

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

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**Form 8-K**

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**CURRENT REPORT**

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

Date of Report (Date of earliest event reported): June 30, 2023

**EASTMAN KODAK COMPANY**

(Exact name of registrant as specified in its charter)

**NEW JERSEY**  
(State or other jurisdiction of incorporation)

**1-87**  
(Commission File Number)

**16-0417150**  
(IRS Employer  
Identification No.)

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

**(800) 356-3259**  
(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:

<u>Title of each class</u>	<u>Trading Symbol</u>	<u>Name of each exchange on which registered</u>
Common stock, par value \$0.01 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.

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**Item 1.01 Entry into a Material Definitive Agreement.**

**Amendment to Term Loan Credit Agreement**

On June 30, 2023, Eastman Kodak Company (the “Company”) and certain of its subsidiaries (the “Subsidiary Guarantors”) entered into an amendment (the “Term Loan Amendment”) to the Credit Agreement, dated as of February 26, 2021, among the Company and certain funds affiliated with Kennedy Lewis Investment Management LLC (“KLIM”) as lenders (the “Term Loan Lenders”) and Alter Domus (US) LLC, as administrative agent (the “Agent”) (the “Existing Term Loan Credit Agreement” and, as amended and restated by the Term Loan Amendment, the “Amended and Restated Term Loan Credit Agreement”), with the Agent and certain funds affiliated with KLIM named therein (the “Refinancing Term Loan Lenders”).

Subject to the terms and conditions of the Term Loan Amendment, the Refinancing Term Loan Lenders provided the Company with a commitment to provide term loans in an aggregate principal amount of \$450,000,000 (the “Refinancing Term Loans”). The Company expects the funding of the Refinancing Term Loans to occur on or prior to July 21, 2023, subject to the satisfaction of certain conditions on or prior to that date. The Company intends to use the proceeds of the Refinancing Term Loans to (i) refinance its existing senior secured first lien term loan facility under the Existing Term Loan Agreement (plus any accrued paid-in-kind or unpaid cash interest and any unwaived premium), (ii) repay in full and terminate the commitments under the Company’s asset-based revolving credit facility made available pursuant to the Amended and Restated Senior Asset Based Revolving Credit Agreement, dated as of May 26, 2016 (the “Existing ABL Credit Agreement”), by and among the Company, Bank of America N.A., as agent, the lenders identified therein and the other agents identified therein, as amended, amended and restated, modified or supplemented from time to time, (iii) repay in full the Company’s outstanding Convertible Promissory Notes held by the Term Loan Lenders, dated as of February 26, 2021 (the “Convertible Notes”), in an aggregate original principal amount of \$25,000,000 (plus any accrued paid-in-kind or unpaid cash interest), (iv) pay certain fees and expenses related to the foregoing, (v) provide cash collateral in respect of the Amended and Restated L/C Facility Agreement, as described below, or other collateral obligations, and (vi) thereafter, for general corporate purposes and working capital needs of the Company and its subsidiaries.

The Term Loan Amendment also amends and restates the Existing Term Loan Credit Agreement to, among other things, (i) extend the maturity date to the earlier of August 15, 2028 or the date that is 91 days prior to the maturity date or mandatory redemption date of any of the Company’s then-outstanding Series B Preferred Stock or Series C Preferred Stock or any extensions or refinancings of any of the foregoing, (ii) make certain other changes to the terms of the Existing Term Loan Credit Agreement and (iii) make certain other changes to the terms of the Guarantee and Collateral Agreement, dated as of February 26, 2021, among the Company, the Subsidiary Guarantors and the Agent.

The Refinancing Term Loans bear interest at a rate of 7.5% per annum payable in cash and 5.0% per annum payable “in-kind” or in cash at the Company’s option, for an aggregate interest rate of 12.5% per annum. Obligations under the Amended and Restated Term Loan Credit Agreement will be secured by a first priority lien on substantially all assets of the Company and the Subsidiary Guarantors (subject to certain exceptions) not constituting L/C Cash Collateral, as defined below (collectively, the “Term Loan Priority Collateral”) and a second priority lien on the L/C Cash Collateral.

The Amended and Restated Term Loan Credit Agreement continues to limit, among other things, the ability of the Company and its Restricted Subsidiaries (as defined in the Amended and Restated 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. The Amended and Restated Term Loan Credit Agreement also includes certain affirmative covenants, including delivery of certain of the Company’s financial statements set forth therein. The Amended and Restated Term Loan Credit Agreement does not include a financial maintenance covenant.

Based on its Schedule 13D filed with the Securities and Exchange Commission on March 28, 2022 and Section 16 reports, as of March 23, 2023, KLIM, together with certain affiliates of KLIM, beneficially own shares of the Company’s common stock representing approximately 7.90% of the outstanding shares of the Company’s common stock, which includes beneficial ownership of shares issuable upon conversion of the Convertible Notes, which are expected to be repaid with proceeds of the Refinancing Term Loans.

## **Amendment to Letter of Credit Facility Agreement**

On June 30, 2023, the Company and the Subsidiary Guarantors entered into an amendment (the "L/C Facility Amendment") to the Letter of Credit Facility Agreement, dated as of February 26, 2021, among the Company, the Subsidiary Guarantors, Bank of America, N.A., as a lender (the "L/C Lender"), the other lenders party thereto, Bank of America, N.A., as agent (the "L/C Agent"), and Bank of America, N.A., as issuing bank (the "Issuing Bank") (as amended, amended and restated, modified and supplemented prior to the L/C Facility Amendment, the "Existing L/C Facility Agreement" and, as amended and restated by the L/C Facility Amendment, the "Amended and Restated L/C Facility Agreement"), with Bank of America, N.A., as L/C Lender, L/C Agent and Issuing Bank. The Company expects the L/C Facility Amendment to become effective in July 2023 upon the completion of certain terms and conditions specified in the L/C Facility Amendment.

Subject to the terms and conditions of the L/C Facility Amendment, the L/C Lender committed to issue additional letters of credit on the Company's behalf in an aggregate amount of up to \$50,000,000, to an aggregate principal amount of commitments of up to \$100,000,000 (the "L/C Facility Commitments"), until August 30, 2023, upon which the aggregate L/C Facility Commitments will reduce to \$50,000,000, provided that, at all times, the Company posts cash collateral in an amount greater than or equal to 104% of the aggregate amount of letters of credit issued and outstanding at any given time (the "L/C Cash Collateral"). The availability of the new L/C Facility Commitments is subject to the satisfaction of certain conditions including the funding of the Refinancing Term Loans and the use of proceeds thereof as set forth above. The Company expects such conditions to be satisfied concurrently with the funding of the Refinancing Term Loans.

The L/C Facility Amendment also amends and restates the Existing L/C Facility Agreement, subject to satisfaction of the conditions referenced above, to, among other things, (i) extend the maturity date to the earliest of (x) the fifth anniversary of the Restatement Date (as defined therein), (y) the date that is 90 days prior to the maturity of the Amended and Restated Term Loan Credit Agreement, as such date may be extended pursuant to the terms thereof (or the maturity date of any refinancing thereof), or (z) the date that is 90 days prior to the earliest scheduled maturity date or mandatory redemption date of any of the Company's then-outstanding Series B Preferred Stock or Series C Preferred Stock or any refinancings of any of the foregoing, (iii) eliminate the existing cash maintenance requirements, and (iv) make certain other changes to the terms of the Existing L/C Facility Agreement.

The Company's obligations under the Amended and Restated 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 and (ii) a second priority lien on certain Term Loan Priority Collateral of the Company and U.S. subsidiary guarantors.

The L/C Facility Agreement contains certain affirmative and negative covenants similar to the affirmative and negative covenants contained in the Amended and Restated Term Loan Credit Agreement. The L/C Facility Agreement does not include a minimum liquidity or financial maintenance covenant.

## **Board Rights Agreement**

On June 30, 2023, in connection with the execution of the Term Loan Amendment, the Company entered into an amendment (the "Board Rights Agreement Amendment") to the letter agreement with KLIM, dated February 26, 2021 (the "Existing Board Rights Agreement"). Pursuant to the Board Rights Agreement Amendment, subject to the effectiveness of the Term Loan Amendment, KLIM's right to nominate one individual for election as a member of the Company's board of directors shall last until the date on which KLIM ceases to hold at least \$200,000,000 of the original principal amount of Refinancing Term Loans. Darren L. Richman, a Co-Founder and Managing Member of KLIM, is currently serving as a member of the Board of Directors of the Company after being nominated pursuant to the Existing Board Rights Agreement.

## **Incorporation by Reference**

The foregoing descriptions of the Term Loan Amendment, the Amended and Restated Term Loan Credit Agreement, the L/C Facility Amendment, the Amended and Restated L/C Facility Agreement and the Board Rights Agreement Amendment (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 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 Term Loan Amendment, the Amended and Restated Term Loan Credit Agreement, the L/C Facility Amendment and the Amended and Restated L/C Facility Agreement is hereby incorporated into this Item 2.03 by reference.

### **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 Refinancing Term Loans and the temporary increase in the L/C Facility Commitments, and the intended use of proceeds thereof, including the Refinancing Transactions, 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, 2022 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 March 31, 2023, and in other filings the Company makes with the U.S. Securities and Exchange Commission from time to time. In addition, each of the drawing of the Refinancing Term Loans and the availability of the L/C Facility Commitments, and the effectiveness of the Term Loan Amendment and the L/C Facility Amendment, 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

(10.1) [First Amendment to Credit Agreement, dated as of June 30, 2023, by and among the Company, the Subsidiary Guarantors, the Lenders named therein and Alter Domus \(US\), LLC, as Administrative Agent \(the Term Loan Amendment\), including as exhibits the Amended and Restated Term Loan Credit Agreement, and Guarantee and Collateral Agreement, as amended.](#)

(10.2) [Amendment No. 2 to Letter of Credit Facility Agreement, dated as of June 30, 2023, by and among the Company, the Subsidiary Guarantors and Bank of America, N.A., as Agent, Lender and Issuing Bank \(the L/C Facility Amendment\), including as an exhibit the Amended and Restated L/C Facility Agreement.](#)

(10.3) [Amendment to Letter Agreement, dated as of June 30, 2023, by and among the Company and Kennedy Lewis Investment Management LLC \(the Board Rights Agreement Amendment\).](#)

104 Cover Page Interactive Data File (embedded within the Inline XBRL document)

**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.

Date: July 7, 2023

EASTMAN KODAK COMPANY

By: /s/ David E. Bullwinkle

Name: David E. Bullwinkle

Title: Chief Financial Officer and Senior  
Vice President

## FIRST AMENDMENT TO CREDIT AGREEMENT

This First Amendment to Credit Agreement (this "**Amendment**") is entered into as of June 30, 2023, by and among EASTMAN KODAK COMPANY, a New Jersey corporation (the "**Borrower**"), the other undersigned Loan Parties (as defined in the Credit Agreement (as defined below)) identified on the signature pages hereto, the undersigned Lenders identified on the signature pages hereto (the "**Lenders**"), and Alter Domus (US) LLC, as administrative agent (in such capacity, the "**Administrative Agent**").

## RECITALS

A. The Borrower, the Administrative Agent and certain of the undersigned Lenders (the "**Existing Lenders**") are party to that certain Credit Agreement, dated as of February 26, 2021 (as in effect prior to the effect of this Amendment, the "**Existing Credit Agreement**" and as amended and restated by this Amendment, the "**Credit Agreement**"), pursuant to which the Existing Lenders extended to the Borrower a senior secured first lien term loan facility (the "**Existing Term Loan Facility**") in an aggregate original principal amount of \$275,000,000.

B. The Borrower has requested, and certain of the undersigned Lenders have agreed, upon the terms and conditions set forth herein and in the Credit Agreement, to make Refinancing Term Loans (as defined below) on the First Amendment Effective Date in an aggregate principal amount equal to the amount set forth opposite such Lenders' name under the heading "Refinancing Term Loan Commitment" on Annex A attached as part of Exhibit C hereto.

C. The Refinancing Term Loans and the proceeds thereof will be used by the Borrower (i) to refinance the Existing Term Loan Facility, (ii) to repay and permanently reduce the corresponding commitments under the Existing ABL Facility, (iii) to repay in full the outstanding Convertible Notes held by the Existing Lenders, (iv) to pay certain fees and expenses related to the foregoing (collectively, the "**Refinancing Transactions**") and (v) thereafter, for general corporate purposes and working capital needs of the Borrower and its subsidiaries.

D. The Borrower has requested, and the Administrative Agent and the undersigned Lenders, constituting 100% of the Existing Lenders under the Existing Facility and 100% of the Lenders providing the Refinancing Term Loans, are willing to agree to the amendment and restatement of the Existing Credit Agreement set forth in Section 2 hereof, in each case, on the terms and conditions set forth in this Amendment (together with the Refinancing Transactions, the "**Transactions**").

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

1. *Defined Terms.*

1.1 All capitalized terms used herein, including the Recitals, but not defined herein shall have the same meanings herein as such terms have in the Credit Agreement.

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2. *Amendment and Restatement of the Existing Credit Agreement; Amendments to the other Loan Documents; Waiver of Make-Whole.* On the First Amendment Effective Date, subject to the terms and conditions set forth herein:

2.1 The Existing Credit Agreement is hereby amended and restated in its entirety to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and to add the underlined text (indicated textually in the same manner as the following example: double underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit A hereto.

2.2 The exhibits to the Existing Credit Agreement are hereby amended and restated in their entirety with the exhibits attached as Exhibit B hereto.

2.3 The annexes and schedules to the Existing Credit Agreement are hereby amended and restated in their entirety with the annexes and schedules attached as Exhibit C hereto.

2.4 The Security Agreement (as defined in the Existing Credit Agreement) is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and to add the underlined text (indicated textually in the same manner as the following example: double underlined text) as set forth in the pages of the Security Agreement attached as Exhibit D hereto.

2.5 Each of the Existing Lenders under the Existing Facility hereby waives the "make-whole" portion of the Prepayment Premium (as defined in the Existing Credit Agreement) set forth in Section 2.06(c)(i)(x) of the Existing Credit Agreement that would otherwise be due and payable in connection with the Refinancing Transactions.

3. *Refinancing Term Loans*

3.1 Subject to the terms and conditions of this Amendment and the Credit Agreement, each Lender listed on Annex A attached as part of Exhibit C hereto agrees to make term loans (the "**Refinancing Term Loans**") to the Borrower on the First Amendment Effective Date in a principal amount not to exceed the amount set forth opposite such Lender's name on Annex A attached as part of Exhibit C hereto (the "**Refinancing Term Loan Commitment**"). Amounts repaid in respect of the Refinancing Term Loans may not be reborrowed. The Refinancing Term Loan Commitment will terminate in full upon the funding of the Refinancing Term Loans on the First Amendment Effective Date.

3.2 As of the First Amendment Effective Date, after giving effect to the incurrence of the Transactions, the aggregate principal amount of Refinancing Term Loans outstanding under the Credit Agreement shall be \$450,000,000.



4. *Representations of the Loan Parties.* To induce the Administrative Agent and each of the Lenders to execute and deliver this Amendment, each Loan Party represents and warrants as of the First Amendment Signing Date that:

4.1. the execution, delivery and performance by each Loan Party of this Amendment (a) are within each Loan Party's corporate powers, and have been duly authorized by all necessary corporate action; (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 Loan Parties or any order of any Governmental Authority applicable to the Borrower or any Loan Party; (c) does 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 Loan Party, 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; and (d) will not violate or result in a default under any indenture, agreement or other instrument binding upon the Borrower or any of the other Loan Parties or its assets, or give rise to a right thereunder to require any payment to be made by the Borrower or any of the other Loan Parties, 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;

4.2. this Amendment has been duly executed and delivered by each Loan Party and constitutes, when executed and delivered by such Loan Party, a legal, valid and binding obligation of each Loan Party, enforceable against such Loan Party in accordance with its terms subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law;

4.3. after giving effect to this Amendment, including the transactions to be contemplated on the First Amendment Effective Date, no Default or Event of Default has occurred and is continuing or will result from the consummation of the Transactions;

4.4. none of the execution, delivery or performance of this Amendment impairs the validity of the Liens granted pursuant to the Loan Documents, which Liens, remain valid, subsisting and perfected to the same extent and secure the Obligations with the same priority required by the Loan Documents; and

4.5. all of the representations and warranties set forth in the Credit Agreement are true and correct in all material respects (or, with respect to any representation or warranty that is itself modified or qualified by materiality or a "Material Adverse Effect" standard, such representation or warranty shall be true and correct in all respects) on and as of the date hereof, as if made on the date hereof, except to the extent any such representation or warranty is made as of a specified date, in which case such representation or warranty shall have been true and correct in all material respects as of such date.

5. *Conditions Precedent to Signing.* This Amendment (other than Sections 2 and 3 hereof, which shall become effective on the First Amendment Effective Date in accordance with Section 6 hereof) shall become effective on the date on which each of the following conditions is satisfied (or waived by the Lenders in writing) (such date, the “**First Amendment Signing Date**”):

5.1. the Administrative Agent and the Lenders shall have received duly executed counterparts of this Amendment from each of the Borrower, the other Loan Parties and each of the Lenders;

5.2. the Administrative Agent and the Lenders shall have received each of the other Loan Documents required to be delivered prior to the First Amendment Signing Date by the applicable Loan Party thereto, including without limitation, the (i) First Amendment Fee Letter; (ii) amendment to board nomination rights letter agreement and (iii) amended and restated Intercreditor Agreement;

5.3. the Administrative Agent and the Lenders shall have received a true and complete copy of each Loan Party’s organizational documents, an incumbency certificate for each Person authorized to execute this Amendment and the other Loan Documents on behalf of a Loan Party and who will execute the Amendment and any other Loan Documents on behalf of such Loan Party, resolutions authorizing the due execution, delivery and performance of the Amendment, the other Loan Documents and the 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 Lenders providing the Refinancing Term Loans, the Administrative Agent and its counsel;

5.4. the Administrative Agent and the Lenders shall have received the Solvency Certificate, dated as of the First Amendment Signing Date, certifying that the Borrower is, and shall be Solvent, as of the First Amendment Signing Date and after giving effect to the Transactions (including the Refinancing Term Loans to be made on the First Amendment Effective Date);

5.5. the representations and warranties contained in this Amendment, the Credit Agreement and the other Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date (except to the extent such representation and warranty speaks to an earlier date, in which case such representation and warranty shall be true and correct in all material respects on and as of such earlier date), in each case, without duplication of materiality qualifiers;

5.6. no Default or Event of Default shall exist or have occurred and be continuing (after giving effect to the Transactions and the provisions of this Amendment);

5.7. the Administrative Agent and the Lenders shall have received a certificate signed by a Responsible Officer of the Borrower, certifying that the conditions set forth in Sections 5.5 and 5.6 have been satisfied as of the First Amendment Signing Date, in each case, after giving effect to the Transactions to be consummated on the First Amendment Effective Date; and

5.8. the Administrative Agent and the Lenders shall have received a duly executed copy of the Amended and Restated Letter of Credit Facility Agreement, dated as of the First Amendment Signing Date, by and among the Loan Parties party thereto, the lenders party thereto and Bank of America, N.A. as administrative and collateral agent.

6. *Conditions Precedent to Funding.* Sections 2 and 3 of this Amendment shall become effective on the date on which each of the following conditions is satisfied (or waived by the Lenders in writing) (such date, the “**First Amendment Effective Date**”):

6.1 the Administrative Agent and the Lenders shall have received, in form and substance reasonably satisfactory to the Lenders providing the Refinancing Term Loans, a payoff letter and all other documents or instruments necessary to release all applicable Liens and evidence of the discharge of all applicable guarantees upon the funding of the Refinancing Term Loans related to the repayment in full, and the termination of, the Existing ABL Agreement and the other related documents;

6.2 the Borrower shall have paid concurrently with the funding of the Refinancing Term Loans hereunder (i) all reasonable out-of-pocket expenses required to be paid on the First Amendment Effective Date pursuant to Section 15 below, (ii) all fees payable under the First Amendment Fee Letter, and (iii) all fees payable to each Lender and the Administrative Agent in accordance with the Credit Agreement;

6.3 the Administrative Agent and the Lenders shall have received a duly executed Borrowing Request (as defined in the Existing Credit Agreement);

6.4 the Administrative Agent and the Lenders shall have received evidence of the consummation of the Refinancing Transactions, in form and substance reasonably acceptable to the Lenders providing the Refinancing Term Loans;

6.5 to the extent requested by July 10, 2023 (or such later date as the Borrower may agree), the Administrative Agent and the Lenders 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 Loan Parties;

6.6 the Administrative Agent and the Lenders shall have received updated schedules to the Security Agreement, together with a duly executed IP Security Agreement in respect of any new intellectual property Collateral reflected on such updated schedule;

6.7 the Administrative Agent and the Lenders shall have received a written opinion (addressed to the Administrative Agent and the Lenders providing the Refinancing Term Loans and dated as of the First Amendment Effective Date and in form and substance reasonably acceptable to the Administrative Agent and the Lenders providing the Refinancing Term Loans) of (1) Sullivan & Cromwell LLP, special counsel for the Borrower, covering certain matters relating to the Loan Documents as the Administrative Agent or the Lenders providing the Refinancing Term Loans shall reasonably request and (2) Day Pitney LLP, special New Jersey counsel to the Loan Parties;

6.8 the representations and warranties contained in this Amendment, the Credit Agreement and the other Loan Documents shall be true and correct in all material respects on and as of such date as if made on and as of such date (except to the extent such representation and warranty speaks to an earlier date, in which case such representation and warranty shall be true and correct in all material respects on and as of such earlier date), in each case, without duplication of materiality qualifiers; and

6.9 no Default or Event of Default shall exist or have occurred and be continuing (after giving effect to the Transactions and the provisions of this Amendment and the Credit Agreement).

For the avoidance of doubt, (I) upon the completion of the conditions set forth in Section 5, each Lender's obligations to fund the Refinancing Term Loans on the First Amendment Effective Date, and the Borrower's obligations to consummate the Refinancing Transactions on the First Amendment Effective Date, shall be binding and may not be revoked, reduced, terminated or otherwise modified for any reason and (II) upon satisfaction of the conditions set forth in Section 6 (which shall occur no later than July 21, 2023), each Lender shall fund its pro rata share of the Refinancing Term Loans in accordance with the Credit Agreement, as amended hereby, and the Borrower shall consummate or cause to be consummated the Refinancing Transactions.

7. *Reaffirmation and Acknowledgement of the Security Agreement and Security Documents*

7.1 Notwithstanding the borrowing of the Refinancing Term Loans and the effectiveness of this Amendment and the Transactions, all of the Collateral described in the Security Documents does and shall continue to secure the payment of all Obligations of the Loan Parties under the Credit Agreement and the other Loan Documents, in each case, as amended by this Amendment. Each Loan Party hereby acknowledges and agrees that each Loan Party expects to receive substantial direct and indirect benefits as a result of this Amendment and the Transactions, and hereby ratifies and reaffirms all of its payment and performance obligations (including obligations as a guarantor) and obligations to reimburse and indemnify, contingent or otherwise, under each of such Loan Documents to which it is a party.

