials and chemicals.”

Details about these transactions can be found in Kodak’s Form 8-K filing with the U.S. Securities and Exchange Commission.

About Kodak Kodak is a global technology company focused on print and advanced materials & chemicals. We provide industry-leading hardware, software, consumables and services primarily to customers in commercial print, packaging, publishing, manufacturing and entertainment. We are committed to environmental stewardship and ongoing leadership in developing sustainable solutions. Our broad portfolio of superior products, responsive support and world-class R&D make Kodak solutions a smart investment for customers looking to improve their profitability and drive growth. For additional information on Kodak, visit us at Kodak.com and engage with us on Twitter @KodakPrint and on LinkedIn at Kodak Print.

About Kennedy Lewis Investment Management, LLC

Kennedy Lewis (www.klimllc.com) is an opportunistic credit manager founded in 2017 by David K. Chene and Darren L. Richman. It pursues event-driven situations in which a catalyst may unlock value and focuses primarily on corporate and structured credit opportunities in North America and Europe.

About Grand Oaks Capital

Grand Oaks Capital is an investment firm founded by B. Thomas Golisano, that makes strategic investments in both public and private securities.

About Southeastern Asset Management

Southeastern Asset Management is an employee-owned, global investment firm founded in 1975. Southeastern employs a value investment approach, focusing on long-term investments in strong businesses, which are managed by good people and trade at deeply discounted prices relative to intrinsic value. The firm seeks to build collaborative, constructive relationships with company boards and management to support long-term value creation. Southeastern is headquartered in Memphis, with global offices in London, Singapore, and Sydney. Additional information can be found at www.southeasternasset.com.

Cautionary Statement Regarding Forward-Looking Statements

This press release includes “forward-looking statements” as that term is defined under the Private Securities Litigation Reform Act of 1995. Forward-looking statements include statements concerning Kodak’s plans, objectives, goals, strategies, future events, business trends and other information that is not historical information. When used in this press release, the words “estimates,” “expects,” “anticipates,” “projects,” “plans,” “intends,” “believes,” “predicts,” “forecasts,” “strategy,” “continues,” “goals,” “targets” or future or conditional verbs, such as “will,” “should,” “could,” or “may,” and similar expressions, as well as statements that do not relate strictly to historical or current facts, are intended to identify forward-looking statements. All forward-looking statements are based upon Kodak’s expectations and various assumptions. The forward looking statements contained in this press release include, without limitation, statements related to the availability of the delayed draw term loans and the issuance and sale of an additional $25 million of Series C Preferred Stock to Grand Oaks Capital subject to HSR Act clearance, as well as expansion, investment and growth opportunities. These and other forward-looking statements are based on management’s current views and assumptions and involve risks and uncertainties that could significantly affect expected results.

Future events or results may differ from those anticipated or expressed in the forward-looking statements. Important factors that could cause actual events or results to differ materially from the forward-looking statements include, among others, the risks and uncertainties described in more detail in Kodak’s Annual Report on Form 10-K for the year ended December 31, 2019 under the headings “Business,” “Risk Factors,” “Legal Proceedings” and/or “Management’s Discussion and Analysis of Financial Condition and Results of Operations—Liquidity and Capital Resources,” in the corresponding sections of Kodak’s Quarterly Reports on Form 10-Q for the quarters ended March 31, 2020, June 30, 2020 and September 30, 2020, and in other filings Kodak makes with the U.S. Securities and Exchange Commission from time to time. In addition, each of the issuance and sale of an additional $25 million of Series C Preferred Stock to Grand Oaks Capital and the drawing of the delayed draw term loans is subject to certain conditions which may not be satisfied.

All forward-looking statements attributable to Kodak or persons acting on its behalf apply only as of the date of this press release and are expressly qualified in their entirety by the cautionary statements included or referenced in this press release. Kodak undertakes no obligation to update or revise forward-looking statements to reflect events or circumstances that arise after the date made or to reflect the occurrence of unanticipated events, except as required by law.

This press release does not constitute an offer to sell or the solicitation of an offer to buy any securities. The offer and sale of the Common Stock mentioned above, Series B Preferred Stock, Series C Preferred Stock and Convertible Notes are being made in a transaction not involving a public offering and have not been registered under the Securities Act of 1933, as amended, or applicable state securities laws. Accordingly, the Common Stock mentioned above, Series B Preferred Stock, Series C Preferred Stock and Convertible Notes may not be reoffered or resold in the United States except pursuant to an effective registration statement or an applicable exemption from the registration requirements of the Securities Act and applicable state securities laws.

# # #

Investor Relations Contact:
Paul Dils
Kodak Investor Relations
shareholderservices@kodak.com
+1 585-724-405

Media Contact:
Kurt Jaeckel
Worldwide Communications Director
kurt.jaeckel@kodak.com
+1 585-490-8646+1 585-490-8646