7.2 Each Loan Party confirms, ratifies and reaffirms (i) its respective obligations under the Security Documents to which it is a party and (ii) the security interest granted in all of its right, title and interest in, to and under all assets and property of the Loan Parties, including, without limitation, all accounts, chattel paper, commercial tort claims, deposit accounts, documents, general intangibles, goods (including all inventory, equipment, and fixtures), instruments, investment property, letter-of-credit rights, letters of credit, money, real estate, and certain other assets and properties of the Loan Parties, whether now owned or existing or hereafter created, acquired or arising. Each Loan Party agrees that each Security Document to which it is a party remains valid, binding and enforceable in all respects against such Loan Party and the security interests granted by it therein shall continue to be in full force and effect, with the same force, effect and priority in effect immediately prior to the First Amendment Signing Date. Each Loan Party agrees, acknowledges and reaffirms all the covenants and agreements contained in each Security Document to which it is a party.

7.3 Each Loan Party (i) confirms, ratifies and reaffirms its respective obligations under the Security Agreement in favor of the Administrative Agent, the Lenders and the other Secured Parties, (ii) agrees that the Security Agreement remains valid, binding and enforceable in all respects against such Loan Party and that the Security Agreement shall continue to be in full force and effect, with the same force, effect and priority in effect immediately prior to the First Amendment Signing Date, and (iii) agrees to continue to comply with, and be subject to, all of the terms, provisions, conditions, covenants, agreements and obligations applicable to it as set forth in the Security Agreement.

8. *Effect of this Amendment; No Novation.* 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, reaffirmed and confirmed by each Loan Party as of the First Amendment Signing Date and the Loan Parties shall not be entitled to any other or further amendment by virtue of the provisions of this Amendment or with respect to the subject matter of this Amendment. To the extent of conflict between the terms of this Amendment and the other Loan Documents, the terms of this Amendment shall control. On and after the First Amendment Effective Date, the Credit Agreement and this Amendment shall be read and construed as one agreement. On and after the First Amendment Effective Date, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of like import, and each reference in the other Loan Documents to the Credit Agreement, shall mean and be a reference to the Existing Credit Agreement as amended by this Amendment. Without limiting the effectiveness of the refinancing of the Existing Term Loan Facility contemplated hereby, the parties hereto acknowledge and agree that this Amendment and the other Loan Documents, whether executed and delivered in connection herewith or otherwise, do not constitute a novation, satisfaction, payment, re-borrowing or termination of the “Obligations” under the Existing Credit Agreement or the other Loan Documents, and that all such “Obligations” under the Existing Credit Agreement or the other Loan Documents are in all respects continued and outstanding as “Obligations” under the Credit Agreement. The parties hereto hereby acknowledge and agree that this Amendment shall constitute a Loan Document for all purposes of the Credit Agreement and the other Loan Documents.

9. *RELEASE.*

9.1 FOR VALUE RECEIVED, INCLUDING WITHOUT LIMITATION, THE AGREEMENTS OF THE LENDERS IN THIS AGREEMENT, EACH LOAN PARTY, ON BEHALF OF ITSELF, ITS SUBSIDIARIES AND THEIR SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE “**RELEASING PARTIES**”), TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EFFECTIVE FROM THE FIRST AMENDMENT EFFECTIVE DATE, HEREBY ABSOLUTELY, UNCONDITIONALLY, AND IRREVOCABLY RELEASES AND FOREVER DISCHARGES THE ADMINISTRATIVE AGENT AND THE LENDERS, AND THEIR CURRENT AND FORMER SHAREHOLDERS, MEMBERS, PARENTS, SUBSIDIARIES, DIVISIONS, AFFILIATES, DIRECTORS, OFFICERS, EMPLOYEES, AGENTS, ATTORNEYS, ADVISORS, CONSULTANTS AND OTHER REPRESENTATIVES (COLLECTIVELY, THE “**RELEASED PARTIES**”) OF AND FROM ANY AND ALL CLAIMS (INCLUDING, WITHOUT LIMITATION, ALL COUNTERCLAIMS, CROSSCLAIMS, DEFENSES, RIGHTS OF SET-OFF AND RECOUPMENT), ACTIONS, CAUSES OF ACTION, ACTS AND OMISSIONS, CONTROVERSIES, DEMANDS, SUITS, AND OTHER LIABILITIES (COLLECTIVELY, THE “**CLAIMS**”) OF EVERY KIND OR NATURE WHATSOEVER, BOTH IN LAW AND IN EQUITY, KNOWN OR UNKNOWN RELATING TO OR ARISING OUT OF THE LOAN DOCUMENTS AS IN EFFECT PRIOR TO THE FIRST AMENDMENT EFFECTIVE DATE (BUT, FOR THE AVOIDANCE OF DOUBT, NOT CLAIMS ARISING FROM ANY RELEASED PARTY’S ACTS AFTER THE FIRST AMENDMENT EFFECTIVE DATE INCLUDING ANY BREACH OR FAILURE TO COMPLY WITH THE LOAN DOCUMENTS AS AMENDED HEREBY), WHICH ANY RELEASING PARTY HAS OR EVER HAD AGAINST THE RELEASED PARTIES PRIOR TO THE FIRST AMENDMENT EFFECTIVE DATE, EXCEPT TO THE EXTENT OF ANY CLAIM ARISING OUT OF THE RELEASED PARTIES’ GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT, INCLUDING, WITHOUT LIMITATION, CLAIMS ARISING OUT OF THE EXISTING FINANCING ARRANGEMENTS BETWEEN THE LOAN PARTIES AND THE LENDERS AND ANY CLAIM OF BREACH OF THE DUTY OF GOOD FAITH AND FAIR DEALING BASED ON, AMONG OTHER THINGS, THE RELEASED PARTIES’ EXERCISE OF DISCRETION UNDER THE LOAN DOCUMENTS (A “**RELEASED CLAIM**”). EACH LOAN PARTY ACKNOWLEDGES AND AGREES THAT, AS OF THE DATE HEREOF, IT DOES NOT HAVE ANY RELEASED CLAIM AGAINST THE RELEASED PARTIES, EACH OF WHICH SUCH LOAN PARTY, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, HEREBY EXPRESSLY WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. EACH LOAN PARTY HEREBY CONFIRMS THAT THE FOREGOING WAIVER AND RELEASE IS AN INFORMED WAIVER AND RELEASE AND IS BEING FREELY GIVEN.

9.2 EACH LOAN PARTY FURTHER AGREES, ON BEHALF OF ITSELF AND ITS SUCCESSORS AND ASSIGNS, NOT TO COMMENCE, INSTITUTE, OR PROSECUTE ANY LAWSUIT, ACTION OR OTHER PROCEEDING, WHETHER JUDICIAL, ADMINISTRATIVE OR OTHERWISE, TO COLLECT OR ENFORCE ANY RELEASED CLAIM.

10. *Entire Agreement.* This Amendment 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.

11. *Governing Law and Waiver of Right to Trial by Jury.*

11.1 THIS AMENDMENT 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).

11.2 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.

11.3 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 Amendment or any other Loan Document in any court referred to in Section 11.2. 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.

11.4 Each party to this Amendment irrevocably consents to service of process in the manner provided for notices in Section 9.01 of the Credit Agreement. Nothing in this Amendment or any other Loan Document will affect the right of any party to this Amendment to serve process in any other manner permitted by law.

11.5 *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 AMENDMENT, ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

12. *Binding Effect.* This Amendment shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and permitted assigns.

13. *Further Assurances.* Each of the Loan Parties shall execute and deliver such additional documents and take such additional action as may be reasonably requested by the Administrative Agent or the Lenders to effectuate the provisions and purposes of this Amendment.

14. *Amendment; Final Agreement.* This Amendment may not be amended, supplemented, or otherwise modified except by a written agreement entered into in accordance with Section 9.02 of the Credit Agreement. This Amendment represents the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. Notwithstanding anything to the contrary, but subject to Section 9.04(b)(vii) of the Credit Agreement, after the date hereof, but prior to the First Amendment Effective Date, Annex A attached as part of Exhibit C hereto may be amended to reflect the initial syndication of the Refinancing Term Loans to one or more additional lenders (each, an “**Additional Lender**”); *provided* that (A) such Additional Lender shall: (i) join this Amendment by providing a duly executed signature page hereto, (ii) provide to the Administrative Agent any requested 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 tax form) of the Additional Lender, and (iii) constitute an “Eligible Assignee” under the Credit Agreement and (B) the Borrower shall have consented to such Additional Lender becoming a Lender hereunder (with such consent not to be unreasonably withheld or delayed).

15. *Fees and Expenses.* The Borrower shall pay all reasonable and documented fees, costs and expenses incurred by the Administrative Agent and the Lenders to the extent required pursuant to Section 9.03 of the Credit Agreement in connection with this Amendment and the other instruments and documents being executed and delivered in connection herewith and the transactions contemplated hereby and matters herein.

16. *Counterparts.* This Amendment may be executed in counterparts and by different parties on separate counterpart signature pages, each of which constitutes an original and all of which taken together constitute one and the same instrument. Delivery of a counterpart hereof by facsimile transmission or by e-mail transmission of an Adobe portable document format file (also known as a “*PDF*” file) shall be effective as delivery of a manually executed counterpart hereof.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK; SIGNATURE PAGES TO FOLLOW]



This First Amendment to Credit Agreement is entered into as of the date and year first above written.

*BORROWER*

**EASTMAN KODAK COMPANY**

By: /s/ Matthew C. Ebersold  
Name: Matthew C. Ebersold  
Title: Treasurer

*OTHER LOAN PARTIES*

**FAR EAST DEVELOPMENT LTD.**

**KODAK (NEAR EAST), INC.**

**KODAK AMERICAS, LTD.**

**EASTMAN KODAK INTERNATIONAL CAPITAL COMPANY, INC.**

By: /s/ Matthew C. Ebersold  
Name: Matthew C. Ebersold  
Title: Treasurer

**KODAK PHILIPPINES, LTD.**

By: /s/ Matthew C. Ebersold  
Name: Matthew C. Ebersold  
Title: Treasurer

[FIRST AMENDMENT TO CREDIT AGREEMENT – EASTMAN KODAK COMPANY]

---

Accepted and agreed to.

**ALTER DOMUS (US) LLC**, AS ADMINISTRATIVE AGENT

By: /s/ Matthew Trybula  
Name: Matthew Trybula  
Title: Associate Counsel

[FIRST AMENDMENT TO CREDIT AGREEMENT – EASTMAN KODAK COMPANY]

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KENNEDY LEWIS CAPITAL PARTNERS  
MASTER FUND LP, as an Existing Lender  
By: Kennedy Lewis GP LLC, its general partner  
By: Kennedy Lewis Investment Holdings LLC, its  
managing member

By: /s/ Anthony Pasqua  
Name: Anthony Pasqua  
Title: Authorized Signatory

KENNEDY LEWIS CAPITAL PARTNERS  
MASTER FUND II LP, as an Existing Lender  
By: Kennedy Lewis GP II LLC, its general partner  
By: Kennedy Lewis Investment Holdings II LLC, its  
managing member

By: /s/ Anthony Pasqua  
Name: Anthony Pasqua  
Title: Authorized Signatory

[FIRST AMENDMENT TO CREDIT AGREEMENT – EASTMAN KODAK COMPANY]

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KENNEDY LEWIS CAPITAL PARTNERS  
MASTER FUND II LP, as a Lender providing  
Refinancing Term Loans  
By: Kennedy Lewis GP II LLC, its general partner  
By: Kennedy Lewis Investment Holdings II LLC, its  
managing member

By: /s/ Anthony Pasqua  
Name: Anthony Pasqua  
Title: Authorized Signatory

KENNEDY LEWIS CAPITAL PARTNERS  
MASTER FUND III LP, as a Lender providing  
Refinancing Term Loans  
By: Kennedy Lewis GP III LLC, its general partner  
By: Kennedy Lewis Investment Holdings II LLC, its  
managing member

By: /s/ Anthony Pasqua  
Name: Anthony Pasqua  
Title: Authorized Signatory

KLCP CO-INVESTMENT OPPORTUNITIES III  
LP, as a Lender providing Refinancing Term  
Loans  
By: Kennedy Lewis GP III LLC, its general partner  
By: Kennedy Lewis Investment Holdings II LLC, its  
managing member

By: /s/ Anthony Pasqua  
Name: Anthony Pasqua  
Title: Authorized Signatory

**Exhibit A**

**Amended and Restated Credit Agreement**

\_\_\_\_\_  
\_\_\_\_\_

**AMENDED AND RESTATED** CREDIT AGREEMENT

dated as of ~~February 26, 2021~~ the First Amendment Effective Date

by and among

EASTMAN KODAK COMPANY,

as Borrower

THE LENDERS PARTY HERETO,

as Lenders,

and

ALTER DOMUS (US) LLC

as Administrative Agent

\_\_\_\_\_  
\_\_\_\_\_

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AMENDED AND RESTATED CREDIT AGREEMENT

This AMENDED AND RESTATED CREDIT AGREEMENT (as amended, restated, supplemented or otherwise modified from time to time, this “**Agreement**”) dated as of ~~February 26, 2021~~ the First Amendment Effective Date, 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.

WITNESSETH:

WHEREAS, each of the Borrower, the Administrative Agent and the lenders party thereto (the “Existing Lenders”) is a party to that certain Credit Agreement, dated as of February, 26, 2021 (as in effect prior to the First Amendment Effective Date (as defined below), the “Existing Credit Agreement”), pursuant to which the Existing Lenders extended to the Borrower a senior secured first lien term loan (the “Existing Term Loan Facility”) in an aggregate original principal amount of \$275,000,000.

WHEREAS, the Borrower has requested (i) to repay the Existing Term Loan Facility in its entirety and (ii) that the Lenders extend to the Borrower a senior secured first lien term loan facilitiesfacility 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 \$50,000,000.450,000,000 (the “Refinancing Term Loan”).

WHEREAS, (i) the Existing Lenders have agreed to accept such repayment of the Existing Term Loan Facility, (ii) the Existing Lenders have agreed to waive the “make-whole” portion of the Prepayment Premium set forth in Section 2.06(c)(i)(x) of the Existing Credit Agreement that would otherwise be due and payable in connection with the repayment of the Existing Term Loan Facility, (iii) the Existing Lenders and the Lenders have agreed to amend the Existing Credit Agreement pursuant to the First Amendment and (iv) the Lenders have agreed to extend such senior secured first lien term loan facilities the Refinancing Term Loan 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.~~

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~~“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~~ previously delivered in connection with the Existing Term Loan Facility 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~~First Amendment Effective 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 (i) 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 (other than any Disposition relating to the Target Non-Core Assets) 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, and~~ (ii) any Disposition of Target Non-Core Assets.

“**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 Deleveraging Milestone Date” means the first date after the First Amendment Effective Date on which the aggregate principal amount of Loans outstanding is less than or equal to \$200,000,000, as evidenced in a certificate of a Responsible Officer delivered to the Agent.

“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~~ “finance lease” on a balance sheet of such Person under GAAP and the amount of which obligations shall be the ~~capitalized~~ amount thereof shown as a liability on such balance sheet as 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 “P2” by Moody’s or at least “A2” 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 13d3 and 13d5 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)([vii](#)).

“**Change in Control Notice**” has the meaning set forth in Section 2.06(b)(vii).

“**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~~First Amendment Effective 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 Refinancing~~ 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~~First Amendment Effective Date, the aggregate principal amount of the Commitments is ~~\$275,000,000~~450,000,000.

~~“**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, and (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 1.00) 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~~Refinancing 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~~Refinancing 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~~First Amendment Effective Date that are so required to be established or adjusted as a result of the ~~Loan~~Refinancing 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~~Closing Date, 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.

~~“Customary Recourse Exceptions” means, with respect to any Non-Recourse Debt of a Non-Recourse Project Subsidiary, exclusions from the exculpation provisions with respect to such Non-Recourse Debt for breach of representations, fraud, misapplication or misappropriation of cash, waste, voluntary bankruptcy filings, violation of loan document prohibitions against transfers of assets or ownership interests therein, tax indemnifications, willful destruction, bad faith, gross negligence and other circumstances customarily excluded by lenders from exculpation provisions or included in separate indemnification agreements in non-recourse financings, including environmental liabilities to the extent so customarily excluded.~~

“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 noncash 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~~ Closing Date 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)([vii](#)).

**“ECF Prepayment Date”** has the meaning set forth in Section 2.06(b)([vii](#)).

**“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.

“Erroneous Payment” has the meaning set forth in Section 8.15(a).

“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 (excluding any gain or loss arising from a Disposition of Target Non-Core Assets), (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 and (vi) if the aggregate principal amount of outstanding Senior Secured Indebtedness is less than \$200,000,000, the Net Proceeds received by the Borrower or any of its Subsidiaries of any transaction (including Dispositions) relating to Target Non-Core Assets (other than any such proceeds that are applied to prepay the Loans pursuant to Section 2.06(b)(v)); 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~~viii)), (iii) the aggregate amount of all prepayments of any Replacement ABL Loans Facility 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 Refinancing 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 (other than a Foreign Subsidiary that is a Loan Party), (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) subject to Section 5.17(b), any Foreign Subsidiary, (f) any direct or indirect Subsidiary of a CFC or Qualified CFC Holding Company; (other than any Foreign Subsidiary that is a Loan Party), (g) any Unrestricted Subsidiary, (h) any Subsidiary that is prohibited by Applicable Law from Guaranteeing the Obligations ~~and~~, (i) any Non-Recourse Project Subsidiary, (j) any Plan Reversion Proceeds SPE and (k) 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 any Replacement ABL Loan Documents Facility 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).

“**Existing 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, Bank of America, N.A., as 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 (as in effect prior to the First Amendment Effective Date).

“**Existing ABL Facility**” means the asset based revolving credit facility made available pursuant to the Existing ABL Agreement.

“**Existing Credit Agreement**” has the meaning set forth in the preamble hereto.

“**Existing Lenders**” has the meaning set forth in the preamble hereto.

“**Existing Term Loan Facility**” has the meaning set forth in the preamble hereto.

“**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 or Governmental Grants (if any)), including cash payments received by the Borrower or a Restricted Subsidiary in respect of (a) ~~pension plan reversions~~[reserved], (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 party thereto, 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).

“**First Amendment**” means that certain First Amendment to Credit Agreement, dated as of June 30, 2023, by and among the Borrower, the other Loan Parties party thereto, the Existing Lenders party thereto, the Lenders party thereto and the Administrative Agent.

“**First Amendment Effective Date**” has the meaning set forth in the First Amendment.

“**First Amendment Fee Letter**” means the First Amendment Fee Letter, dated as of the First Amendment Effective Date, between the Borrower, the Lenders party thereto and the Administrative Agent, as amended, amended and restated or modified from time to time.

“**Fiscal Month**” means each calendar month.

“**Fiscal Quarter**” means each threemonth 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 nonUS 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.

“**Governmental Grant**” means any grant, incentive, subsidy, award, participation, exemption, status, cost sharing arrangement, reimbursement arrangement or other financial benefit, relief or privilege provided or made available by or on behalf of, or under the authority of, any Governmental Authority, but excluding any Indebtedness.

“**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~~First Amendment Effective 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~~First Amendment Effective 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 Amended and Restated Intercreditor Agreement, dated as of ~~February 26, 2021~~the First Amendment Effective Date, by and among the Administrative Agent, the ~~ABL Agent, the Supplemental Letter of Credit Facility~~LC 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, in each case, in form and substance acceptable to the Required Lenders.

“**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 Replacement ABL Agreement or any other revolving line of credit permitted under this Agreement) 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.

“**LC Agent**” has the meaning set forth in the Intercreditor Agreement.

“**LC Priority Collateral**” has the meaning set forth in the Intercreditor Agreement.

“**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~~First Amendment Effective 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 First Amendment Fee Letter, the Security Documents, the Intercompany Subordination Agreement, ~~the~~each Perfection Certificate, each promissory note delivered pursuant to Section 2.05(e), each Assignment and Acceptance, ~~the~~each 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 and each Foreign Subsidiary made a party hereto pursuant to Section 5.17(b).

~~“**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~~Refinancing 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 Foreign Jurisdiction**” means Canada, the United Kingdom and any other jurisdiction in which any entity listed on Schedule 5.17(b) is organized.

“**Material Indebtedness**” means Indebtedness (other than the Loans and any intercompany Indebtedness), 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 (i) prior to the Borrower Deleveraging Milestone Date, \$20,000,000 or (ii) on or after the Borrower Deleveraging Milestone Date, \$25,000,000 (or, in each case, its equivalent); *provided* that, notwithstanding the foregoing, Indebtedness incurred pursuant to ~~the~~any Replacement ABL Agreement or any refinancing or replacement 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~~the earlier of: (i) August 15, 2028 (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) and (ii) 91 days prior to the mandatory redemption date of any outstanding shares of Series B Preferred Stock and Series C Preferred Stock, (or, if the Series B Preferred Stock and/or the Series C Preferred Stock shall have been replaced, refinanced or otherwise retired with proceeds of any preferred equity interests or unsecured convertible debt, then 91 days prior to the mandatory redemption date of such preferred equity interests and/or unsecured convertible debt, as the case may be) with written notice of such date provided to the Administrative Agent and the Lenders by the Borrower; *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) in respect of pension plan reversions, without duplication of clause (iii) above, the amount of all excise taxes paid (or reasonably estimated to be payable) by the Borrower and the Restricted Subsidiaries, and amounts paid to fund replacement plans as needed to reduce excise tax, and (vi) 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-Recourse Debt**” means Indebtedness as to which (i) no Loan Party provides credit support of any kind, or is directly or indirectly liable as a guarantor or otherwise and (ii) the lenders of such Non-Recourse Debt will not have any recourse to the assets of any Loan Party, in each case, except for Customary Recourse Exceptions.

“**Non-Recourse Project Subsidiary**” means any Subsidiary of the Borrower or any of its Subsidiaries formed after the First Amendment Effective Date for the purpose of engaging in a specific project or a series of related projects and incurring Non-Recourse Debt in connection therewith.

“**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 [or other applicable law](#);

(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, of (a) George Karfunkel, Renee Karfunkel, Moses Marx, Joseph Fink, Phillippe Katz, B. Thomas Golisano and Staley Cates, (b) George Karfunkel Family LLC, Congregation Chemdas Yisroel, and Chesed Foundation of America, Marnet Holding Company, Moses Marx, Phillippe Katz, K.F. Investors LLC, United Equities Commodities Company, Momar Corporation, 111 John Realty Corporation and any Lender and (in each case, so long as no Person that is not a direct or indirect holder of an equity interest in any such entity as of the First Amendment Effective Date acquires an ownership interest in such entity after the First Amendment Effective Date for the purpose of evading the Change in Control provisions hereunder), (c) in the case of any natural person in the foregoing clause (a), such person’s spouses, children, step-children and lineal descendants or trusts established by or for any of such natural persons the ultimate beneficiaries of which are one or more of such natural persons, (d) any Person or group of Persons a majority of the voting interests of which are held directly or indirectly by one or more of the persons listed in clauses (a) and (c) above (or, in the case of a group of Persons, a Person described in this clause (d)), and (e) KLIM and any Affiliate of any of the foregoing KLIM.~~

**“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.

"Plan Reversion Proceeds" means all liquid and illiquid assets of any Loan Party or any other Restricted Subsidiary including cash and/or other securities acquired and/or possessed by such Loan Party or such other Restricted Subsidiary as a result of any future termination, amendment or other modification of any Plan (including, without limitation, the Kodak Retirement Income Plan), including assets comprising any "employer reversion" as that term is defined under IRC § 4980(c)(2)(A), after all plan termination obligations have been satisfied and after payment of any applicable excise and/or income taxes and fees and expenses payable in connection with such termination, amendment or other modification, but excluding any such assets that the Borrower applies to provide benefit increases under the Plan being terminated, hold in reserve or suspense accounts and/or contribute to a replacement plan, in each case, for the purpose of reducing the excise tax rate that would otherwise be applicable with respect to the Borrower's or its Subsidiaries' receipt of such assets.

"Plan Reversion Proceeds SPE" means a direct Subsidiary of a Loan Party that is a bankruptcy-remote special purpose entity formed for the purpose of holding Plan Reversion Proceeds.

"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.

“**Refinancing Term Loan**” has the meaning set forth in the preamble hereto.

“**Refinancing Term Loan Commitment**” means, with respect to each Lender, the “**Refinancing Term Loan Commitment**” of such Lender set forth opposite such Lender’s name on Annex B hereto. As of the **First Amendment Effective Date**, the aggregate principal amount of the **Refinancing Term Loan Commitment** is \$450,000,000.

“**Refinancing Transactions**” means (i) the execution, delivery and performance by the Borrower of the First Amendment and this Agreement, (ii) 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, and (iii) the repayment in full in cash of (x) the Existing Term Loan Facility, (y) the Existing ABL Facility and (z) the Convertible Notes.

“**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.

“**Replacement ABL Facility**” has the meaning set forth in Section 6.01(a)(ii)(B).

“**Replacement Period**” has the meaning set forth in the definition of “**Triggering Event**”.

“**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~~ Closing Date (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), *provided further, that so long as KLIM holds 33% or more of the sum of all Loans outstanding at such time, any determination of Required Lenders must always include KLIM.*

**“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 other security documents delivered in other foreign jurisdictions, including any Material Foreign Jurisdiction, and all financing statements, filings, documents, agreements other instrument executed, made or delivered pursuant to any of the foregoing.

“**Senior Secured Indebtedness**” means Indebtedness under this Agreement, and any other Indebtedness for borrowed money of the Borrower or its Restricted Subsidiaries that is secured (other than any Indebtedness that is subordinated to the Obligations), including, any such Indebtedness under the Supplemental Letter of Credit Facility and any Replacement ABL Facility (but excluding any amounts under the Supplemental Letter of Credit Facility to the extent cash collateralized).

“**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~~ First Amendment Effective Date, and as contemplated to be engaged following the ~~Closing~~ First Amendment Effective 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 Amended and Restated Credit Agreement, dated as of ~~Closing Date~~the date hereof, by and among the Borrower, the ~~Supplemental Letter of Credit Facility~~LC 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.

“Target Non-Core Assets” means the assets set forth in Schedule 1.01(B).

“**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 statistical release published by the Board of Governors of the Federal Reserve ~~Statistical Release H-15 (5-19)~~ System designated as “Selected Interest Rates (Daily) - H.15” (or any successor designation or publication) 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~~ First Amendment Effective 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.

“**Triggering Event**” shall mean, at any time, when Jim Continenza ceases to serve as Chief Executive Officer of the Borrower (whether as a result of resignation, death, disability or otherwise) and, in each case, is not replaced with another person reasonably acceptable to the Required Lenders within 60 days thereafter (such period, the “Replacement Period”).

“**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 consisting of the Borrower and any Domestic Subsidiary 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 and the documentation for any Replacement ABL Facility) 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~~First Amendment Effective Date in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been 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 Refinancing~~ Initial Refinancing Term Loan Commitments. Subject to the terms and conditions set forth herein, each Lender severally agrees to make ~~an Initial~~ a Refinancing Term Loan denominated in Dollars to the Borrower on the ~~Closing~~ First Amendment Effective Date, in a principal amount up to the ~~Initial~~ Refinancing Term Loan Commitment of such Lender. The ~~Initial~~ Refinancing Term Loan Commitment of each such Lender will terminate in full upon the making of such Loan by such Lender on the ~~Closing~~ First Amendment Effective Date. The failure of any such Lender to make any such ~~Initial~~ Refinancing Term Loan required to be made by it shall not relieve any other such Lender of its obligations hereunder, *provided* that the ~~Initial~~ Refinancing 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~~ Refinancing Term Loans as required.

Section 2.02. ~~Delayed Draw Term Loan Commitments~~ [Reserved]. ~~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.~~

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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~~ Refinancing Term Loans. 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)~~ clauses (v) and (viii) 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 (other than any Asset Sale relating to the Target Non-Core Assets), 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)~~clauses (v) and (viii) 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 (other than any Recovery Event relating to the Target Non-Core Assets), 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)~~(ix); *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)~~(ix).

(iv) ~~Not~~Subject to clause (v) below, not later than the fifth Business Day following (A) receipt of Net Proceeds by the Borrower or any Subsidiary of any Extraordinary Receipts (other than any Extraordinary Receipts relating to the Target Non-Core Assets), 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)~~(ix); *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; and (B) the date on which any cash that is restricted on the balance sheet of the Borrower is no longer restricted as a result of the incurrence of any Replacement ABL Facility pursuant to Section 6.01(a)(ii)(B), including upon any issuance of letters of credit under such Replacement ABL Facility, or otherwise, except to the extent such cash promptly becomes restricted in favor of the State of New York as cash collateral for statutory obligations.

(v) Not later than five (5) Business Days following receipt by the Borrower or any Subsidiary of any Net Proceeds in connection with any Asset Sale, Recovery Event or other transaction resulting in proceeds in respect of Target Non-Core Assets:

(1) if the aggregate principal amount of outstanding Senior Secured Indebtedness is greater than or equal to \$300,000,000, the Borrower shall apply (i) 100% of such Net Proceeds to prepay outstanding Loans in accordance with Section 2.06(b)(ix) plus (ii) a prepayment premium equal to one percent (1.0%) of the principal amount of the Loans so prepaid;

(2) if the aggregate principal amount of outstanding Senior Secured Indebtedness is less than \$300,000,000, but greater than or equal to \$200,000,000, the Borrower shall apply (i) 50% of the Net Proceeds received with respect thereto to prepay outstanding Loans in accordance with Section 2.06(b)(ix) plus (ii) a prepayment premium equal to (x) with respect to any prepayment pursuant to this Section 2.06(b)(v)(2) prior to the fourth anniversary of the First Amendment Effective Date, one percent (1.0%) or (y) with respect to any prepayment pursuant to this Section 2.06(b)(v)(2) on or after the fourth anniversary of the First Amendment Effective Date, zero percent (0%), in each case, of the principal amount of the Loans so repaid; *provided that, concurrently with making the mandatory prepayment described in this Section 2.06(b)(v)(2), the Borrower shall have the option to apply the remaining 50% of the Net Proceeds not so required to be applied to mandatory prepayment pursuant to this Section 2.06(b)(v)(2) to voluntarily prepay the outstanding Loans at a prepayment premium equal to (x) with respect to any prepayment pursuant to this Section 2.06(b)(v)(2) prior to the fourth anniversary of the First Amendment Effective Date, one percent (1.0%) or (y) with respect to any prepayment pursuant to this Section 2.06(b)(v)(2) on or after the fourth anniversary of the First Amendment Effective Date, zero percent (0%), in each case, of the principal amount of the Loans so repaid; and*

(3) if the aggregate principal amount of outstanding Senior Secured Indebtedness is less than \$200,000,000, the Borrower shall not be required to make any mandatory prepayment pursuant to this Section 2.06(b)(y); provided that such Net Proceeds shall be included in the calculation of Excess Cash Flow.

(vvi) 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)(vvi) 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)(vvi). The Borrower shall make any prepayment pursuant to this Section 2.06(b)(vvi) 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.

(v vij) 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) except for the Refinancing Transactions (as defined in the First Amendment), 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)(v vij) to the extent that after giving effect to such prepayment U.S. Liquidity would be less than (x) prior to the Borrower Deleveraging Milestone Date, \$60,000,000 or (y) on or after the Borrower Deleveraging Milestone Date, \$85,000,000, in each case at the time of making such prepayment; *provided* that (iA) 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 (iiB) 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.

(v viii) 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;~~ (A) 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~~, (iiB) 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 (v viii) 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 outstanding Senior Secured Indebtedness is less than \$300,000,000 at the time of making such reinvestment, in which case the limitation set forth in this ~~sub-clause~~ clause (iiB) shall not apply) and (C) the Net Proceeds of any Target Non-Core Assets that are required to be used to prepay Loans pursuant to Section 2.06(b)(y) may not be reinvested without the prior written consent of the Required Lenders.



(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 fourth anniversary of the First Effective Date, 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 second anniversary of the First Amendment Effective Date, 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~~the second anniversary of the First Amendment Effective Date (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~~the second anniversary of the First Amendment Effective Date and ending on and including ~~August 26, 2023~~the second anniversary of the First Amendment Effective Date 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~~the second anniversary of the First Amendment Effective Date) based upon the Interest Rate plus (y) the Prepayment Premium that would be payable if such Loans were voluntarily prepaid on ~~August 26, 2023~~the second anniversary of the First Amendment Effective Date, 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~~the second anniversary of the First Amendment Effective Date but prior to ~~February 26, 2024~~the third anniversary of the First Amendment Effective Date, 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~~the third anniversary of the First Amendment Effective Date but prior to ~~February 26, 2025~~the fourth anniversary of the First Amendment Effective Date, 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 (~~0.0%~~) thereafter. ~~Notwithstanding, provided however, that notwithstanding anything herein to the contrary, at any time after in this clause (c), the foregoing Prepayment Premium shall not be applicable to any prepayment made by the Borrower on or prior to the fourth anniversary of the Closing Date, the Borrower may prepay the Loans in up to an aggregate principal amount of up to not to exceed \$50,000,000 150,000,000 (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, so long as (i) any such Specified Prepayment made prior to the fourth anniversary of the First Amendment Effective Date shall be accompanied by a prepayment premium equal to ~~six~~one percent (~~6.0~~1.0%) of the principal amount of the Loans so prepaid, without any other Prepayment Premium, and (ii) such Specified Prepayment is not made with any proceeds received directly or indirectly from any individual transaction or series of related transactions related to any incurrence of Indebtedness (it being understood and agreed that the foregoing clause (ii) shall not restrict any mandatory prepayment made pursuant to Section 2.06(b)(iv)(B)).~~



(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)(vii), 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)(vii) 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.

(c) 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 First Amendment 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~~7.50% in cash, and (y) interest at a rate per annum equal to ~~4.00~~5.00% 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 F1 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 W8BEN 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-8ECL, 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~~First Amendment Effective 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~~Refinancing 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~~Refinancing 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~~As of the First Amendment Effective 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~~delivered pursuant to Section 5.01(a) or (b).

(b) Since ~~September 30, 2020~~December 31, 2022, 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~~Refinancing 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 fiveyear 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~~First Amendment Effective 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~~First Amendment Effective Date.

Section 3.13. *Use of Proceeds.* The proceeds of the Refinancing Term Loans shall be used (i) to refinance the ~~Series A Preferred Stock of the Borrower and/or Existing Term Loan Facility~~, (ii) to repay and permanently reduce the corresponding commitments under the Existing ABL Facility, (iii) to repay in full the outstanding Convertible Notes held by the Existing Lenders, (iv) to pay certain fees and expenses related to the foregoing, (v) to provide cash collateral in respect of the Supplemental Letter of Credit Facility or to otherwise provide cash collateral to third parties in substitution for Letters of Credit and (v) for general corporate purposes and working capital needs of the Borrower and its subsidiaries.

Section 3.14. *Labor Matters.* As of the ~~Closing~~First Amendment Effective 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~~First Amendment Effective 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~~Refinancing 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 or First Amendment Effective Date, as applicable, 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 Agent, 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) or First Amendment Effective Date, as applicable 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~~ Closing Date). 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 ~~(other than any applicable filings or actions taken with respect to any Foreign Subsidiary formed in any Material Foreign Jurisdiction in accordance with Section 5.17(b))~~ or to reimburse Agent or any Lender for the same) with respect to jurisdictions other than Canada and the United Kingdom.

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 (x) 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 or (y) economic or financial sanctions administered or enforced by the United Kingdom, European Union or United Nations (collectively, together with (x), “Sanctions”). 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~~ Sanctions.

(b) Each Loan Party is in compliance, in all material respects, with the USA PATRIOT Act and other Applicable Laws related to money laundering or terrorist financing (“Anti-Money Laundering Laws”), Applicable Laws related to export controls or customs or import controls (“Ex-Im Laws”), and United States Foreign Corrupt Practices Act of 1977, as amended, UK Bribery Act 2010 and any other Applicable Laws related to bribery or corruption (“Anti-Corruption Laws”). 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~~ Anti-Corruption Laws.

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~~ First Amendment Effective Date, after giving effect to the consummation of the ~~Loan~~ Refinancing 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.~~ [Reserved.]

Section 3.20. *No Default.* After giving effect to the consummation of the ~~Loan~~ Refinancing 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** [RESERVED]

~~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 & Gromwell 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 waived 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~~First Amendment Effective 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~~First Amendment Effective 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~~viii);

(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~~ any Replacement ABL Facility or the Supplemental Letter of Credit Facility, 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 Replacement ABL ~~Loan Document~~ Facility or the Supplemental Letter of Credit Facility; 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 9307 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 notwithstanding anything to the contrary herein, (1) 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 and (2) any Foreign Subsidiary formed in any Material Foreign Jurisdiction shall be subject to the requirements set forth in Section 5.17(b).

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 First Amendment Effective Date, which schedule shall include, with respect to each depository as of the Closing First Amendment Effective 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 First Amendment Effective Date (the "Lock Boxes").

(b) As soon as practicable and in no event more than sixty (60) days following the Closing First Amendment Effective 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~~) (such date, the "Cash Control Implementation Date"), the Loan Parties shall enter into/deliver (i) an amendment to any Account Control Agreement (or any notices and actions required thereunder) 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) ~~an~~ an amendment to any Lock Box Agreement (or any notices and actions required thereunder) with the banks with which any Loan Party maintains a Lock Box, with respect to each Lock Box (collectively, the "**Controlled Lock Box Accounts**"), in each case, in form and substance reasonably satisfactory to the Administrative Agent to evidence the Refinancing Transactions.

(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~~First Amendment Effective 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; Material Foreign Jurisdictions*

~~(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.~~

(ba) 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 ~~undertakings~~undertakings as are set forth on Schedule 5.17 hereto.

(b) (I) Within ninety (90) days after the First Amendment Effective Date (for any such Foreign Subsidiary that is not an Immaterial Foreign Subsidiary in existence on the First Amendment Effective Date) and within ninety (90) days after the date on which any such future Foreign Subsidiary becomes a Foreign Subsidiary that is not an Immaterial Foreign Subsidiary, in each case, as such deadline may be extended by the Required Lenders in their reasonable discretion, the Loan Parties shall use commercially reasonable efforts to cause each Foreign Subsidiary organized in Canada or the United Kingdom to (i) become a party to the Security Agreement or any other applicable Loan Document as a Guarantor pursuant to documentation in form and substance reasonably acceptable to the Required Lenders and (ii) take such actions to create, grant, establish, preserve and perfect the Liens on such Subsidiary's assets as the Administrative Agent or the Required Lenders shall reasonably request, including any local law governed guaranties and collateral documents, including filings, instruments and other customary deliverables, in each case, in form and substance reasonably satisfactory to the Required Lenders, and (II) within ninety (90) days following a request therefor by the Required Lenders, as such deadline may be extended by the Required Lenders in their reasonable discretion, the Loan Parties shall use commercially reasonable efforts to cause each Foreign Subsidiary that is not an Immaterial Foreign Subsidiary organized in a Material Foreign Jurisdiction other than Canada or the United Kingdom to (i) become a party to the Security Agreement or any other applicable Loan Document as a Guarantor pursuant to documentation in form and substance reasonably acceptable to the Required Lenders and (ii) take such actions to create, grant, establish, preserve and perfect the Liens on such Subsidiary's assets as the Administrative Agent or the Required Lenders shall reasonably request, including any local law governed guaranties and collateral documents, including filings, instruments and other customary deliverables, in each case, in form and substance reasonably satisfactory to the Required Lenders.

(c) The Lenders shall promptly reimburse the Borrower for all documented out-of-pocket expenses incurred by the Borrower or any of its Subsidiaries, including any fees, charges and disbursements of any counsel or other professional consultants for the Borrower or any of its Subsidiaries, in connection with any actions taken by Borrower or any of its Subsidiaries pursuant to Section 5.17(b)(II).



Section 5.18. *Triggering Event.* Upon the occurrence of a Triggering Event, until the Borrower has prepaid the Loans in an aggregate principal amount of at least \$250,000,000, the Borrower shall use commercially reasonable efforts to:

(a) Within 30 days after the end of the Replacement Period (or such later date as approved by the Required Lenders in their sole and absolute discretion), form a special committee of the board of directors of the Borrower (the “Special Committee”), comprised of one or more independent directors reasonably acceptable to the Required Lenders (such approval not to be unreasonably withheld, conditioned or delayed), empowered and authorized to negotiate and consummate a sale, transfer or other monetization event with respect to the Target Non-Core Assets, in each case, pursuant to documentation reasonably satisfactory to the Required Lenders (the “Special Committee Milestone”);

(b) Within 60 days after the end of the Replacement Period (or such later date as approved by the Required Lenders in their sole and absolute discretion), engage advisors and/or consultants (either new or existing with an expanded mandate in each case, reasonably acceptable to the Required Lenders (such approval not to be unreasonably withheld, conditioned or delayed)) to explore value maximization across each of the Target Non-Core Assets (the “Advisor/Consultant Milestone”); and

(c) Within 120 days after the end of the Replacement Period (or such later date as approved by the Required Lenders in their sole and absolute discretion), the Special Committee shall have prepared and delivered a presentation to the board of directors of the Borrower with respect to the options for value maximization with respect to the Target Non-Core Assets (the “Presentation Milestone”, and together with the Special Committee Milestone and the Advisor/Consultant Milestone, collectively, the “Milestones” and each individually, a “Milestone”);

provided, that if the Borrower has already satisfied a given Milestone prior to the occurrence of a Triggering Event, then such Milestone need not be satisfied again after the occurrence of the Triggering Event.

Section 5.19. *Plan Reversion Proceeds.* Notwithstanding anything to the contrary herein, upon receipt of any Plan Reversion Proceeds that are not applied to prepay the Loans pursuant to Section 2.06(b)(v) (including any Plan Reversion Proceeds that are not so applied by virtue of being illiquid), the Borrower shall cause such Plan Reversion Proceeds to be (i) held in trust for the benefit of the Loan Parties and the Plan Reversion Proceeds SPE and promptly transferred to either a Loan Party (to the extent not already held by a Loan Party) or the Plan Reversion Proceeds SPE, (ii) held in trust by a Loan Party for the benefit of the Plan Reversion Proceeds SPE prior to the transfer described in clause (iii)(a) below and (iii)(a) promptly transferred to and held by a Plan Reversion Proceeds SPE, the Equity Interests of which shall be subject to a perfected, first-priority Lien in favor of the Administrative Agent for the benefit of the Secured Parties and (b) to the extent not yet promptly transferred to the Plan Reversion Proceeds SPE, subject to a perfected, first-priority Lien in favor of the Administrative Agent for the benefit of the Lenders (it being understood and agreed that this clause (b) does not in any way serve to extend or waive the requirement that the Plan Reversion Proceeds be promptly transferred to the Plan Reversion Proceeds SPE). Upon any subsequent sale or other liquidation for cash of the Plan Reversion Proceeds by the Plan Reversion Proceeds SPE (which shall be for fair market value as reasonably determined by the Borrower and the Required Lenders or otherwise on terms reasonably acceptable to the Borrower and the Required Lenders), the proceeds of such sale or other liquidation shall be transferred to a Loan Party for prompt application to prepay the Loans pursuant to Section 2.06(b)(v). When held in trust in accordance with the above, any Pension Reversion Proceeds shall not be used for any purpose and shall be held in a segregated account and not commingled with other funds. Notwithstanding the foregoing, no action shall be required under this Section 5.19 to the extent that the burden of complying with this Section 5.19 outweighs the benefit to the Lenders (as reasonably determined by the Borrower and the Required Lenders). To the extent that a requirement of applicable law or a contractual obligation not entered into in contemplation hereof would prevent the Loan Parties and their Restricted Subsidiaries from complying with the foregoing provisions in this Section 5.19, the Loan Parties and their Restricted Subsidiaries will use commercially reasonable efforts to take or cause to be taken such actions as will permit compliance with this Section 5.19 without conflicting with such applicable law or contractual obligation; provided that notwithstanding anything else in this Section 5.19 to the contrary, to the extent the Loan Parties and their Restricted Subsidiaries are not able to comply with the foregoing requirements without conflicting with such applicable law or contractual obligation notwithstanding that they have used commercially reasonable efforts to do so, they shall be deemed not to be in breach of this Section 5.19.

Section 5.20. International Trade Controls. The Borrower will, and will cause each of the Restricted Subsidiaries to (a) comply in all material respects with all Sanctions, Ex-Im Laws, Anti-Corruption Laws, and Anti-Money Laundering Laws; and (b) maintain policies and procedures reasonably designed to ensure compliance by Borrower and each Restricted Subsidiary, and their respective directors, officers, employees, and agents with Sanctions, Ex-Im Laws, Anti-Corruption Laws, and Anti-Money Laundering Laws.

## 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 in an aggregate face amount not to exceed \$150,000,000 (including Bank Product Obligations as defined therein); 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; Letters of Credit (as defined therein) at any time outstanding thereunder shall not exceed \$120,000,000), and any Permitted Refinancing thereof to the extent permitted by the Intercreditor Agreement (including, for the avoidance of doubt, a Replacement LC Credit Agreement (as defined in the Intercreditor Agreement)) and (B) any revolving or asset-based revolving facility incurred after the First Amendment Effective Date (the "Replacement ABL Facility"); provided that, with respect to any such Replacement ABL Facility, (i) such Indebtedness shall be on terms satisfactory to the Required Lenders, (ii) no Default or Event of Default shall exist or result therefrom, (iii) the aggregate principal amount of all Senior Secured Indebtedness of the Borrower, on a pro forma basis after giving effect to such Indebtedness shall not exceed \$450,000,000 (plus any capitalized PIK Interest) and (iv) if outstanding at such time, the Supplemental Letter of Credit Facility (or any Replacement LC Credit Agreement (as defined in the Intercreditor Agreement)) must be terminated, any outstanding letters of credit issued thereunder must be then issued under the Replacement ABL Facility and any corresponding cash collateral that secured such Supplemental Letter of Credit Facility (or any Replacement LC Credit Agreement (as defined in the Intercreditor Agreement)) must be released and applied to prepay the Loans pursuant to Section 2.06(b)(iv)(B);

(iii) Indebtedness existing on the ~~Closing~~First Amendment Effective 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 must be permitted under Section 6.04(c) and (B) Indebtedness of any Subsidiary that is not a Loan Party owing to any Loan Party shall be ~~subject to~~permitted to the extent permitted under 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 permitted to be incurred under this Agreement; *provided that* ~~Guarantees~~such Guarantee by any Loan Party of any Indebtedness of any Subsidiary that is not a Loan Party or such Guarantee by any Subsidiary that is not a Loan Party of any Indebtedness of any Loan Party, in each case, shall be subject to Section 6.04(c);

(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~~under 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 (x) prior to the Borrower Deleveraging Milestone Date, \$30,000,000 or (y) on or after the Borrower Deleveraging Milestone Date, the greater of ~~(x1)~~ \$40,000,000 and ~~(y2)~~ 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 clause~~under this clause (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 (x) prior to the Borrower Deleveraging Milestone Date, \$30,000,000 or (y) on or after the Borrower Deleveraging Milestone Date, the greater of ~~(x1)~~ \$40,000,000 and ~~(y2)~~ 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~~under this clause (viii) of this Section 6.01 at any time outstanding shall not exceed (x) prior to the Borrower Deleveraging Milestone Date, \$20,000,000 or (y) on or after the Borrower Deleveraging Milestone Date, the greater of ~~(x1)~~ \$25,000,000 and ~~(y2)~~ 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, earnout obligations, adjustment of purchase price or similar obligations, or guarantees or letters of credit, bankers' acceptances, ~~accommodation~~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 each case incurred, arising~~ in connection with such permitted Disposition; any Permitted Acquisition or other, any permitted Investment or any Disposition of any business, assets or Equity Interests of any Restricted Subsidiary permitted under Section 6.05 (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 the Borrower or 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 of clause (A) and (B), 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 (1) prior to the Borrower Deleveraging Milestone Date, \$20,000,000 or (2) on or after the Borrower Deleveraging Milestone Date, \$25,000,000, in each case, in the aggregate at any time outstanding and (z) if any Indebtedness assumed by a Loan Party is secured, the obligations of such Loan Party thereunder shall only be secured by the assets subject to such Indebtedness;

(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 (x) prior to the Borrower Deleveraging Milestone Date, \$45,000,000 or (y) on or after the Borrower Deleveraging Milestone Date, \$60,000,000, in each case 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~~[reserved];

(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 (x) prior to the Borrower Deleveraging Milestone Date, \$30,000,000 or (y) on or after the Borrower Deleveraging Milestone Date, \$40,000,000, in each case 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 with replacement preferred equity interests or unsecured convertible debt, (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, with replacement preferred equity interests or unsecured convertible debt and (c) 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~~(A) any Non-Recourse Debt of Non-Recourse Project Subsidiaries and (B) obligations of the Borrower or its Restricted Subsidiaries pursuant to Customary Recourse Exceptions in connection with such Non-Recourse Debt; and

(xxix) other unsecured or ~~junior lien~~subordinated Indebtedness of the Borrower or any Restricted Subsidiary in an aggregate principal amount not to exceed (x) prior to the Borrower Deleveraging Milestone Date, \$22,500,000 or (y) on or after the Borrower Deleveraging Milestone Date, \$30,000,000, in each case at any time outstanding; *provided* that any such ~~junior lien~~subordinated 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;~~ and (iii) Liens securing any Replacement ABL Facility; provided that such Liens incurred under clauses (ii) and (iii) shall be subject to the Intercreditor Agreement at all times;

(b) Permitted Encumbrances;

(c) any Lien on any property or asset of the Borrower or any Restricted Subsidiary existing as of the ~~Closing~~First Amendment Effective 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~~First Amendment 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, 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)(xviii) in an aggregate amount not to exceed (x) prior to the Borrower Deleveraging Milestone Date, \$45,000,000 or (y) on or after the Borrower Deleveraging Milestone Date, \$60,000,000, in each case 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 (x) prior to the Borrower Deleveraging Milestone Date, \$22,500,000 or (y) on or after the Borrower Deleveraging Milestone Date, \$30,000,000, in each case 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; and

(bb) Liens on assets of Non-Recourse Project Subsidiaries to secure Non-Recourse Debt.

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 First Amendment Effective 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 or Non-Recourse Project Subsidiaries 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 and consistent with past practice; ~~provided that (w) any Investment by a Loan Party to a non-Loan Party must be for a bona fide business purpose,~~ (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, Non-Recourse Project Subsidiaries or Unrestricted Subsidiaries pursuant to this clause 6.04(c) shall not exceed (x) prior to the Borrower Deleveraging Date, \$60,000,000 or (y) on or after the Borrower Deleveraging Date, \$75,000,000, in each case 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, Non-Recourse Project Subsidiaries 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 and~~ 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~~ any Unrestricted Subsidiary is designated as a Restricted Subsidiary that becomes a Loan Party, or any Restricted Subsidiary in the Borrower or any other that was not a Loan Party otherwise becomes a Loan Party, any Investment previously made in such Unrestricted Subsidiary or 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; under the cap set forth in clause (z) of the proviso above shall be deemed an Investment in a Loan Party and shall no longer count against such cap);
- (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;~~ (a)(v) to the extent constituting an Investment;
- (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, 5.17(b) 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 (x) prior to the Borrower Deleveraging Milestone Date, \$20,000,000 or (y) on or after the Borrower Deleveraging Milestone Date, \$30,000,000, in each case 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~~ 30,000,000 during the period ending on the third anniversary of the ~~closing date and (y) Closing Date and (y) thereafter, (1) prior to the Borrower Deleveraging Milestone Date, \$52,500,000 thereafter or (2) on or after the Borrower Deleveraging Milestone Date, \$70,000,000 thereafter; and~~

(q) Investments in the form of accounts payable and other similar extension of credit to customers or suppliers in the ordinary course of business; ~~and~~

(r) Investments in Non-Recourse Project Subsidiaries consisting solely of obligations pursuant to Customary Recourse Exceptions in connection with Non-Recourse Debt.

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~~; permitted under this Agreement;

(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 of applicable customers;

(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~~ [reserved];

(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; *provided, further, that as it relates to the Borrower's brand licensing business, so long as such licenses of the Borrower's brand or trademarks relate to a field in which the Borrower is not currently engaged or contemplated to be engaged in, such licenses shall be deemed to be in the ordinary course of business for purposes of clause (o)(i) above, even if such licenses (x) are exclusive or (y) provide for a term in perpetuity or an up-front royalty (or a combination thereof); provided however, that if the Net Proceeds received from any counterparty in connection with any Disposition relating to the Borrower's brand licensing business shall be greater than \$50,000,000 in the aggregate (on a cumulative basis on or after the First Amendment Effective Date, but excluding (I) any such Net Proceeds received from any counterparty in connection with any Disposition relating to the Borrower's brand licensing business entered into prior to the First Amendment Effective Date and any such Disposition relating to a renewal of any such existing arrangement with any such counterparty and (II) any such Net Proceeds received in connection with any Disposition relating to the Borrower's brand licensing business from counterparties with which the Borrower is negotiating brand licensing arrangements as of the First Amendment Effective Date with respect to which the Borrower has notified the Required Lenders on or prior to the First Amendment Effective Date), any amounts in excess of \$50,000,000 shall be subject to mandatory prepayments pursuant to Section 2.06(b)(i).*

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~~voluntary prepayment of an amount of Loans in a principal amount at least equal to the face amount of preferred stock being repurchased, and such prepayment shall be subject to a prepayment premium equal to (x) until the Borrower has prepaid the Loans after the First Amendment Effective Date pursuant to mandatory or voluntary prepayments in an aggregate principal amount of at least \$150,000,000, 1.0% and (y) thereafter, the lesser of (1) 6.0% and (2) the applicable Prepayment Premium calculated in accordance with Section 2.06(c) as if the Loans had been prepaid pursuant to Section 2.06(a). (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 (vii)~~ 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)(viii)~~ 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-); provided that:

(i) the ABL Loans, the Convertible Note, Loan Parties may make regularly scheduled repayments (including payments of principal and interest as and when due) or redemptions of Indebtedness permitted to be incurred under Section 6.01 (including any Indebtedness of Foreign Subsidiaries permitted by Section 6.01(a)(xviii); secured Indebtedness permitted by Section 6.01(a)(vi) or (vii); provided that, with respect to any intercompany Indebtedness permitted under Section 6.01(a)(iv) and (viii) in connection with any such payment, (x) such regularly scheduled payments shall be made in the ordinary course of business, other Indebtedness with a principal amount not exceeding \$10,000,000); provided that: and consistent with past practices, and (y) with respect to any intercompany Indebtedness owed by any Loan Party to any Subsidiary organized or formed in China, both before and after giving effect to such payment, U.S. Liquidity shall not be less than (1) with respect to any such repayment on or prior to December 31, 2024, \$30,000,000 and (2) with respect to any such repayment after December 31, 2024, \$50,000,000;

~~(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: ~~and~~

(v) Non-Recourse Project Subsidiaries may make payments in respect of Non-Recourse Debt.

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'slength 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~~Refinancing 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~~First Amendment Effective 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~~, any Supplemental Letter of Credit Loan Documents or the document governing any Replacement ABL Facility, (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~~ First Amendment Effective Date 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~~ Supplemental Letter of Credit Facility or any Replacement ABL Facility 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 document governing any Replacement ABL Loan Documents Facility 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 Material 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, the advanced materials and chemicals business and digital film and printing 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.

Section 6.14. International Trade Controls. The Borrower will not, nor will it permit any Restricted Subsidiary to:

(a) directly or knowingly indirectly use any proceeds of the Loans, or use, lend, contribute or otherwise make available any proceeds of the Loans, to any Subsidiary, Affiliate, joint venture partner or other Person (i) to fund any activities or transactions involving any country or territory that is the target of comprehensive Sanctions or Russia so long as the government of Russia is the target of Sanctions (“Sanctioned Country”); or (ii) in any manner in violation of Anti-Corruption Laws, Anti-Money Laundering Laws, Ex-Im Laws or Sanctions by any Agent or Lender; or

(b) fund all or part of any repayment of the Loans or other payments under this Agreement out of proceeds directly or knowingly indirectly derived from (i) any Sanctioned Country; or (ii) criminal activity or activity or transactions in violation of any Anti-Corruption Laws, Anti-Money Laundering Laws, Ex-Im Laws or Sanctions, or in a manner that would otherwise cause any Agent or Lender to be in violation of any Anti-Corruption Laws, Anti-Money Laundering Laws, Ex-Im Laws or Sanctions.

## 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 (i) secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness or (ii) any Indebtedness by and among the Borrower and/or one or more of its direct or indirectly wholly-owned Subsidiaries; *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 (x) prior to the Borrower Deleveraging Milestone Date, \$20,000,000 or (y) on or after the Borrower Deleveraging Milestone Date, \$25,000,000 (or, in each case, 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~~any Replacement ABL Facility unless and until each guarantor is (or is being simultaneously) released from its guarantee with respect to ~~the~~such Replacement 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.

Section 8.15. Erroneous Payments.

(a) Each Lender hereby agrees that (i) if the Administrative Agent notifies such Lender in writing that the Administrative Agent has determined in its sole but reasonable discretion that any funds received by such Lender from the Administrative Agent or any of its Affiliates were erroneously or mistakenly transmitted to, or otherwise erroneously or mistakenly received by, such Lender (whether or not known to such Lender) (whether as a payment, prepayment or repayment of principal, interest, fees or otherwise; individually and collectively, an "Erroneous Payment") and demands the return of such Erroneous Payment (or a portion thereof), such Lender shall promptly, but in no event later than two (2) Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made, in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the third Business Day after the Administrative Agent demands the return of such Erroneous Payment (or a portion thereof) to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation from time to time in effect and (ii) to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments received, including, without limitation, waiver of any defense based on "discharge for value" or any similar theory or doctrine. A notice of the Administrative Agent to any Lender under this clause (a) shall be conclusive, absent manifest error.

(b) Without limiting immediately preceding clause (a), each Lender hereby further agrees that if it receives a payment from the Administrative Agent (or any of its Affiliates) (x) that is in a different amount than, or on a different date from, that specified in a notice of payment sent by the Administrative Agent, (y) that was not preceded or accompanied by notice of payment, or (z) that such Lender otherwise becomes aware was transmitted, or received, in error or by mistake (in whole or in part), then in each case, if an error has been made each such Lender is deemed to have knowledge of such error, and to the extent permitted by applicable law, such Lender shall not assert any right or claim to the Erroneous Payment, and hereby waives, any claim, counterclaim, defense or right of set-off or recoupment with respect to any demand, claim or counterclaim by the Administrative Agent for the return of any Erroneous Payments received, including without limitation waiver of any defense based on "discharge for value" or any similar theory or doctrine. Each Lender agrees that, in each such case, it shall promptly (and, in all events, within two (2) Business Days of its knowledge (or deemed knowledge) of such error) notify the Administrative Agent of such occurrence and, upon written demand from the Administrative Agent, it shall promptly, but in all events no later than two (2) Business Days thereafter, return to the Administrative Agent the amount of any such Erroneous Payment (or portion thereof) as to which such a demand was made in same day funds (in the currency so received), together with interest thereon in respect of each day from and including the third Business Day after the Administrative Agent demands the return of such Erroneous Payment (or a portion thereof) to the date such amount is repaid to the Administrative Agent in same day funds at the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with industry rules on interbank compensation from time to time in effect.

(c) The Borrower and each other Loan Party hereby agrees that (x) in the event an Erroneous Payment (or portion thereof) is not recovered from any Lender that has received such Erroneous Payment (or portion thereof) for any reason (and without limiting the Administrative Agent's rights and remedies under this Section 8.15), the Administrative Agent shall be subrogated to all the rights of such Lender with respect to such amount and (y) an Erroneous Payment shall not pay, prepay, repay, discharge or otherwise satisfy any Obligations owed by the Borrower or any other Loan Party.

(d) In addition to any rights and remedies of the Administrative Agent provided by law, Administrative Agent shall have the right, without prior notice to any Lender, such notice being expressly waived by such Lender to the extent permitted by applicable law, with respect to any Erroneous Payment for which a written demand has been made in accordance with this Section 8.15 and which has not been returned to the Administrative Agent within the time period required hereunder, to set off and appropriate and apply against such amount any and all deposits (general or special, time or demand, provisional or final but excluding trust accounts), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by Administrative Agent or any of its Affiliate, branch or agency thereof to or for the credit or the account of such Lender. Administrative Agent agrees promptly to notify the Lender after any such setoff and application made by Administrative Agent; provided that the failure to give such notice shall not affect the validity of such setoff and application.



(e) Each party's obligations under this Section 8.15 shall survive the resignation or replacement of the Administrative Agent, the termination of the Commitments or the repayment, satisfaction or discharge of all Obligations (or any portion thereof) under any Loan Document.

**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 ~~Agency, Emily Ergang Pappas~~ and Bill Ryan  
Phone: 312-564-5100  
Fax: 312-376-0751  
Email: ~~legal~~ [legal\\_agency@alterdomus.com](mailto:legal_agency@alterdomus.com); [emily.ergangpappas@alterdomus.com](mailto:emily.ergangpappas@alterdomus.com)  
[and bill.ryan@alterdomus.com](mailto: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~~ [Joshua.spencer@hklaw.com](mailto:Joshua.spencer@hklaw.com) and [alterdomus@hklaw.com](mailto:alterdomus@hklaw.com)

and:

Akin Gump Strauss Hauer & Feld LLP  
One Bryant Park  
New York, New York 10036  
Attn: ~~Frederick Lee~~; Ryan Kim; [Josh Peary](mailto:JPeary@akingump.com)  
Fax: 212-872-1002  
Email: [flee@akingump.com](mailto:flee@akingump.com)  
[kimr@akingump.com](mailto:kimr@akingump.com)  
[JPeary@akingump.com](mailto:JPeary@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 email notice to the Administrative Agent shall be in "pdf" format. Any party hereto may change its address, email 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 email 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 email 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; or

(viii) subordinate the Liens on the Collateral securing the Obligations to any other Indebtedness (other than in connection with a Replacement ABL Facility approved by the Required Lenders) or (y) subordinate the Obligations in right of payment to any other Indebtedness, in each case, 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 the 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 and distribution (including, without limitation, via the internet or through an electronic system) of the credit facilities provided for herein, the preparation, execution, delivery and administration of the Loan Documents ~~or, the Refinancing Transactions, the amendments to the Existing Term Loan Facility, or related to any transactions and financings of the Borrower contemplated or otherwise permitted by this Agreement (including without limitation, any intercreditor matters, side letters and governance rights), and~~ 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 and their respective Affiliates, including the fees, charges and disbursements of any counsel or other professional consultants for the Administrative Agent or any Lender, in connection with the enforcement, collection 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; provided that the Borrower shall not be required to reimburse any fees or expenses, including legal fees, incurred by the Administrative Agent or the Lenders in connection with the joinder of any Foreign Subsidiary organized outside of Canada or the United Kingdom as a Loan Party in accordance with Section 5.17 or any action taken in connection therewith.

(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 aftertax 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 Refinancing 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~~[Refinancing](#) 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.

(i) *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.

(ii) *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.

(iii) *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.

(iv) *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 at least a majority ~~in~~of the 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).



(a) *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.

(b) *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.

(c) *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.

(d) *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.

(e) *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.

(a) 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.

(b) 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~~REFINANCING 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~~obligations 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: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to the Credit Agreement]*

---



ALTER DOMUS (US) LLC, as Administrative Agent

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to the Credit Agreement]*

---

~~KENNEDY LEWIS CAPITAL PARTNERS MASTER  
FUND LP~~ [●], as a Lender

By: \_\_\_\_\_  
Name:  
Title:

~~KENNEDY LEWIS CAPITAL PARTNERS MASTER  
FUND H LP~~ [●], as a Lender

By: \_\_\_\_\_  
Name:  
Title:

[Signature Page to the Credit Agreement]

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**Exhibit B**

**Amended and Restated Exhibits to Credit Agreement**

*Execution Version*

EXHIBIT A

**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]<sup>1</sup>]
- 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 Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (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 <sup>2</sup>
\$	\$	%

<sup>1</sup> Select as applicable.  
<sup>2</sup> 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.]<sup>3</sup>

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:

\_\_\_\_\_  
<sup>3</sup> 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:]<sup>4</sup>

[EASTMAN KODAK COMPANY]

By \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
<sup>4</sup> 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 Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (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**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

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] 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.

FORM OF CASH/PIK ELECTION NOTICE

[ , 20 \_\_\_\_]5

Alter Domus (US) LLC  
225 W. Washington St., 9th Floor  
Chicago, IL 60606  
Telephone: (312) 564-5100  
Attention: Legal Department – Agency, Emily Ergang Pappas and Bill Ryan  
Email: legal\_agency@alterdomus.com; emily.ergangpappas@alterdomus.com and  
bill.ryan@alterdomus.com

Reference is made to that certain Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), among Eastman Kodak Company, a New Jersey corporation (the “Borrower”), the several banks and other financial institutions or entities 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 herein that are not otherwise defined shall have meanings provided in the Credit Agreement.

\_\_\_\_\_ Pursuant to Section 2.08(a) of the Credit Agreement, the Borrower hereby elects that all interest due for all Loans on [\_\_\_\_\_]6 [shall be paid in cash]7[shall be paid partially in cash and paid partially in kind and capitalized]8. Such payment shall otherwise be made in accordance with the terms and conditions of the Credit Agreement.

Very truly yours,

**EASTMAN KODAK COMPANY**, as Borrower

By: \_\_\_\_\_  
Name:  
Title:

5 The Cash/PIK Election Notice shall be delivered to the Administrative Agent no later than 11:00 a.m., five (5) Business Days prior to each Interest Payment Date.

6 Populate the upcoming Interest Payment Date.

7 To be utilized if Cash Option is selected.

8 To be utilized if Cash/PIK Option is selected.

**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 Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (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 2.10 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 Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (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 2.10 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 Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (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 2.10 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 W8BEN 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 Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (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 2.10 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 W8BEN 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[●]

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 – Agency, Emily Ergang Pappas and Bill Ryan  
E-mail: legal\_agency@alterdomus.com; emily.ergangpappas@alterdomus.com and  
bill.ryan@alterdomus.com

[●], 20[●]

Ladies and Gentlemen:

Reference is made to the Amended and Restated Credit Agreement dated as the First Amendment Effective Date (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<sup>9</sup>: [●]

Very truly yours,

Eastman Kodak Company

By: \_\_\_\_\_  
Name:  
Title:

<sup>9</sup> Must comply with the requirements of Section 2.04 of the Credit Agreement.

[Reserved]



## 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, 9<sup>th</sup> 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 Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (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:

<u>Date</u>	<u>Principal Amount of Loan</u>	<u>Interest Rate</u>	<u>Amount Paid or Prepaid,</u>	<u>Notation Made by</u>
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## 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]<sup>10</sup>]
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 Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (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 <sup>11</sup>
\$ _____	\$ _____	% _____

<sup>10</sup> Select as applicable.

<sup>11</sup> 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]<sup>12</sup>

By: \_\_\_\_\_  
Name:  
Title:

\_\_\_\_\_  
<sup>12</sup> 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 Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (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**”). Capitalized terms used but not defined herein shall have the meanings given to them in the Credit Agreement.

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 Refinancing 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 Refinancing 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.

## FORM OF SOLVENCY CERTIFICATE

June [●], 2023

This Solvency Certificate is being executed and delivered in connection with that certain Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (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, [●], the Chief Financial Officer of the Borrower, in such capacity and not in an individual capacity, hereby certify as follows:

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 First Amendment Effective 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: [●]

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 Refinancing Term Loans pursuant to the Offer Documents (including, for the avoidance of doubt, by participating in the Auction as a Lender) or whether or not the Borrower or any of its Subsidiaries should purchase by assignment any Refinancing 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 Refinancing Term Loans and, if so, the principal amount of and price to be sought for such Refinancing 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) Refinancing 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 Refinancing 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 Refinancing 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 Refinancing 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 Refinancing 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 Refinancing Term Loans (the “**Reply Price**”) within the Discount Range and (ii) the principal amount of Refinancing 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 Refinancing 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 Refinancing 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 Refinancing Term Loans for which the Offeror has received Qualifying Bids). The Offeror shall purchase (by assignment) Refinancing 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 Refinancing 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 Refinancing 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 Refinancing 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 Refinancing 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 Refinancing Term Loans purchased below the Applicable Threshold Price), the Offeror shall purchase the Refinancing 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 Refinancing 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 is not 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 Refinancing 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 Refinancing 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 Refinancing 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 Refinancing 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 Refinancing 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 Amended and Restated Credit Agreement dated as of the First Amendment Effective Date (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 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.]<sup>1314</sup>
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 First Amendment Effective Date).<sup>15</sup>

IN WITNESS WHEREOF, I have executed this Certificate this day of [●], 20[●].

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

<sup>13</sup> Bracketed language only required in compliance certificate accompanying audited annual financial statements.

<sup>14</sup> Alternatively, the Responsible Officer shall confirm that there is no change to the information set forth on the Perfection Certificate since the date of the last such list.

<sup>15</sup> Alternatively, the Responsible Officer shall confirm that there are no additional Subsidiaries since the later of the First Amendment Effective 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 C**

**Amended and Restated Annexes and Schedules to Credit Agreement**

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Exhibit D

**Amended Security Agreement**

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**GUARANTEE AND COLLATERAL AGREEMENT**

Dated February 26, 2021

[as amended on the First Amendment Effective Date](#)

From

The Grantors referred to herein

as Grantors

to

Alter Domus (US) LLC

as Administrative Agent

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## GUARANTEE AND COLLATERAL AGREEMENT

GUARANTEE AND COLLATERAL AGREEMENT dated February 26, 2021 (as ~~it may be~~ amended by that certain [First Amendment to Credit Agreement, dated as of June 30, 2023 as it may be further](#) amended, restated, amended and restated, supplemented or otherwise modified from time to time, this “**Agreement**”), made by Eastman Kodak Company, a New Jersey corporation (“**Borrower**” or “**Company**”), and the other Persons listed on the signature pages hereof, or which at any time execute and deliver a Security Agreement Supplement in substantially the form attached hereto as Exhibit C (the Borrower and such Persons so listed or joined being, collectively, the “**Grantors**”), to Alter Domus (US) LLC, as administrative agent (in such capacity, together with any successor Administrative Agent appointed pursuant to Article VIII of the Credit Agreement (as hereinafter defined) and assigns, the “**Administrative Agent**”) for the Secured Parties (as defined in the Credit Agreement).

### PRELIMINARY STATEMENTS.

- (1) Borrower and the other Grantors ~~have~~ entered into a senior secured first lien term loan credit agreement with Administrative Agent and certain other parties as set forth in the Credit Agreement, dated ~~of even date herewith~~ [as of February 26, 2021](#), by and among the Borrower, the lenders party thereto from time to time (the “**Lenders**”) and Administrative Agent ([as amended and restated on the First Amendment Effective Date, as](#) it may be [further](#) amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”);
  - (2) Borrower is a member of an affiliated group of companies that includes each other Grantor;
  - (3) Part I of Schedule I hereto lists all Equity Interests (other than Excluded Property) directly owned by such Grantor as of the ~~date~~ [hereof First Amendment Effective Date](#) (the “**Initial Pledged Equity**”). Each Grantor is the holder of the indebtedness owed to such Grantor as of the ~~date~~ [hereof First Amendment Effective Date](#) (the “**Initial Pledged Debt**”) set forth opposite such Grantor’s name on and as otherwise described in Part II of Schedule I hereto and issued by the obligors named therein.
  - (4) Each Grantor is the owner of the deposit accounts set forth opposite such Grantor’s name on Schedule II hereto (together with all deposit accounts now owned or hereafter acquired by the Grantors, the “**Pledged Deposit Accounts**”).
  - (5) Company is the owner of an LC Cash Collateral Account (as defined in the Supplemental Letter of Credit Facility Agreement, the “**LC Cash Collateral Account**”) created in accordance with the Supplemental Letter of Credit Facility Agreement and subject to the security interest granted under this Agreement.
  - (6) It is a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement that the Grantors shall have provided the guarantee and granted the security interests contemplated by this Agreement.
-

(7) Each Grantor will derive substantial direct or indirect benefit from the transactions contemplated by this Agreement, the Credit Agreement and the other Loan Documents.

(8) Terms defined in the Credit Agreement and not otherwise defined in this Agreement are used in this Agreement as defined in the Credit Agreement. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. Further, unless otherwise defined in this Agreement or in the Credit Agreement, terms defined in Article 8 or 9 of the UCC (as defined below) are used in this Agreement (whether or not capitalized) as such terms are defined in such Article 8 or 9. “**UCC**” means the Uniform Commercial Code as in effect from time to time in the State of New York; provided, that, if perfection or the effect of perfection or non-perfection or the priority of the 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.

NOW, THEREFORE, in consideration of the premises and in order to induce the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement, each Grantor hereby agrees with the Administrative Agent for the benefit of the Secured Parties as follows:

Section 1. Guarantee.

(a) Guarantee.

(i) Each of the Guarantors hereby, jointly and severally, unconditionally and irrevocably, guarantees to the Administrative Agent, for the ratable benefit of the Secured Parties and their respective successors, indorsees, transferees and assigns, the prompt and complete payment and performance by the Borrower when due (whether at the stated maturity, by acceleration or otherwise) of the Borrower Obligations. “**Guarantors**” shall mean each Grantor other than the Borrower. “**Borrower Obligations**” shall mean the unpaid principal of and interest on (including interest accruing after the maturity of the Loans and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding, relating to the Borrower, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans and all other obligations and liabilities of the Borrower to the Administrative Agent or to any Lender, whether direct or indirect, absolute or contingent, due or to become due, or now existing or hereafter incurred, which may arise under, out of, or in connection with, this Agreement, any other Loan Document, or any other document made, delivered or given in connection herewith or therewith, whether on account of principal, interest, reimbursement obligations, fees, indemnities, costs, expenses (including all fees, charges and disbursements of counsel to the Administrative Agent or to any Lender that are required to be paid by the Borrower pursuant to Section 9.03 of the Credit Agreement) or otherwise.

(ii) Anything herein or in any other Loan Document to the contrary notwithstanding, the maximum liability of each Guarantor hereunder and under the other Loan Documents shall in no event exceed the amount which can be guaranteed by such Guarantor under applicable federal and state laws relating to the insolvency of debtors (after giving effect to the right of contribution established in Section 1(b)).

(iii) Each Guarantor agrees that the Borrower Obligations may at any time and from time to time exceed the amount of the liability of such Guarantor hereunder without impairing the guarantee contained in this Section 1 or affecting the rights and remedies of the Administrative Agent or any Lender hereunder.

(iv) The guarantee contained in this Section 1 shall remain in full force and effect until all the Obligations (other than any contingent indemnification obligations not then due and payable) shall have been satisfied by payment in full and the Commitments shall be terminated. "**Obligations**" shall mean (i) in the case of the Borrower, the Borrower Obligations, and (ii) in the case of each Guarantor, its Guarantor Obligations. "**Guarantor Obligations**" shall mean with respect to any Guarantor, all obligations and liabilities of such Guarantor which may arise under or in connection with this Agreement (including, without limitation, this Section 1) or any other Loan Document, in each case whether on account of guarantee obligations, reimbursement obligations, fees, indemnities, costs, expenses or otherwise (including, without limitation, all fees and disbursements of counsel to the Administrative Agent or to the Lenders that are required to be paid by such Guarantor pursuant to Section 9.03 of the Credit Agreement or Section 22 hereof).

(v) No payment made by the Borrower, any of the Guarantors, any other guarantor or any other Person or received or collected by the Administrative Agent or any Lender from the Borrower, any of the Guarantors, any other guarantor or any other Person by virtue of any action or proceeding or any set-off or appropriation or application at any time or from time to time in reduction of or in payment of the Borrower Obligations shall be deemed to modify, reduce, release or otherwise affect the liability of any Guarantor hereunder which shall, notwithstanding any such payment (other than any payment made by such Guarantor in respect of the Borrower Obligations or any payment received or collected from such Guarantor in respect of the Borrower Obligations), remain liable for the Borrower Obligations up to the maximum liability of such Guarantor hereunder until the Obligations are paid in full (other than any contingent indemnification obligations not then due and payable) and the Commitments are terminated.

(b) Right of Contribution. Each Guarantor hereby agrees that to the extent that a Guarantor shall have paid more than its proportionate share of any payment made hereunder, such Guarantor shall be entitled to seek and receive contribution from and against any other Guarantor hereunder which has not paid its proportionate share of such payment. Each Guarantor's right of contribution shall be subject to the terms and conditions of Section 1(c). The provisions of this Section 1(b) shall in no respect limit the obligations and liabilities of any Guarantor to the Administrative Agent and the Lenders, and each Guarantor shall remain liable to the Administrative Agent and the Lenders for the full amount guaranteed by such Guarantor hereunder.



(c) No Subrogation. Notwithstanding any payment made by any Guarantor hereunder or any set-off or application of funds of any Guarantor by the Administrative Agent or any Lender, no Guarantor shall be entitled to be subrogated to any of the rights of the Administrative Agent or any Lender against the Borrower or any other Guarantor or any collateral security or guarantee or right of offset held by the Administrative Agent or any Lender for the payment of the Borrower Obligations, nor shall any Guarantor seek or be entitled to seek any contribution or reimbursement from the Borrower or any other Guarantor in respect of payments made by such Guarantor hereunder, until all amounts owing to the Administrative Agent and the Lenders by the Borrower on account of the Borrower Obligations (other than contingent indemnification obligations not then due and payable) are paid in full and the Commitments shall have terminated. If any amount shall be paid to any Guarantor on account of such subrogation rights at any time when all of the Borrower Obligations shall not have been paid in full, such amount shall be held by such Guarantor in trust for the Administrative Agent and the Lenders, segregated from other funds of such Guarantor, and shall, forthwith upon receipt by such Guarantor, be turned over to the Administrative Agent in the exact form received by such Guarantor (duly indorsed by such Guarantor to the Administrative Agent, if required), to be applied against the Borrower Obligations, whether matured or unmatured, in such order as the Administrative Agent may determine.

(d) Amendments, etc. with respect to the Borrower Obligations. Each Guarantor shall remain obligated hereunder notwithstanding that, without any reservation of rights against any Guarantor and without notice to or further assent by any Guarantor, any demand for payment of any of the Borrower Obligations made by the Administrative Agent or any Lender may be rescinded by the Administrative Agent or such Lender and any of the Borrower Obligations continued, and the Borrower Obligations, or the liability of any other Person upon or for any part thereof, or any collateral security or guarantee therefor or right of offset with respect thereto, may, from time to time, in whole or in part, be renewed, extended, amended, modified, accelerated, compromised, waived, surrendered or released by the Administrative Agent or any Lender, and the Credit Agreement and the other Loan Documents and any other documents executed and delivered in connection therewith may be amended, modified, waived, supplemented or terminated, in whole or in part, as the Administrative Agent (or the Required Lenders or such requisite Lenders as required pursuant to Section 9.02 of the Credit Agreement, as the case may be) may reasonably deem advisable from time to time, and any collateral security, guarantee or right of offset at any time held by the Administrative Agent or any Lender for the payment of the Borrower Obligations may be sold, exchanged, waived, surrendered or released. Neither the Administrative Agent nor any Lender shall have any obligation to protect, secure, perfect or insure any Lien at any time held by it as security for the Borrower Obligations or for the guarantee contained in this Section 1 or any property subject thereto.

(e) Guarantee Absolute and Unconditional. Each Guarantor waives any and all notice of the creation, renewal, extension or accrual of any of the Borrower Obligations and notice of or proof of reliance by the Administrative Agent or any Lender upon the guarantee contained in this Section 1 or acceptance of the guarantee contained in this Section 1; the Borrower Obligations, and any of them, shall conclusively be deemed to have been created, contracted or incurred, or renewed, extended, amended or waived, in reliance upon the guarantee contained in this Section; and all dealings between the Borrower and any of the Guarantors, on the one hand, and the Administrative Agent and the Lenders, on the other hand, likewise shall be conclusively presumed to have been had or consummated in reliance upon the guarantee contained in this Section 1. Each Guarantor waives diligence, presentment, protest, demand for payment and notice of default or nonpayment to or upon the Borrower or any of the Guarantors with respect to the Borrower Obligations. Each Guarantor understands and agrees that the guarantee contained in this Section 1 shall be construed as a continuing, absolute and unconditional guarantee of payment without regard to (a) the validity or enforceability of the Credit Agreement or any other Loan Document, any of the Borrower Obligations or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by the Administrative Agent or any Lender, (b) any defense, set-off or counterclaim (other than a defense of payment or performance) which may at any time be available to or be asserted by the Borrower or any other Person against the Administrative Agent or any Lender, or (c) any other circumstance whatsoever (with or without notice to or knowledge of the Borrower or such Guarantor) which constitutes, or might be construed to constitute, an equitable or legal discharge of the Borrower for the Borrower Obligations, or of such Guarantor under the guarantee contained in this Section 1, in bankruptcy or in any other instance. When making any demand hereunder or otherwise pursuing its rights and remedies hereunder against any Guarantor, the Administrative Agent or any Lender may, but shall be under no obligation to, make a similar demand on or otherwise pursue such rights and remedies as it may have against the Borrower, any other Guarantor or any other Person or against any collateral security or guarantee for the Borrower Obligations or any right of offset with respect thereto, and any failure by the Administrative Agent or any Lender to make any such demand, to pursue such other rights or remedies or to collect any payments from the Borrower, any other Guarantor or any other Person or to realize upon any such collateral security or guarantee or to exercise any such right of offset, or any release of the Borrower, any other Guarantor or any other Person or any such collateral security, guarantee or right of offset, shall not relieve any Guarantor of any obligation or liability hereunder, and shall not impair or affect the rights and remedies, whether express, implied or available as a matter of law, of the Administrative Agent or any Lender against any Guarantor. For the purposes hereof "demand" shall include the commencement and continuance of any legal proceedings.

(f) Reinstatement. The guarantee contained in this Section 1 shall continue to be effective, or be reinstated, as the case may be, if at any time payment, or any part thereof, of any of the Borrower Obligations is rescinded or must otherwise be restored or returned by the Administrative Agent or any Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of the Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, intervenor or conservator of, or trustee or similar officer for, the Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payments had not been made.

Section 2. Grant of Security. Each Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest in such Grantor's right, title and interest in and to each type of property described below, whether now owned or hereafter acquired by such Grantor, wherever located, and whether now or hereafter existing or arising, excluding in each case any Excluded Property (collectively, the "*Collateral*"):

(a) all Equipment in all of its forms, including all machinery, tools, motor vehicles, vessels, aircraft and furniture (excepting all Fixtures), and all parts thereof and all accessions thereto, including computer programs and supporting information that constitute equipment within the meaning of the UCC (any and all such property being the “**Equipment**”);

(b) all Inventory in all of its forms, including (i) all raw materials, work in process, finished goods and materials used or consumed in the manufacture, production, preparation or shipping thereof, (ii) goods in which such Grantor has an interest in mass or a joint or other interest or right of any kind (including goods in which such Grantor has an interest or right as consignee) and (iii) goods that are returned to or repossessed or stopped in transit by such Grantor, and all accessions thereto and products thereof and documents therefor, including computer programs and supporting information that constitute inventory within the meaning of the UCC (any and all such property being the “**Inventory**”);

(c) (i) all Accounts, Instruments (including promissory notes), deposit accounts, Chattel Paper, General Intangibles (including Payment Intangibles) and other obligations of any kind owing to the Grantors, whether or not arising out of or in connection with the sale or lease of goods or the rendering of services and whether or not earned by performance (any and all such instruments, deposit accounts, chattel paper, general intangibles and other obligations to the extent not referred to in clause (d), (e) or (f) below, being the “**Receivables**”), and all Supporting Obligations, security agreements, Liens, leases, letters of credit and other Contracts owing to the Grantors or supporting the obligations owing to the Grantors under the Receivables (collectively, the “**Related Contracts**”), and (ii) all Commercial Tort Claims now or hereafter described on Schedule X hereto;

(d) the following (the “**Security Collateral**”):

(i) the Initial Pledged Equity and the certificates, if any, representing the Initial Pledged Equity, and all dividends, distributions, return of capital, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Initial Pledged Equity and all warrants, rights or options issued thereon or with respect thereto;

(ii) the Initial Pledged Debt and the instruments, if any, evidencing the Initial Pledged Debt, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Initial Pledged Debt;

(iii) all additional equity interests (other than Excluded Property) from time to time acquired by such Grantor in any manner (such equity interests, together with the Initial Pledged Equity, being the “**Pledged Equity**”), and the certificates, if any, representing such additional equity interests, and all dividends, distributions, return of capital, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such equity interests and all warrants, rights or options issued thereon or with respect thereto;

(iv) all additional indebtedness from time to time owed to such Grantor (such indebtedness, together with the Initial Pledged Debt, being the “**Pledged Debt**”) and the instruments, if any, evidencing such indebtedness, and all interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such indebtedness;

(v) all security entitlements or commodity contracts carried in, or from time to time credited to, as applicable, a securities account or commodity account, all financial assets, and all dividends, distributions, return of capital, interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such security entitlements or financial assets and all warrants, rights or options issued thereon with respect thereto; and

(vi) all other investment property (including all (A) securities, whether certificated or uncertificated, (B) security entitlements, (C) securities accounts, (D) commodity contracts and (E) commodity accounts, but excluding any equity interest excluded from the Pledged Equity) in which such Grantor has now, or acquires from time to time hereafter, any right, title or interest in any manner, and the certificates or instruments, if any, representing or evidencing such investment property, and all dividends, distributions, return of capital, interest, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of such investment property and all warrants, rights or options issued thereon or with respect thereto (“**Investment Property**”);

(e) each Hedging Agreement to which such Grantor is now or may hereafter become a party, in each case as such agreements may be amended, amended and restated, supplemented or otherwise modified from time to time (collectively, the “**Assigned Agreements**”), including (i) all rights of such Grantor to receive moneys due and to become due under or pursuant to the Assigned Agreements, (ii) all rights of such Grantor to receive proceeds of any insurance, indemnity, warranty or guaranty with respect to the Assigned Agreements, (iii) claims of such Grantor for damages arising out of or for breach of or default under the Assigned Agreements and (iv) the right of such Grantor to terminate the Assigned Agreements, to perform thereunder and to compel performance and otherwise exercise all remedies thereunder (all such Collateral being the “**Agreement Collateral**”);

(f) the following (collectively, the “**Account Collateral**”):

(i) the Pledged Deposit Accounts or the LC Cash Collateral Account, and all funds and financial assets from time to time credited thereto (including all cash equivalents), and all certificates and instruments, if any, from time to time representing or evidencing the Pledged Deposit Accounts or the LC Cash Collateral Account;

(ii) all promissory notes, certificates of deposit, checks and other instruments from time to time delivered to or otherwise possessed by the Administrative Agent for or on behalf of such Grantor in substitution for or in addition to any or all of the then existing Account Collateral; and

(iii) all interest, dividends, distributions, cash, instruments and other property from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the then existing Account Collateral; and

(g) the following (such rights, title and interests in and to the intellectual property as described in clauses (i) through (iv) below, collectively, the "**Intellectual Property Collateral**"):

(i) all issued patents and patent applications ("**Patents**"), all utility models and statutory invention registrations, all inventions claimed or disclosed therein and all improvements thereto;

(ii) all trademarks, service marks, trade dress, logos, designs, slogans, trade names, business names, corporate names and other source identifiers, whether registered or unregistered, together, in each case, with the goodwill symbolized thereby ("**Trademarks**") and uniform resource locators ("**URLs**") and domain names;

(iii) all copyrights, including copyrights in computer software, internet web sites and the content thereof, whether registered or unregistered ("**Copyrights**"); all confidential and proprietary information, including know-how, trade secrets, manufacturing and production processes and techniques, inventions, research and development information, databases and data, including technical data, financial, marketing and business data, pricing and cost information, business and marketing plans and customer and supplier lists and information (collectively, "**Trade Secrets**"), and all other intellectual property and industrial property of any type, including industrial designs and mask works;

(iv) except as set forth above, all registrations and applications for registration for any of the foregoing, including those registrations and applications for registration, together with all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations thereof;

(v) all agreements, permits, consents and orders relating to the license, development, use or disclosure of any of the foregoing to which such Grantor, now or hereafter, is a party or a beneficiary ("**IP Agreements**"); and

(vi) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages;

(h) all Documents, all Money and all Letter-of-Credit Rights;

(i) all Plan Reversion Proceeds;

(i) all books and records and documents (including databases, customer lists, credit files, computer files, printouts, other computer output materials and records and other records) of the Grantors pertaining to any of the Grantors' Collateral;

(k) all other property not otherwise described above (except for any property specifically excluded from any clause in this section, and any property specifically excluded from any defined term used in any clause of this section);

(l) all proceeds of and payments under business interruption insurance;

(m) all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and Supporting Obligations relating to, any and all of the Collateral (including proceeds, collateral and supporting obligations that constitute property of the types described in clauses (a) through (h) of this Section 2); and

(n) to the extent not otherwise included, all (A) payments under insurance (whether or not the Administrative Agent is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral, and (B) cash and cash equivalents.

Notwithstanding any of the other provisions set forth in this Section 2 or in any Loan Document, no Excluded Property shall constitute Collateral under this Agreement (and no defined term for items that constitute Collateral shall include any Excluded Property). For purposes of this Agreement and the other Loan Documents, “**Excluded Property**” shall mean (1) any property to the extent that such grant of a security interest (x) is prohibited by any applicable Requirements of Law, (y) requires a consent not obtained of any Governmental Authority pursuant to such applicable Requirement of Law or (z) is prohibited by, or constitutes a breach or default under or results in the termination of or requires any consent not obtained under, any contract, license, agreement, instrument or other document evidencing or giving rise to such property or, in the case of any Security Collateral (other than any of the foregoing issued by a Grantor), any applicable shareholder or similar agreement, except to the extent that such Requirement of Law or the term in such contract, license, agreement, instrument or other document or shareholder or similar agreement providing for such prohibition, breach, default or termination or requiring such consent is ineffective under applicable law, (2) any lease, license or other agreement or any property that is subject to a purchase money Lien or capital lease or similar arrangement (in each case permitted by the Credit Agreement and for so long as subject to such purchase money Lien, capital lease or similar arrangement), in each case to the extent that a grant of a Lien therein would violate or invalidate such lease, license or agreement or such purchase money, capital lease or similar arrangement or create a right of termination in favor of any party thereto (other than a Loan Party), except to the extent that such lease, license or other agreement or other document providing for such violation or invalidation or termination right is ineffective under applicable law (it being understood that Excluded Property shall not include proceeds and Receivables in respect of the foregoing), (3) any United States trademark or service mark application filed on the basis of a Grantor’s “intent-to-use” such trademark or service mark pursuant to Section 1(b) the Lanham Act, 15 U.S.C. § 1051, in each case, to the extent the inclusion in the Collateral of any such application would void, impair or invalidate any such application or any resulting registration, unless and until an Amendment to Allege Use or a Statement of Use under Section 1(c) or 1(d) of said Act is filed with and accepted by the United States Patent and Trademark Office, (4) any property to the extent a security interest in such property would result in material adverse tax consequences as reasonably determined by the Borrower and the Administrative Agent, (5) all leasehold or fee interests in real property, (6) any Excluded Account, (7) subject to Section 5.17(b) of the Credit Agreement, any of the equity interests of any Foreign Subsidiary of the Borrower that is not a Material First-Tier Foreign Subsidiary, each of which, as of the ~~date hereof~~First Amendment Effective Date, is indicated on Part III of Schedule I hereto, ~~(8) or as supplemented from time to time, (8) subject to Section 5.17(b) of the Credit Agreement~~, any of the equity interests of any Subsidiary of the Borrower that is a Material First-Tier Foreign Subsidiary in excess of 65% of all of the issued and outstanding shares of capital stock of such Material First-Tier Foreign Subsidiary entitled to vote (within the meaning of Treasury Regulation Section 1.956-2) ~~and~~, (9) any property as to which the Administrative Agent shall agree in writing that the cost of obtaining a security interest would be excessive in relation to the value of the security to be afforded thereby and (10) any assets of Foreign Subsidiaries subject to Liens permitted under Section 6.02(x) of the Credit Agreement. Notwithstanding anything herein or in any other Loan Document, the Grantors shall not be required to perfect the Administrative Agent’s security interest in (i) motor vehicles and other assets subject to certificates of title to the extent a Lien thereon cannot be perfected by the filing of a UCC financing statement, (ii) Letter-of-Credit Rights (other than any Letter-of-Credit Rights constituting a Supporting Obligation or Receivables in which the Administrative Agent has a valid and perfected security interest), (iii) Disbursement Accounts and (iv) any property as to which the Administrative Agent shall agree in writing that the cost of perfecting a security interest therein would be excessive in relation to the value of the security to be afforded thereby. For purposes of this Agreement, “**Requirements of Law**” shall mean, as to any Person, the certificate of incorporation and by-laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

Section 3. Security for Obligations. This Agreement secures, in the case of each Grantor, the payment of all Obligations of such Grantor or Subsidiary of the Company owing to the Secured Parties. Without limiting the generality of the foregoing, this Agreement secures, as to each Grantor, the payment of all amounts that constitute part of the Obligations and would be owed by such Grantor or Subsidiary of the Company, as applicable, to any Secured Party but for the fact that they are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving any of the Loan Parties and other Subsidiaries of the Company.

Section 4. Grantors Remain Liable. Anything herein to the contrary notwithstanding, (a) each Grantor shall remain liable under the contracts and agreements included in such Grantor's Collateral to perform all of its duties and obligations thereunder to the extent set forth therein to the same extent as if this Agreement had not been executed, (b) the exercise by the Administrative Agent of any of the rights hereunder shall not release any Grantor from any of its duties or obligations under the contracts and agreements included in the Collateral and (c) no Secured Party shall have any obligation or liability under the contracts and agreements included in the Collateral by reason of this Agreement or any other Loan Document, nor shall any Secured Party be obligated to perform any of the obligations or duties of any Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

Section 5. Delivery and Control of Certain Account and Security Collateral.

(a) Subject to the Intercreditor Agreement, all certificates or instruments representing or evidencing Pledged Equity or Pledged Debt shall be promptly delivered to and held by or on behalf of the Administrative Agent pursuant hereto and shall be in suitable form for transfer by delivery, or shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Administrative Agent except to the extent that such transfer or assignment is prohibited by applicable law. With respect to any Initial Pledged Equity, the transfer or assignment of which is subject to (x) certain corporate actions by the holders of or issuers of Initial Pledged Equity issued by Foreign Subsidiaries which have not occurred as of the ~~Closing~~First Amendment Effective Date despite the Grantors' use of commercially reasonable efforts to cause such corporate actions to occur prior to the ~~Closing~~First Amendment Effective Date or (y) governmental approvals or consents which have not been obtained as of the ~~Closing~~First Amendment Effective Date despite the Grantors' use of commercially reasonable efforts to cause such approvals or consents to be obtained prior to the ~~Closing~~First Amendment Effective Date, the Grantors shall cause such corporate actions to occur or shall obtain such approvals or consents within ~~45~~30 days after the ~~Closing~~First Amendment Effective Date (or such later date as the Administrative Agent shall reasonably agree).

(b) With respect to any Security Collateral representing interests in which any Grantor has any right, title or interest and that constitutes an uncertificated security, such Grantor will use commercially reasonable efforts (or in the case of a wholly-owned Subsidiary, take all actions necessary) to (and following the occurrence of an Event of Default, if requested by the Administrative Agent, such Grantor shall) cause (i) the issuers of such Security Collateral and (ii) any securities intermediary which is the holder of any such Security Collateral, to cause the Administrative Agent to have and retain, subject to the Intercreditor Agreement, Control over such Security Collateral. Without limiting the foregoing, such Grantor will, with respect to any such Security Collateral held with a securities intermediary, use commercially reasonable efforts to (and following the occurrence of an Event of Default, if requested by the Administrative Agent, such Grantor shall) cause such securities intermediary to enter into a control agreement with the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, giving the Administrative Agent Control, subject to the Intercreditor Agreement.

(c) With respect to any securities or commodity account and any Security Collateral that constitutes a security entitlement (other than a security entitlement which is an uncertificated security, which shall be subject to the preceding Section 5(b)), within ~~60~~45 days after the ~~Closing~~First Amendment Effective Date (or such later date as the Administrative Agent shall reasonably agree), the relevant Grantor will cause the securities intermediary with respect to such security or commodity account or security entitlement to identify in its records the Administrative Agent as the entitlement holder thereof or enter into a control agreement with the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent, giving the Administrative Agent Control, subject to the Intercreditor Agreement.

(d) Subject to the Intercreditor Agreement and upon the occurrence and during the continuance of an Event of Default, each Grantor shall cause the Security Collateral to be registered in the name of the Administrative Agent or such of its nominees as the Administrative Agent shall direct, subject only to the revocable rights specified in Section 13(a). In addition, the Administrative Agent shall have the right upon the occurrence and during the continuance of an Event of Default to convert Security Collateral consisting of financial assets credited to any securities account or the LC Cash Collateral Account to Security Collateral consisting of financial assets held directly by the Administrative Agent, and to convert Security Collateral consisting of financial assets held directly by the Administrative Agent to Security Collateral consisting of financial assets credited to any securities or commodity account or the LC Cash Collateral Account.



(e) Upon the occurrence and during the continuance of an Event of Default, each Grantor will notify each issuer of Security Collateral granted by it hereunder that such Security Collateral is subject to the security interest granted hereunder.

Section 6. [Reserved].

Section 7. Representations and Warranties. Each Grantor represents and warrants as follows:

(a) Such Grantor's exact legal name, chief executive office, type of organization, jurisdiction of organization, organizational identification number and Federal Employer Identification Number as of the ~~date hereof~~ First Amendment Effective Date is set forth in Schedule V hereto. Within the five years preceding the ~~date hereof~~ First Amendment Effective Date, such Grantor has not changed its legal name, chief executive office, type of organization, jurisdiction of organization, organizational identification number or Federal Employer Identification Number from those set forth in Schedule V hereto except as set forth in Schedule VI hereto. Each of the trade names owned and used by any Grantor in the operation of its business (e.g. billing, advertising, etc.) are set forth in Schedule V hereto.

(b) No Grantor has made or entered into any mergers or acquisitions during the six (6) months period prior to the ~~Closing~~ First Amendment Effective Date other than as set forth on Schedule XI hereto.

(c) The books and records of each Grantor pertaining to accounts, contract rights, inventory, and other assets are located at the addresses indicated for each Grantor on Schedule XII hereto.

(d) Such Grantor is the legal and beneficial owner of the Collateral and has rights in, the power to transfer, or a valid right to use, the Collateral with respect to which it has purported to grant a security interest hereunder, free and clear of any Lien, claim, option or right of others, except for the security interest created under this Agreement or Liens permitted under the Credit Agreement, and has full power and authority to grant to the Administrative Agent the security interest in such Collateral granted hereunder pursuant to the terms hereof. No effective financing statement or other instrument similar in effect covering all or any part of such Collateral or listing such Grantor or any trade name of such Grantor as debtor is on file in any recording office, except such as may exist on the date of this Agreement, have been filed in favor of the Administrative Agent relating to the Loan Documents or are otherwise permitted under the Credit Agreement.

(e) When financing statements naming such Grantor as debtor and the Administrative Agent as secured party and providing a description of the Collateral with respect to which such Grantor has purported to grant a security interest hereunder have been filed in the appropriate offices against such Grantor in the locations listed on Schedule XIII, the Administrative Agent will have a fully perfected and, subject to the Intercreditor Agreement, first priority security interest (except as enforceability may be affected by bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditor's rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing), subject only to Liens permitted under the Credit Agreement, in that Collateral of the Grantor in which a security interest may be perfected by filing of ~~an initial~~ financing statement in the appropriate office against such Grantor; provided that (i) the filing of Intellectual Property security agreements with the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect the security interest of the Administrative Agent in respect of any registered U.S. Patents, U.S. Patent applications, registered or applied for U.S. Trademarks and registered or applied for U.S. Copyrights, (ii) additional filings may be necessary to perfect the Administrative Agent's security interest in any registered U.S. Patents, U.S. Patent applications, registered or applied for U.S. Trademarks and registered or applied for U.S. Copyrights acquired by such Grantor after the ~~date hereof~~ First Amendment Effective Date, and (iii) upon completion of the filings referred to in this Section 7(e) and the other actions specified on Schedule XIV, the security interests granted pursuant to this Agreement will constitute valid perfected security interests in all of the Collateral (other than Excluded Property) in favor of the Administrative Agent as collateral security for the Obligations to the extent such security interests may be perfected by such filings or actions. Notwithstanding the foregoing, subject to Section 5.17(b) of the Credit Agreement, nothing in this Agreement shall require any Grantor 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 the Administrative Agent for the same).

(f) All of such Grantor's locations where Equipment and Inventory having a value in excess of ~~\$1,000,000~~ 750,000 is located as of the ~~date hereof~~ First Amendment Effective Date are specified in Schedule VIII and Schedule IX hereto, respectively (other than Collateral in transit in the ordinary course of business, in use or on display at any trade show, conference or similar event in the ordinary course of business, maintained with customers (or otherwise on the premises of customers) and consignees in the ordinary course of business or in the possession of employees in the ordinary course of business). Such Grantor has exclusive possession and control of its Inventory, other than Inventory stored at any leased premises or third party warehouse.

(g) None of the Receivables or Agreement Collateral is evidenced by a promissory note or other instrument in excess of (i) prior to the Borrower Deleveraging Milestone Date, \$2,812,500 or (ii) on or after the Borrower Deleveraging Milestone Date, \$3,750,000, that has not been delivered to the Administrative Agent. All such Receivables or Agreement Collateral valued in excess of ~~\$3,750,000~~ 2,812,500 is listed on Schedule III attached hereto.

(h) Subject to the Intercreditor Agreement, all Security Collateral of the Grantors consisting of (i) certificated Pledged Equity or Pledged Debt and (ii) other certificated securities and instruments with an aggregate fair market value in excess of (i) prior to the Borrower Deleveraging Milestone Date, \$7,500,000, or (ii) on or after the Borrower Deleveraging Milestone Date, \$10,000,000, in each case of (i) and (ii), have been delivered to the Administrative Agent.

(i) If such Grantor is an issuer of Security Collateral, such Grantor confirms that it has received notice of the security interest granted hereunder.

(j) The Pledged Equity pledged by such Grantor hereunder has been duly authorized and validly issued and is fully paid and non-assessable (to the extent such concepts are applicable), provided that the foregoing representation and warranty, insofar as it relates to the Pledged Equity issued by a Person other than a Subsidiary of a Grantor, is made to the knowledge of the Grantors. Each interest in any limited liability company or limited partnership wholly-owned by such Grantor, pledged hereunder and represented by a certificate is a “security” within the meaning of Article 8 of the UCC and is governed by Article 8 of the UCC and each such interest shall at all times hereafter be represented by a certificate. Each interest in any limited liability company or limited partnership controlled by such Grantor, pledged hereunder and not represented by a certificate either (1) is not a “security” within the meaning of Article 8 of the UCC and is not governed by Article 8 of the UCC and such Grantor shall at no time elect to treat any such interest as a “security” within the meaning of Article 8 of the UCC or issue any certificate representing such interest or (2) is a “security” within the meaning of Article 8 of the UCC and is governed by Article 8 of the UCC and such Grantor shall have entered into a control agreement with the issuer of such “security” and the Administrative Agent to establish Control with respect to such “security.” The Pledged Debt pledged by such Grantor hereunder has been duly authorized, authenticated or issued and delivered, is the legal, valid and binding obligation of the issuers thereof and, if evidenced by any promissory notes, such promissory notes have been delivered to the Administrative Agent, and is not in default.

(k) The Initial Pledged Equity in Foreign Subsidiaries pledged by such Grantor constitutes, as of the ~~date hereof~~ First Amendment Effective Date, 65% of the issued and outstanding equity interests entitled to vote (within the meaning of Treasury Regulation Section 1.956-1) of the issuers thereof indicated on Part I of Schedule I hereto, each of which is a Material First-Tier Foreign Subsidiary. The Initial Pledged Debt constitutes all of the outstanding Indebtedness for borrowed money owed to such Grantor by the issuers thereof (other than intercompany Indebtedness in respect of the UK Pension Settlement Agreement).

(l) Such Grantor has no Investment Property with a market value in excess of ~~\$1,000,000~~ 750,000 as of the ~~date hereof~~ First Amendment Effective Date, other than the Investment Property listed on Part IV of Schedule I hereto.

(m) The Assigned Agreements to which such Grantor is a party have been duly authorized, executed and delivered by such Grantor and, to such Grantor’s knowledge, any material Assigned Agreements are in full force and effect and are binding upon and enforceable against all parties thereto in accordance with their terms.

(n) Such Grantor has no deposit accounts or securities accounts as of the ~~date hereof~~ First Amendment Effective Date, other than the deposit accounts and securities accounts listed on Schedule II hereto (other than deposit accounts or securities accounts that have less than ~~\$750,000~~ 562,500 in the aggregate on deposit).

(o) Such Grantor is not a beneficiary or assignee under any letter of credit with a stated amount in excess of ~~\$2,500,000~~ 1,875,000 and issued by a United States financial institution as of the ~~date hereof~~ First Amendment Effective Date, other than the letters of credit described in Schedule VII hereto.

(p) This Agreement creates in favor of the Administrative Agent for the benefit of the Secured Parties a valid security interest in the Collateral granted by such Grantor under this Agreement, securing the payment of the Obligations to the extent such matter is governed by the laws of the United States or any jurisdiction therein.

(q) No authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or any other third party is required for (i) the grant by such Grantor of the security interest granted hereunder or for the execution, delivery or performance of this Agreement by such Grantor, (ii) the perfection or maintenance of the security interest created hereunder (including, subject to the Intercreditor Agreement, the first priority nature of such security interest in Collateral), except for (A) the filing of financing and continuation statements under the UCC, (B) the recordation of the Intellectual Property Security Agreement with respect to certain registered Intellectual Property Collateral attached thereto, and the actions described in Section 5 with respect to the Security Collateral, (C) subject to certain corporate actions by the holders or issuers of Initial Pledged Equity issued by Foreign Subsidiaries which have not occurred as of the ~~Closing~~ First Amendment Effective Date pursuant to Section 5(a) to the extent such actions are necessary to transfer or assign such Initial Pledged Equity, (D) the governmental filings required to be made or approvals obtained prior to the creation of a security interest in any Pledged Equity issued by a non-US Person and any filings or approvals required prior to realizing on any such Pledged Equity, and (E) the Control of certain assets as provided in Sections 9-104, 9-105, 9-106 and 9-107 of the UCC, or (iii) the exercise by the Administrative Agent of its voting or other rights provided for in this Agreement or the remedies in respect of the Collateral pursuant to this Agreement, except as set forth above and as may be required in connection with the disposition of any portion of the Security Collateral by laws affecting the offering and sale of securities generally.

(r) The Inventory that has been produced or distributed by such Grantor has been produced in compliance with all requirements of applicable law except where the failure to so comply would not have a Material Adverse Effect.

(s) As to itself and its Intellectual Property Collateral:

(i) The operation of such Grantor's business and the use of the Intellectual Property Collateral in connection therewith do not conflict with, infringe, misappropriate, dilute, misuse or otherwise violate the intellectual property rights of any third party, except as are not expected to have a Material Adverse Effect.

(ii) Such Grantor is the exclusive owner of all right, title and interest in and to Patents, Trademarks, Copyrights, and other unregistered Intellectual Property constituting material Intellectual Property Collateral, except as set forth in Schedule IV hereto with respect to co-ownership of certain Patents, and such Grantor is entitled to use all such Intellectual Property Collateral in accordance with applicable law, subject to the terms of the IP Agreements.

(iii) To the Company's knowledge based on its reasonable review, the Intellectual Property Collateral set forth on Schedule IV hereto includes all of the registered/issued patents, patent applications, domain names, trademark registrations and applications, copyright registrations and applications owned by such Grantor as of the date set forth therein ("**Registered IP**"), provided that Schedule IV contains all of the material Registered IP owned by such Grantor as of the date set forth therein.

(iv) The issued Patents and registered Trademarks contained in the Intellectual Property Collateral have not been adjudged invalid or unenforceable in whole or part, and to the knowledge of the Company, are valid and enforceable, except to the extent Grantor has ceased use of any such registered Trademarks, and except as would not be reasonably expected, individually or in the aggregate, to have a Material Adverse Effect.

(v) Such Grantor has made or performed all filings, recordings and other acts and has paid all required fees and taxes, as deemed necessary by Grantor in its reasonable business discretion, to maintain and protect its interest in each and every material item of Intellectual Property Collateral owned by such Grantor in full force and effect.

(vi) No claim has been asserted and is pending by any Person challenging or questioning the use of any Intellectual Property Collateral or the validity of effectiveness of any such Intellectual Property Collateral, nor does the Company 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 consummation of the transactions contemplated by the Loan Documents will not result in the termination or impairment (other than impairment contemplated by the Loan Documents) of any of the Intellectual Property Collateral.

(vii) With respect to each IP Agreement that is not Excluded Property: (A) to the knowledge of the Company, such IP Agreement is valid and binding and in full force and effect; (B) such IP Agreement will not cease to be valid and binding and in full force and effect on terms identical to those currently in effect as a result of the rights and interest granted herein, nor will the grant of such rights and interest constitute a breach or default under such IP Agreement or otherwise give any party thereto a right to terminate such IP Agreement; (C) such Grantor has not received any notice of termination or cancellation under such IP Agreement within the six months immediately preceding the ~~date of this Agreement~~First Amendment Effective Date; (D) within the six months immediately preceding the ~~date of this Agreement~~First Amendment Effective Date, such Grantor has not received any notice of a breach or default under such IP Agreement, which breach or default has not been cured; and (E) neither such Grantor nor, to such Grantor's knowledge, any other party to such IP Agreement is in breach or default thereof in any material respect, and no event has occurred that, with notice or lapse of time or both, would constitute such a breach or default or permit termination or modification under such IP Agreement, in each case except as would not reasonably be expected to have a Material Adverse Effect.

(viii) To the Company's knowledge, none of the material Trade Secrets of such Grantor has been used, divulged, disclosed or appropriated to the detriment of such Grantor for the benefit of any other Person other than such Grantor within the past two years.

(ix) This Agreement is effective to create a valid and continuing Lien and, upon filing of appropriate financing statements in the offices listed on Schedule XIII and appropriate releases (which releases have been filed or will be filed substantially simultaneously with the entering into of this Agreement) and Intellectual Property security agreements with the United States Copyright Office and the United States Patent and Trademark Office, fully perfected (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 Copyright Office or the United States Patent and Trademark Office, as applicable) and, subject to the Intercreditor Agreement, first priority security interests in favor of the Administrative Agent on such Grantor's U.S. Patents, U.S. Trademarks and U.S. Copyrights and such perfected security interests are enforceable as such as against any and all creditor of and purchasers from such Grantor.

#### Section 8. Further Assurances

(a) Each Grantor agrees that from time to time, in accordance with the terms of this Agreement at the expense of such Grantor and at the reasonable request of the Administrative Agent, such Grantor will promptly execute and deliver, or otherwise authenticate, all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that the Administrative Agent may reasonably request, in order to perfect and protect any pledge or security interest granted or purported to be granted by such Grantor hereunder or to enable the Administrative Agent to exercise and enforce its rights and remedies hereunder with respect to any Collateral of such Grantor. Without limiting the generality of the foregoing, each Grantor will, at the reasonable request of the Administrative Agent, promptly with respect to the Collateral of such Grantor: (i) upon the occurrence and during the continuance of an Event of Default, ~~and, with respect to any ABL Priority Collateral, solely following payment in full of the ABL Priority Obligations (as such terms are defined in the Intercreditor Agreement)~~, mark conspicuously each document included in Inventory, each chattel paper included in Receivables, each Assigned Agreement and, at the request of the Administrative Agent, each of its records pertaining to such Collateral with a legend, in form and substance reasonably satisfactory to the Administrative Agent, indicating that such document, Assigned Agreement or Collateral is subject to the security interest granted hereby; (ii) if any such Collateral with a face amount exceeding (i) prior to the Borrower Deleveraging Milestone Date, \$2,182,500 or (ii) on or after the Borrower Deleveraging Milestone Date, \$3,750,000, shall be evidenced by a promissory note or other instrument or chattel paper, deliver and pledge to the Administrative Agent hereunder such note or instrument or chattel paper duly indorsed and accompanied by duly executed instruments of transfer or assignment, all in form and substance reasonably satisfactory to the Administrative Agent; (iii) file such financing or continuation statements, or amendments thereto, and such other instruments or notices, as may be reasonably necessary or desirable, or as the Administrative Agent may reasonably request, in order to perfect and preserve the security interest granted or purported to be granted by such Grantor hereunder; (iv) prepare, sign, and file for recordation in any intellectual property registry, appropriate evidence of the lien and security interest granted herein in any Intellectual Property in the name of such Grantor as debtor; and (v) deliver to the Administrative Agent evidence that all other actions that the Administrative Agent may deem reasonably necessary or desirable in order to perfect and protect the security interest granted or purported to be granted by such Grantor under this Agreement has been taken.

~~date hereof~~(b) Each Grantor hereby authorizes the Administrative Agent to file one or more financing or continuation statements, and amendments thereto in the applicable UCC filing office, including one or more financing statements indicating that such financing statements cover all assets or all personal property (or words of similar effect) of such Grantor in the United States, or any real property or fixtures, regardless of whether any particular asset described in such financing statements falls within the scope of the UCC. A photocopy or other reproduction of this Agreement shall be sufficient as a financing statement where permitted by law. Each Grantor ratifies its authorization for the Administrative Agent to have filed such financing statements, continuation statements or amendments filed prior to the [First Amendment Effective Date](#).

(c) Each Grantor will furnish to the Administrative Agent from time to time statements and schedules further identifying and describing the Collateral of such Grantor and such other reports in connection with such Collateral as the Administrative Agent may reasonably request, all in reasonable detail.

Section 9. As to Equipment and Inventory.

(a) Each Grantor will keep its Equipment having a value in excess of [\(i\) prior to the Borrower Deleveraging Milestone Date, \\$2,812,500 or \(ii\) on or after the Borrower Deleveraging Milestone Date, \\$3,750,000](#), and Inventory having a value in excess of ~~\$(i) prior to the Borrower Deleveraging Milestone Date, \$2,812,500 or (ii) on or after the Borrower Deleveraging Milestone Date, \$3,750,000~~ (other than Inventory sold in the ordinary course of business) at the locations therefor specified in Schedule VIII and Schedule IX, respectively; ~~or, to the extent prior written notice is required to the ABL Agent, upon concurrent notice to the Administrative Agent, at such other places designated by such Grantor in such notice.~~ Schedule VIII and Schedule IX respectively set forth whether each such location is owned, leased or operated by third parties, and, if leased or operated by third parties, their names and addresses.

(b) Each Grantor will pay promptly when due all property and other taxes, assessments and governmental charges or levies imposed upon, and all claims (including claims for labor, materials and supplies) against, its Equipment and Inventory, except to the extent payment thereof is not required by Section 5.05 of the Credit Agreement. In producing its Inventory, each Grantor will comply with all requirements of applicable law, except where the failure to so comply will not have a Material Adverse Effect.

Section 10. Insurance. Each Grantor will, and will cause each Subsidiary to, at its own expense, maintain, insurance as required pursuant to Section 5.07 of the Credit Agreement. Notwithstanding anything to the contrary herein or in any other Loan Document, each policy of each Grantor for liability insurance shall provide for all losses to be paid on behalf of the Administrative Agent and such Grantor as their interests may appear, and each policy for property damage insurance shall provide for all losses to be paid, in accordance with the Credit Agreement, the Intercreditor Agreement and the Lender loss payee provisions which were requested pursuant to clause (iv) below, directly to the Administrative Agent. Each such policy (i) shall name such Grantor and the Administrative Agent as insured parties thereunder (without any representation or warranty by or obligation upon the Administrative Agent) as their interests may appear, (ii) shall not have any recourse against the Administrative Agent for payment of premiums or other amounts with respect thereto and (iii) shall require at least 30 days' prior written notice of cancellation or of lapse to be given to the Administrative Agent by the insurer (or at least 10 days' prior written notice in the event such cancellation is as a result of non-payment). Each Grantor will, at the request of the Administrative Agent, duly execute and deliver instruments of assignment of such insurance policies to comply with the requirements of Section 2(~~h~~) and cause the insurers to acknowledge notice of such assignment. Each Grantor will deliver to the Administrative Agent certificates of insurance evidencing such insurance and, as often as the Administrative Agent may reasonably request, a report of a reputable insurance broker or the insurer with respect to such insurance. Further, each Grantor will duly execute and deliver instruments of assignment of such insurance policies to comply with the requirements of Section 2(~~k~~), 2(~~l~~) and 2(~~m~~) and 2(n) and use its commercially reasonable efforts to cause the insurers to acknowledge notice of such assignment.

Section 11. Post-Closing Changes; Collections on Assigned Agreements and Receivables.

(a) Each Grantor will hold and preserve its records relating to the Collateral, including the Assigned Agreements and Related Contracts, and will permit representatives of the Administrative Agent at any time during normal business hours to inspect and make abstracts from such records and other documents to the extent provided in Section 5.08 of the Credit Agreement. If any Grantor does not have an organizational identification number and later obtains one, it will promptly notify the Administrative Agent of such organizational identification number.

(b) Administrative Agent shall have the right at any time or times, in Administrative Agent's name or in the name of a nominee of Administrative Agent, to verify the validity, amount or any other matter relating to any Receivables or other Collateral, by mail, telephone, facsimile transmission or otherwise; *provided that* (~~i~~) any visits shall be done during normal business hours and at times to be mutually agreed ~~and (ii) with respect to any ABL Priority Collateral, the Administrative Agent shall only exercise such right following the Payment in Full of the ABL Priority Obligations (as such terms are defined in the Intercreditor Agreement)~~. Except as otherwise provided in this subsection (b), each Grantor, at its own expense and in the ordinary course of business undertaken in a commercially reasonable manner and consistent with applicable law, will continue to collect, adjust, settle, compromise the amount or payment of, all amounts due or to become due such Grantor under the Assigned Agreements and Receivables. In connection with such collections, adjustments, settlements, compromises and other exercises of rights, such Grantor may take (and, at the Administrative Agent's direction upon the occurrence and during the continuance of an Event of Default, will take) such action as such Grantor (or, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent) may deem necessary or advisable; *provided, that*, the Administrative Agent shall have the right at any time, upon the occurrence and during the continuance of an Event of Default and upon written notice to such Grantor of its intention to do so, to notify the Obligors under any Assigned Agreements and Receivables of the assignment of such Assigned Agreements to the Administrative Agent and to direct such Obligors to make payment of all amounts due or to become due to such Grantor thereunder directly to the Administrative Agent and, upon such notification and at the expense of such Grantor, to enforce collection of any such Assigned Agreements and Receivables, to adjust, settle or compromise the amount or payment thereof, in the same manner and to the same extent as such Grantor might have done, and to otherwise exercise all rights with respect to such Assigned Agreements and Receivables, including those set forth in Section 9-607 of the UCC. After receipt by any Grantor of the notice from the Administrative Agent referred to in the proviso to the preceding sentence, (i) all amounts and proceeds (including instruments) received by such Grantor in respect of the Assigned Agreements and Receivables of such Grantor shall be received in trust for the benefit of the Secured Parties, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Administrative Agent in the same form as so received (with any necessary indorsement) to be applied as provided in Section 20(b) of this Agreement or to prepay Loans under the Credit Agreement, and (ii) such Grantor will not adjust, settle or compromise the amount or payment of any Receivable or amount due on any Assigned Agreement, release wholly or partly any Obligor thereof or allow any credit or discount thereon other than credits or discounts given in the ordinary course of business.



(c) No Grantor will authorize the filing of any financing statement naming it as debtor covering all or any portion of the Collateral owned by it, except for financing statements (i) naming the Administrative Agent on behalf of the Secured Parties as the secured party, and (ii) in respect to other Liens permitted by the Credit Agreement. Each Grantor acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement naming the Administrative Agent as secured party without the prior written consent of the Administrative Agent, subject to such Grantor's rights under the UCC.

Section 12. As to Intellectual Property Collateral.

(a) With respect to each item of its Intellectual Property Collateral material to the business of the Company and its Restricted Subsidiaries, each Grantor agrees to take, at its expense, commercially reasonable steps as determined in Grantor's reasonable discretion, including in the U.S. Patent and Trademark Office, the U.S. Copyright Office and any other Governmental Authority, to (i) maintain (in accordance with the exercise of such Grantor's reasonable business discretion) the validity and enforceability of such Intellectual Property Collateral and maintain such Intellectual Property Collateral in full force and effect, and (ii) pursue the registration and maintenance (in accordance with the exercise of such Grantor's reasonable business discretion) of each patent, trademark, or copyright registration or application, now or hereafter included in such Intellectual Property Collateral of such Grantor, including the payment of required fees and taxes, the filing of responses to office actions issued by the U.S. Patent and Trademark Office, the U.S. Copyright Office or other Governmental Authorities, the filing of applications for renewal or extension, the filing of affidavits under Sections 8 and 15 of the U.S. Trademark Act, and the participation in interference, reexamination, opposition, cancellation, infringement and misappropriation proceedings, in each case except where the failure to so file, register or maintain is not reasonably likely to have a Material Adverse Effect. No Grantor shall, without the written consent of the Administrative Agent, which shall not be unreasonably withheld or delayed, discontinue use of any material Trademark or otherwise abandon any such material Intellectual Property Collateral unless such Grantor shall have determined that such use or the pursuit or maintenance of such Intellectual Property Collateral is no longer material to the conduct of such Grantor's business.

(b) Until the termination of the Credit Agreement, each Grantor agrees to provide to the Administrative Agent, concurrently with any delivery of Financial Statements pursuant to Section 5.01(a) or (b) of the Credit Agreement, an updated Schedule of its registered U.S. Patents, U.S. Patent applications, registered or applied for U.S. Trademarks and registered or applied for U.S. Copyrights.

(c) In the event that any Grantor becomes aware that any item of Intellectual Property Collateral is being infringed or misappropriated by a third party, such Grantor shall take such commercially reasonable actions determined in its reasonable discretion, at its expense, to protect or enforce such Intellectual Property Collateral, including suing for infringement or misappropriation and for an injunction against such infringement or misappropriation.

(d) Each Grantor shall take all reasonable steps which it deems appropriate under the circumstances to preserve and protect each item of its material Trademarks included in the Intellectual Property Collateral, including maintaining substantially the quality of any and all products or services used or provided in connection with any such Trademarks, consistent with the general quality of the products and services as of the ~~date~~ hereof First Amendment Effective Date, and taking steps reasonably necessary to ensure that all licensed users of any such Trademarks use such consistent standards of quality.

(e) With respect to its Intellectual Property Collateral, each Grantor agrees to execute or otherwise authenticate an agreement, in substantially the form set forth in Exhibit A hereto or otherwise in form and substance satisfactory to the Administrative Agent (an “**Intellectual Property Security Agreement**”), for recording the security interest granted hereunder to the Administrative Agent in such Intellectual Property Collateral with the U.S. Patent and Trademark Office, the U.S. Copyright Office, and any other U.S. Governmental Authorities necessary to perfect the security interest hereunder in such Intellectual Property Collateral.

(f) Each entity which executes a Security Agreement Supplement as Grantor shall execute and deliver to the Administrative Agent with such written notice, or otherwise authenticate, an agreement substantially in the form of Exhibit B hereto or otherwise in form and substance satisfactory to the Administrative Agent (an “**IP Security Agreement Supplement**”) covering such Intellectual Property, which IP Security Agreement Supplement shall be recorded with the U.S. Patent and Trademark Office, the U.S. Copyright Office and any other U.S. Governmental Authorities necessary to perfect the security interest hereunder in such Intellectual Property Collateral.

Section 13. Voting Rights; Dividends; Etc.

(a) So long as no Event of Default shall have occurred and be continuing:

(i) Each Grantor shall be entitled to exercise any and all voting and other consensual rights pertaining to the Security Collateral of such Grantor or any part thereof for any purpose.

(ii) Each Grantor shall be entitled to receive and retain any and all dividends, interest and other distributions paid in respect of the Security Collateral of such Grantor if and to the extent that the payment thereof is not otherwise prohibited by the terms of the Loan Documents; provided, that, any and all dividends, interest and other distributions paid or payable in the form of instruments or certificates in respect of, or in exchange for, any Security Collateral, shall be promptly delivered to the Administrative Agent to hold as Security Collateral (to the extent it is not Excluded Property) and shall, if received by such Grantor, be received in trust for the benefit of the Secured Parties, be segregated from the other property or funds of such Grantor and be promptly delivered to the Administrative Agent as Security Collateral in the same form as so received (with any necessary indorsement).

(iii) The Administrative Agent will execute and deliver (or cause to be executed and delivered) to each Grantor all such proxies and other instruments as such Grantor may reasonably request for the purpose of enabling such Grantor to exercise the voting and other rights that it is entitled to exercise pursuant to paragraph (i) above and to receive the dividends or interest payments that it is authorized to receive and retain pursuant to paragraph (ii) above.

(b) Upon the occurrence and during the continuance of an Event of Default:

(i) All rights of each Grantor (A) to exercise or refrain from exercising the voting and other consensual rights that it would otherwise be entitled to exercise pursuant to Section 13(a)(i) shall, upon notice to such Grantor by the Administrative Agent, cease and (B) to receive the dividends, interest and other distributions that it would otherwise be authorized to receive and retain pursuant to Section 13(a)(ii) shall automatically cease, and all such rights shall, subject to the Intercreditor Agreement, thereupon become vested in the Administrative Agent for the benefit of the Secured Parties, which shall thereupon have the sole right to exercise or refrain from exercising such voting and other consensual rights and to receive and hold as Security Collateral such dividends, interest and other distributions.

(ii) All dividends, interest and other distributions that are received by any Grantor contrary to the provisions of paragraph (i) of this Section 13(b) shall be received in trust for the benefit of the Secured Parties, shall be segregated from other funds of such Grantor and shall be promptly paid over to the Administrative Agent as Security Collateral in the same form as so received (with any necessary indorsement).

Section 14. As to the Assigned Agreements.

(a) Each Grantor will, at its expense, perform and observe in all material respects all terms and provisions of the Assigned Agreements to be performed or observed by it to the extent consistent with its past practice or reasonable business judgment.

(b) Each Grantor hereby consents on its behalf and on behalf of its Subsidiaries to the assignment and pledge to the Administrative Agent for benefit of the Secured Parties of each Assigned Agreement to which it is a party by any other Grantor hereunder.

(c) Each Grantor agrees, upon the reasonable request of Administrative Agent, to instruct each other party to each Assigned Agreement to which it is a party, that all payments due or to become due under or in connection with such Assigned Agreement will be made directly to a Pledged Deposit Account.

(d) All moneys received or collected pursuant to subsection (c) above shall be (i) released to the applicable Grantor on the terms set forth in the Credit Agreement so long as no Event of Default shall have occurred and be continuing or (ii) if any Event of Default shall have occurred and be continuing, applied as provided in Section 20(b).

Section 15. As to Letter-of-Credit Rights and Commercial Tort Claims.

(a) Except as otherwise permitted by the Credit Agreement and this Agreement, each Grantor, by granting a security interest in its Receivables consisting of Letter-of-Credit Rights to the Administrative Agent, hereby assigns to the Administrative Agent such rights (including its contingent rights) to the proceeds of all Related Contracts consisting of letters of credit of which it is or hereafter becomes a beneficiary or assignee. Upon request of the Administrative Agent, each Grantor will promptly use commercially reasonable efforts to cause the issuer of each letter-of-credit with a stated amount in excess of [\(i\) prior to the Borrower Deleveraging Milestone Date, \\$750,000 or \(ii\) on or after the Borrower Deleveraging Milestone Date, \\$1,000,000](#), and each nominated person (as defined in Section 5-102 of the UCC) (if any) with respect thereto to consent to such assignment of the proceeds thereof pursuant to a consent in form and substance reasonably satisfactory to the Administrative Agent and deliver written evidence of such consent to the Administrative Agent.

(b) Upon the occurrence and during the continuance of an Event of Default, each Grantor will, promptly upon request by the Administrative Agent, (i) notify (and such Grantor hereby authorizes the Administrative Agent to notify) the issuer and each nominated person with respect to each of the Related Contracts consisting of letters of credit that the proceeds thereof have been assigned to the Administrative Agent hereunder and any payments due or to become due in respect thereof are to be made directly to the Administrative Agent or its designee and (ii) arrange for the Administrative Agent to become the transferee beneficiary of letter of credit.

(c) In the event that any Grantor hereafter acquires or has any Commercial Tort Claim that has been filed with any court in excess of [\(i\) prior to the Borrower Deleveraging Milestone Date, \\$1,875,000 or \(ii\) on or after the Borrower Deleveraging Milestone Date, \\$2,500,000](#), in the aggregate, it shall, promptly after such claim has been filed with such court, deliver a supplement to Schedule X hereto, identifying such new Commercial Tort Claim.

Section 16. Transfers and Other Liens; Additional Shares.

(a) Each Grantor agrees that it will not (i) sell, assign or otherwise dispose of, or grant any option with respect to, any of the Collateral, other than sales, assignments and other dispositions of Collateral, and options relating to Collateral, permitted under the terms of the Credit Agreement or (ii) create or suffer to exist any Lien upon or with respect to any of the Collateral of such Grantor except for the pledge, assignment and security interest created under this Agreement and Liens permitted under Section 6.02 of the Credit Agreement.

(b) Subject to the terms of the Credit Agreement and this Agreement, each Grantor agrees that it will pledge hereunder, promptly upon its acquisition (directly or indirectly) thereof, any and all additional equity interests or other securities as required by Section 5.10 of the Credit Agreement from time to time acquired by such Grantor in any manner.

Section 17. Administrative Agent Appointed Attorney in Fact. Each Grantor hereby irrevocably appoints the Administrative Agent such Grantor's attorney-in-fact, with full authority in the place and stead of such Grantor and in the name of such Grantor or otherwise, from time to time, in the Administrative Agent's discretion, to take any action and to execute any instrument that the Administrative Agent may deem necessary or advisable to accomplish the purposes of this Agreement, including:

(a) to obtain, an upon the occurrence and during the continuance of an Event of Default, adjust insurance required to be paid to the Administrative Agent pursuant to Section 10,

(b) upon the occurrence and during the continuation of any Event of Default, to ask for, demand, collect, sue for, recover, compromise, receive and give acquittance and receipts for moneys due and to become due under or in respect of any of the Collateral,

(c) upon the occurrence and during the continuance of an Event of Default, to receive, indorse and collect any drafts or other instruments, documents and chattel paper, in connection with clause (a) or (b) above,

(d) upon the occurrence and during the continuation of any Event of Default to file any claims or take any action or institute any proceedings that the Administrative Agent may deem necessary or desirable for the collection of any of the Collateral or otherwise to enforce compliance with the terms and conditions of any Assigned Agreement or the rights of the Administrative Agent with respect to any of the Collateral;

(e) upon the occurrence and during the continuation of any Event of Default, to use any Intellectual Property Collateral or IP Agreements (solely pursuant to the terms thereof) of such Grantor that are not Excluded Property, including any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, or advertising materials included therein, in preparing for sale, advertising for sale, or selling Inventory or other Collateral;

(f) to take or cause to be taken all actions necessary to perform or comply or cause performance or compliance with the terms of this Agreement, including actions to pay or discharge taxes or Liens (other than Permitted Liens) levied or placed upon or threatened against the Collateral, the legality or validity thereof and the amounts necessary to discharge the same to be determined by Administrative Agent in its sole discretion, any such payments made by Administrative Agent to become obligations of such Grantor to Administrative Agent, due and payable immediately without demand;

(g) (i) upon the occurrence and during the continuation of any Event of Default, generally to sell, transfer, lease, license, pledge, make any agreement with respect to or otherwise deal with any of the Collateral as fully and completely as though Administrative Agent were the absolute owner thereof for all purposes, and (ii) to do, at Administrative Agent's option and such Grantor's expense, at any time or from time to time, all acts and things that Administrative Agent deems reasonably necessary to protect, preserve or realize upon the Collateral and Administrative Agent's security interest therein in order to effect the intent of this Agreement, all as fully and effectively as such Grantor might do;

(h) upon the occurrence and during the continuation of any Event of Default, to repair, alter, or supply goods, if any, necessary to fulfill in whole or in part the purchase order of any Person obligated to the Borrower or such other Grantor in respect of any Account of the Borrower or such other Grantor; and

(i) upon the occurrence and during the continuance of any Event of Default, to take exclusive possession of all locations where the Borrower or other Grantor conducts its business or has rights of possession, with prompt notice to the Borrower or any Grantor and to use such locations to store, process, manufacture, sell, use, and liquidate or otherwise dispose of items that are Collateral, without obligation to pay rent or other compensation for the possession or use of any location.

Section 18. Administrative Agent May Perform. If any Grantor fails to perform any agreement contained herein, the Administrative Agent may, but without any obligation to do so, upon notice to the Company of at least five Business Days in advance and if the Company fails to cure within such period, itself perform, or cause performance of, such agreement, and the expenses of the Administrative Agent incurred in connection therewith shall be payable by such Grantor under Section 22.

Section 19. The Administrative Agent's Duties.

(a) The powers conferred on the Administrative Agent hereunder are solely to protect the Secured Parties' interest in the Collateral and shall not impose any duty upon it to exercise any such powers. Except for the safe custody of any Collateral in its possession and the accounting for moneys actually received by it hereunder, the Administrative Agent shall have no duty as to any Collateral, as to ascertaining or taking action with respect to calls, conversions, exchanges, maturities, tenders or other matters relative to any Collateral, whether or not any Secured Party has or is deemed to have knowledge of such matters, or as to the taking of any necessary steps to preserve rights against any parties or any other rights pertaining to any Collateral. The Administrative Agent shall be deemed to have exercised reasonable care in the custody and preservation of any Collateral in its possession if such Collateral is accorded treatment substantially equal to that which it accords its own property.

(b) Anything contained herein to the contrary notwithstanding, the Administrative Agent may from time to time, when the Administrative Agent deems it to be necessary, appoint one or more of its Affiliates (or, with the consent of the Company, any other Persons) subagents (each a “**Subagent**”) for the Administrative Agent hereunder with respect to all or any part of the Collateral. In the event that the Administrative Agent so appoints any Subagent with respect to any Collateral, (i) the assignment and pledge of such Collateral and the security interest granted in such Collateral by each Grantor hereunder shall be deemed for purposes of this Agreement to have been made to such Subagent, in addition to the Administrative Agent, for the benefit of the Secured Parties, as security for the Obligations of such Grantor, (ii) such Subagent shall automatically be vested, in addition to the Administrative Agent, with all rights, powers, privileges, interests and remedies of the Administrative Agent hereunder with respect to such Collateral, and (iii) the term “Administrative Agent,” when used herein in relation to any rights, powers, privileges, interests and remedies of the Administrative Agent with respect to such Collateral, shall include such Subagent; *provided, however*, that no such Subagent shall be authorized to take any action with respect to any such Collateral unless and except to the extent expressly authorized in writing by the Administrative Agent.

Section 20. Remedies. If any Event of Default shall have occurred and be continuing and such Event of Default has resulted in the acceleration of the Obligations, which acceleration has not been rescinded or otherwise terminated:

(a) The Administrative Agent may exercise in respect of the Collateral, in addition to other rights and remedies provided for herein or otherwise available to it, all the rights and remedies of a secured party upon default under the UCC (whether or not the UCC applies to the affected Collateral) and also may: (i) require each Grantor to, and each Grantor hereby agrees that it will at its expense and upon request of the Administrative Agent forthwith, assemble all or part of the Collateral as directed by the Administrative Agent and make it available to the Administrative Agent at a place and time to be designated by the Administrative Agent that is reasonably convenient to both parties; (ii) subject to applicable law, without notice except as specified below, sell the Collateral or any part thereof in one or more parcels at public or private sale, at any of the Administrative Agent’s offices or elsewhere, for cash, on credit or for future delivery, and upon such other terms as the Administrative Agent may deem commercially reasonable; (iii) occupy, consistent with Section 5.08 of the Credit Agreement, on a non-exclusive basis any premises owned or leased by any of the Grantors where the Collateral or any part thereof is assembled or located for a reasonable period in order to effectuate its rights and remedies hereunder or under law, without obligation to such Grantor in respect of such occupation; and (iv) exercise any and all rights and remedies of any of the Grantors under or in connection with the Collateral, or otherwise in respect of the Collateral, including (A) any and all rights of such Grantor to demand or otherwise require payment of any amount under, or performance of any provision of, the Assigned Agreements, the Receivables and the other Collateral, (B) withdraw, or cause or direct the withdrawal, of all funds with respect to the Account Collateral, and (C) exercise all other rights and remedies with respect to the Assigned Agreements, the Receivables and the other Collateral, including those set forth in Section 9-607 of the UCC. Each Grantor agrees that, to the extent notice of sale shall be required by law, at least ten days’ notice to such Grantor of the time and place of any public sale, or of the time after which any private sale is to be made shall constitute reasonable notification. The Administrative Agent shall not be obligated to make any sale of Collateral regardless of notice of sale having been given. The Administrative Agent may adjourn any public or private sale from time to time by announcement at the time and place fixed therefor, and such sale may, without further notice, be made at the time and place to which it was so adjourned. Each Grantor agrees that (A) the internet shall constitute a “place” for purposes of Section 9-610(b) of the UCC and (B) to the extent notification of sale shall be required by law, notification by mail of the URL where a sale will occur and the time when a sale will commence at least ten (10) days prior to the sale shall constitute a reasonable notification for purposes of Section 9-611(b) of the UCC.

(b) Any cash held by or on behalf of the Administrative Agent and all cash proceeds received by or on behalf of the Administrative Agent in respect of any sale of, collection from, or other realization upon all or any part of the Collateral and any proceeds of the guarantee set forth in Section 1 may, in the discretion of the Administrative Agent, be held by the Administrative Agent as collateral for, and/or then or at any time thereafter shall be applied in whole or in part by the Administrative Agent for the benefit of the Secured Parties against, all or any part of the Obligations, in accordance with Section 7.03 of the Credit Agreement.

(c) All payments received by any Grantor under or in connection with any Assigned Agreement or otherwise in respect of the Collateral shall be received in trust for the benefit of the Administrative Agent, shall be segregated from other funds of such Grantor and shall be forthwith paid over to the Administrative Agent in the same form as so received (with any necessary indorsement).

(d) Subject to the provisions of Section 9.08 of the Credit Agreement, the Administrative Agent may, without notice to any Grantor except as required by law and at any time or from time to time, charge, set off and otherwise apply all or any part of the Obligations against any funds held with respect to the Account Collateral or in any other deposit account.

(e) In the event of any sale or other disposition of any of the Intellectual Property Collateral of any Grantor, the goodwill symbolized by any Trademarks subject to such sale or other disposition shall be included therein, and such Grantor shall supply to the Administrative Agent or its designee, documents and things relating to any Intellectual Property Collateral subject to such sale or other disposition, and such Grantor's customer lists and other records and documents relating to such Intellectual Property Collateral and to the manufacture, distribution, advertising and sale of products and services of such Grantor.

(f) In each case under this Agreement in which the Administrative Agent takes any action with respect to the Collateral, including proceeds, the Administrative Agent shall provide to the Company such records and information regarding the possession, control, sale and any receipt of amounts with respect to such Collateral as may be reasonably requested by the Company as a basis for the preparation of the company's financial statements in accordance with GAAP.

Section 21. Grant of Intellectual Property License. For the purpose of enabling Administrative Agent, upon the occurrence and during the continuance of an Event of Default, to exercise rights and remedies under Section 20 hereof at such time as Administrative Agent shall be lawfully entitled to exercise such rights and remedies, and for no other purpose, each Grantor hereby grants to Administrative Agent, to the extent licensable, an irrevocable, non-exclusive license (exercisable without payment of royalty or other compensation to such Grantor), subject, in the case of Trademarks, to sufficient rights to quality control and inspection in favor of such Grantor to avoid the risk of invalidation of such Trademarks, to use, assign, license or sublicense any of the Intellectual Property Collateral, including any labels, Patents, Trademarks, trade names, URLs, domain names, industrial designs, Copyrights, and advertising materials, in each case, that are owned or hereafter acquired, developed or created by such Grantor, wherever the same may be located. Such license shall include access to all media in which any of the licensed items may be recorded or stored and to all computer programs used for the compilation or printout hereof, solely to the extent such Grantor has all rights necessary to provide such access.



Section 22. Indemnity and Expenses.

(a) Without limiting or affecting each Secured Party's rights set forth in Section 9.03 of the Credit Agreement but subject to the limitations set forth therein, each Grantor agrees to indemnify, defend and save and hold harmless each Secured Party and each of their Affiliates and their respective officers, directors, employees, trustees, agents and advisors (each, an "**Indemnified Party**") from and against, and shall pay on demand, any and all claims, damages, losses, liabilities and expenses (including reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or resulting from this Agreement (including enforcement of this Agreement), except to the extent such claim, damage, loss, liability or expense is found in a final, non-appealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct.

(b) Without limiting or affecting each Secured Party's rights set forth in Section 9.03 of the Credit Agreement but subject to the limitations set forth therein, each Grantor will upon demand pay to the Administrative Agent the amount of any and all reasonable expenses, including the reasonable fees and expenses of its counsel and of any experts and agents, that the Administrative Agent may incur in connection with (i) the custody, preservation, use or operation of, or the sale of, collection from or other realization upon, any of the Collateral of such Grantor, (ii) the exercise or enforcement of any of the rights of the Administrative Agent or the other Secured Parties hereunder or (iii) the failure by such Grantor to perform or observe any of the provisions hereof.

(c) The undertakings in this Section 22 shall survive termination of this Agreement, the payment of all Obligations and the resignation of the Administrative Agent.

Section 23. Amendments; Waivers; Additional Grantors; Etc.

(a) No amendment or waiver of any provision of this Agreement, and no consent to any departure by any Grantor herefrom, shall in any event be effective unless the same shall be in writing and signed by the Administrative Agent and, with respect to any amendment, the Company on behalf of the Grantors, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure on the part of the Administrative Agent or any other Secured Party to exercise, and no delay in exercising any right hereunder, 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.

(b) Each Subsidiary of the Borrower that is required to become a party to this Agreement pursuant to Section 5.10 of the Credit Agreement shall become a Grantor for all purposes of this Agreement upon the execution and delivery by such Person of a security agreement supplement in substantially the form of Exhibit C hereto (each a “**Security Agreement Supplement**”). Such Person shall be referred to as an “**Additional Grantor**” and each reference in this Agreement and the other Loan Documents to “Grantor” or “Guarantor” shall also mean and be a reference to such Additional Grantor, each reference in this Agreement and the other Loan Documents to the “Collateral” shall also mean and be a reference to the Collateral granted by such Additional Grantor and each reference in this Agreement to a Schedule shall also mean and be a reference to the schedules attached to such Security Agreement Supplement.

Section 24. Confidentiality; Notices; References.

(a) The confidentiality provisions of Section 9.12 of the Credit Agreement shall apply to all information received by the Administrative Agent or any Lender under this Agreement.

(b) All notices and other communications provided for hereunder shall be delivered as provided in Section 9.01 of the Credit Agreement.

Section 25. Continuing Security Interest; Assignments Under the Credit Agreement. This Agreement shall create a continuing guaranty and continuing security interest in the Collateral and shall (a) continue in effect (notwithstanding the fact that from time to time there may be no Obligations outstanding) until (i) the Credit Agreement has terminated pursuant to its express terms and (ii) all of the Obligations (other than any contingent indemnification obligations not then due and payable) have been paid in full and no commitments of the Administrative Agent or the Lenders which would give rise to any Obligations are outstanding, (b) be binding upon each Grantor, its successors and assigns and (c) inure, together with the rights and remedies of the Administrative Agent hereunder, to the benefit of the Secured Parties and their respective successors, permitted transferees and permitted assigns. Without limiting the generality of the foregoing clause (c), to the extent permitted in Section 9.04 of the Credit Agreement, any Lender may assign or otherwise transfer all or any portion of its rights and obligations under the Credit Agreement (including all or any portion of its Commitments and the Loans owing to it and the promissory note or promissory notes, if any, held by it) to any permitted transferee, and such permitted transferee shall thereupon become vested with all the benefits in respect thereof granted to such Lender herein or otherwise.

Section 26. Release; Termination. (i) Upon (A) any Disposition of any item of Collateral of any Grantor as permitted by the Loan Documents, (B) any item of Collateral becoming Excluded Property (except to the extent resulting from any transaction that is not permitted under the Loan Documents), (C) any Subsidiary that is not an Excluded Subsidiary becoming an Excluded Subsidiary pursuant to a transaction permitted by the Loan Documents, (D) subject to Section 5.17(b) of the Credit Agreement, provided any Foreign Subsidiary ceasing to be a Material First-Tier Foreign Subsidiary pursuant to a transaction permitted by the Loan Documents or (E) the consent of the Required Lenders to such release and termination as provided in Section 9.02 of the Credit Agreement, the security interests granted under this Agreement by such Grantor in such Collateral or in the assets of such Subsidiary (and in the case of clause (C), the guarantee provided by such Subsidiary hereunder), as applicable, shall immediately terminate and automatically be released. The Administrative Agent will, in the case of each of the foregoing clauses (i) and (ii) above, subject to the Intercreditor Agreement, promptly deliver at the Grantor’s request to such Grantor all certificates representing any Pledged Equity released and all notes and other instruments representing any Pledged Debt, Receivables or other Collateral so released, and Administrative Agent will, at such Grantor’s expense, promptly execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted hereby; , that, the release of any Grantor from its obligations under this Agreement or any other Loan Document if such Grantor becomes an Excluded Subsidiary shall only be permitted if, at the time such Grantor becomes an Excluded Subsidiary, (1) no Default or Event of Default shall have occurred and be continuing, (2) after giving pro forma effect to such release and the consummation of the applicable transaction, the Borrower is deemed to have made a new Investment in such Person (as if such Person were then newly acquired) and such Investment is permitted at such time, and (3) such Grantor shall have delivered to the Administrative Agent a certificate of such Grantor to the effect that the contemplated transaction will be in compliance with the Loan Documents and the foregoing clauses (1) and (2); provided further that no such release shall occur if such Grantor continues to be a guarantor in respect of the Replacement ABL Facility or any other Material Indebtedness.

At such time as the Obligations shall have been paid in full and the Commitments have been terminated, the Collateral shall be released from the Liens created hereby, and this Agreement and all obligations (other than those expressly stated to survive such termination) of the Administrative Agent and each Grantor hereunder shall automatically terminate, all without delivery of any instrument or performance of any act by any party, and all rights to Collateral shall revert to the Grantors. At the request and sole expense of any Grantor following any such termination, the Administrative Agent shall promptly deliver to such Grantor any Collateral held by the Administrative Agent hereunder, and promptly execute and deliver to such Grantor such documents as such Grantor shall reasonably request to evidence such termination. At the request and sole expense of the Borrower, a Guarantor shall be released from its obligations hereunder in the event that all the Capital Stock of such Guarantor shall be sold, transferred or otherwise disposed of in a transaction permitted by the Credit Agreement.

Section 27. Execution in 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. Delivery of an executed counterpart of a signature page to this Agreement by telecopier or .pdf shall be effective as delivery of an original executed counterpart of this Agreement.

Section 28. Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

Section 29. Jurisdiction; Waiver of Jury Trial.

(a) Each of the parties hereto hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any New York State court or federal court of the United States of America sitting in New York City in the borough of Manhattan, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in any such New York State court or, to the extent permitted by law, in such federal court. Each Grantor hereby further irrevocably consents to the service of process in any action or proceeding in such courts by the mailing thereof by any parties hereto by registered or certified mail, postage prepaid, to the Borrower at its address specified pursuant to Section 9.01 of the Credit Agreement. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

(b) Each of the parties hereto irrevocably and unconditionally waives, to the fullest extent it may legally and effectively do so, any objection that it may now or hereafter have to the laying of venue of any suit, action or proceeding arising out of or relating to this Agreement in any such New York State or federal court. Each of the parties hereto hereby irrevocably waives, to the fullest extent permitted by law, the defense of an inconvenient forum to the maintenance of such action or proceeding in any such court.

(c) Each of the parties hereto hereby irrevocably waives all right to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement or the actions of the Administrative Agent or any Secured Party in the negotiation, administration, performance or enforcement thereof.

Section 30. Intercreditor Agreement. Notwithstanding anything herein to the contrary, the Lien granted to the Administrative Agent, for the benefit of the Secured Parties, pursuant to this Security Agreement and the exercise of any right or remedy by the Administrative Agent and the other Secured Parties hereunder are subject to the provisions of the Amended and Restated Intercreditor Agreement, dated as of ~~even date herewith~~ June 30, 2023, effective as of the First Amendment Effective Date, among the Administrative Agent, as Term Loan Agent, Bank of America, N.A, as ABL Agent, the Company and the Guarantors (the “**Intercreditor Agreement**”). In the event of any conflict or inconsistency between the provisions of the Intercreditor Agreement and this Agreement, the provisions of the Intercreditor Agreement shall control to the extent of such conflict or inconsistency.

*[Remainder of Page Intentionally Left Blank]*

IN WITNESS WHEREOF, each Grantor and Guarantor has caused this Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

**GRANTORS:**

**EASTMAN KODAK COMPANY**

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

Eastman Kodak Company  
~~345~~343 State Street  
Rochester, NY 14650

**EASTMAN KODAK INTERNATIONAL CAPITAL COMPANY INC.**

**FAR EAST DEVELOPMENT LTD.**

**KODAK (NEAR EAST), INC.**

**KODAK AMERICAS, LTD.**

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

~~c/o Eastman Kodak Company~~  
~~345 State Street~~  
~~Rochester, NY 14650~~

[Signature Page to Guaranty and Collateral Agreement (Kodak Term Loan)]

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**KODAK PHILIPPINES, LTD.**

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

c/o Eastman Kodak Company

~~345~~343 State Street

Rochester, NY 14650

*[Signature Page to Guaranty and Collateral Agreement (Kodak Term Loan)]*

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**ADMINISTRATIVE AGENT:**

**ALTER DOMUS (US) LLC**

By: \_\_\_\_\_

Name:

Title:

Address for Notices:

Alter Domus (US) LLC

225 W. Washington St., 9th Floor

Chicago, IL 60606

Attention: Legal Department – [Agency, Emily Ergang Pappas](#) and Bill Ryan

Phone: 312-564-5100

Fax: 312-376-0751

Email: [legal@alterdomus.com](mailto:legal@alterdomus.com)

[bill.ryan@alterdomus.com](mailto:bill.ryan@alterdomus.com)

[Email: legal\\_agency@alterdomus.com;](mailto:legal_agency@alterdomus.com)

[emily.ergangpappas@alterdomus.com](mailto:emily.ergangpappas@alterdomus.com) and

[bill.ryan@alterdomus.com](mailto:bill.ryan@alterdomus.com)

with copies to (which shall not constitute notice):

Holland & Knight LLP

150 North Riverside Plaza, Suite 2700

Chicago, IL 60606

Attention: Joshua M. Spencer

Fax: 312-578-6666

Email: [Joshua.spencer@hklaw.com](mailto:Joshua.spencer@hklaw.com) [Joshua.spencer@hklaw.com](mailto:Joshua.spencer@hklaw.com) and

[alterdomus@hklaw.com](mailto:alterdomus@hklaw.com)

and

Akin Gump Strauss Hauer & Feld LLP

One Bryant Park

New York, New York 10036

Attn: ~~Frederick Lee~~; Ryan Kim; [Josh Peary](#)

Fax: 212-872-1002

Email: [flee@akingump.com](mailto:flee@akingump.com)

~~\_\_\_\_\_~~kimr@akingump.com

[\\_\\_\\_\\_\\_jpeary@akingump.com](mailto:jpeary@akingump.com)

[Signature Page to Guaranty and Collateral Agreement (Kodak Term Loan)]

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**FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT**

This INTELLECTUAL PROPERTY SECURITY AGREEMENT (as amended, amended and restated, supplemented or otherwise modified from time to time, the “**IP Security Agreement**”) dated February 26, 2021, is made by the Persons listed on the signature pages hereof (collectively, the “**Grantors**”) in favor of Alter Domus (US) LLC, as Administrative Agent (the “**Administrative Agent**”) for the Secured Parties (as defined in the Credit Agreement referred to below).

WHEREAS, Eastman Kodak Company, a New Jersey corporation, has entered into a Credit Agreement dated as of February 26, 2021 (as amended [and restated by that certain First Amendment to Credit Agreement dated as of June 30, 2023 and effective as of the First Amendment Effective Date \(as defined in the Credit Agreement\), and as may be further amended](#), amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), with Alter Domus (US) LLC, as Administrative Agent, and the Lenders party thereto. Terms defined in the Credit Agreement and not otherwise defined herein are used herein as defined in the Credit Agreement.

WHEREAS, as a condition precedent to the obligation of the Lenders to make their respective extensions of credit to the Borrower under the Credit Agreement, each Grantor has executed and delivered that certain Guarantee and Collateral Agreement dated February 26, 2021, made by the Grantors to the Administrative Agent (as amended [by that certain First Amendment to Credit Agreement, dated as of June 30, 2023 and effective as of the First Amendment Effective Date, as further amended](#), amended and restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”).

WHEREAS, under the terms of the Security Agreement, the Grantors have granted to the Administrative Agent, for the benefit of the Secured Parties, a security interest in, among other property, certain intellectual property of the Grantors, and have agreed as a condition thereof to execute this IP Security Agreement for recording with the United States Copyright Office, the United States Patent and Trademark Office and other governmental authorities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Grantor agrees as follows:

SECTION 1. Grant of Security. Each Grantor hereby grants to the Administrative Agent for the benefit of the Secured Parties a security interest in all of such Grantor’s right, title and interest in and to the following (the “**Collateral**”):

- (i) the patents and patent applications and all exclusive patent licenses set forth in Schedule A hereto (the “**Patents**”);
-



(ii) the trademark and service mark registrations and applications and all exclusive trademark licenses set forth in Schedule B hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law), together with the goodwill symbolized thereby (the “**Trademarks**”);

(iii) all copyrights, whether registered or unregistered, now owned or hereafter acquired by such Grantor, including the copyright registrations and applications and exclusive copyright licenses set forth in Schedule C hereto (the “**Copyrights**”);

(iv) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

(v) any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

(vi) any and all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and supporting obligations relating to, any and all of the Collateral of or arising from any of the foregoing.

SECTION 2. Security for Obligations. The grant of a security interest in, the Collateral by each Grantor under this IP Security Agreement secures the payment of all obligations of such Grantor now or hereafter existing under or in respect of the Loan Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise. Without limiting the generality of the foregoing, this IP Security Agreement secures, as to each Grantor, the payment of all amounts that constitute part of the Obligations and that would be owed by such Grantor to any Secured Party under the Loan Documents but for the fact that such Obligations are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving a Loan Party.

SECTION 3. Recordation. Each Grantor authorizes and requests that the Register of Copyrights and the Commissioner for Patents or Trademarks record this IP Security Agreement.

SECTION 4. Execution in Counterparts. This IP Security 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.

SECTION 5. Grants, Rights and Remedies. This IP Security Agreement has been entered into in conjunction with the provisions of the Security Agreement. Each Grantor does hereby acknowledge and confirm that the grant of the security interest hereunder to, and the rights and remedies of, the Administrative Agent with respect to the Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

SECTION 6. Governing Law. This IP Security Agreement shall be governed by, and construed in accordance with, the laws of the State of New York.

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IN WITNESS WHEREOF, each Grantor has caused this IP Security Agreement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

EASTMAN KODAK COMPANY

By \_\_\_\_\_

Name:

Title:

Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[NAME OF GRANTOR]

By \_\_\_\_\_

Name:

Title:

Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[NAME OF GRANTOR]

By \_\_\_\_\_

Name:

Title:

Address for Notices:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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FORM OF INTELLECTUAL PROPERTY SECURITY AGREEMENT SUPPLEMENT

This INTELLECTUAL PROPERTY SECURITY AGREEMENT SUPPLEMENT (this “*IP Security Agreement Supplement*”) dated \_\_\_\_\_, ~~200-20~~, is made by the Person listed on the signature page hereof (the “Grantor”) in favor of Alter Domus (US) LLC, as Administrative Agent (the “Administrative Agent”) for the Secured Parties (as defined in the Credit Agreement referred to below).

WHEREAS, Eastman Kodak Company, a New Jersey corporation, has entered into a Credit Agreement dated as of February 26, 2021 (as amended and restated by that certain First Amendment to Credit Agreement dated as of June 30, 2023 and effective as of the First Amendment Effective Date (as defined in the Credit Agreement), and as may be further amended, amended and restated, supplemented or otherwise modified from time to time, the “*Credit Agreement*”), with Alter Domus (US) LLC, as Administrative Agent, and the Lenders party thereto. Terms defined in the Credit Agreement and not otherwise defined herein are used herein as defined in the Credit Agreement.

WHEREAS, pursuant to the Credit Agreement, the Grantor and certain other Persons have executed and delivered that certain Guarantee and Collateral Agreement dated February 26, 2021 made by the Grantor and such other Persons to the Administrative Agent (as amended pursuant to that certain First Amendment to Credit Agreement, dated as of June 30, 2023 and effective as of the First Amendment Effective Date and as may be further amended, amended and restated, supplemented or otherwise modified from time to time, the “*Security Agreement*”) and that certain Intellectual Property Security Agreement dated February 26, 2021 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “*IP Security Agreement*”).

WHEREAS, under the terms of the Security Agreement, the Grantor has granted to the Administrative Agent, for the benefit of the Secured Parties, a security interest in the Collateral (as defined in Section 1 below) of the Grantor and has agreed as a condition thereof to execute this IP Security Agreement Supplement for recording with the United States Copyright Office, the United States Patent and Trademark Office and other governmental authorities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Grantor agrees as follows:

SECTION 1. Grant of Security. Each Grantor hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest in all of such Grantor’s right, title and interest in and to the following (the “*Collateral*”):

- (i) the patents and patent applications and all exclusive patent licenses set forth in Schedule A hereto (the “*Patents*”);
-

(ii) the trademark and service mark registrations and applications and all exclusive trademark licenses set forth in Schedule B hereto (provided that no security interest shall be granted in United States intent-to-use trademark applications to the extent that, and solely during the period in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark applications under applicable federal law), together with the goodwill symbolized thereby (the “**Trademarks**”);

(iii) all copyrights, whether registered or unregistered, now owned or hereafter acquired by such Grantor, including the copyright registrations and applications and exclusive copyright licenses set forth in Schedule C hereto (the “**Copyrights**”);

(iv) all reissues, divisions, continuations, continuations-in-part, extensions, renewals and reexaminations of any of the foregoing, all rights in the foregoing provided by international treaties or conventions, all rights corresponding thereto throughout the world and all other rights of any kind whatsoever of such Grantor accruing thereunder or pertaining thereto;

(v) all any and all claims for damages and injunctive relief for past, present and future infringement, dilution, misappropriation, violation, misuse or breach with respect to any of the foregoing, with the right, but not the obligation, to sue for and collect, or otherwise recover, such damages; and

(vi) any and all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and supporting obligations relating to, any and all of the foregoing or arising from any of the foregoing.

SECTION 2. Security for Obligations. The grant of a security interest in the Additional Collateral by the Grantor under this IP Security Agreement Supplement secures the payment of all obligations of the Grantor now or hereafter existing under or in respect of the Loan Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise.

SECTION 3. Recordation. The Grantor authorizes and requests that the Register of Copyrights, and the Commissioner for Patents or Trademarks record this IP Security Agreement Supplement.

SECTION 4. Grants, Rights and Remedies. This IP Security Agreement Supplement has been entered into in conjunction with the provisions of the Security Agreement. The Grantor does hereby acknowledge and confirm that the grant of the security interest hereunder to, and the rights and remedies of, the Administrative Agent with respect to the Additional Collateral are more fully set forth in the Security Agreement, the terms and provisions of which are incorporated herein by reference as if fully set forth herein.

SECTION 5. Governing Law. This IP Security Agreement Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

[Signature page follows.]

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IN WITNESS WHEREOF, the Grantor has caused this IP Security Agreement Supplement to be duly executed and delivered by its officer thereunto duly authorized as of the date first above written.

By \_\_\_\_\_

Name:

Title:

Address for Notices:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_



FORM OF SECURITY AGREEMENT SUPPLEMENT

[Date of Security Agreement Supplement]

Alter Domus (US) LLC, as the Administrative Agent for  
the Secured Parties referred to in the  
Credit Agreement referred to below

Alter Domus (US) LLC  
[Insert Address]  
Attn: [\_\_\_\_\_]

Eastman Kodak Company

Ladies and Gentlemen:

Reference is made to (i) the Credit Agreement, dated as of February 26, 2021 (as [amended and restated by that certain First Amendment to Credit Agreement dated as of June 30, 2023 and effective as of the First Amendment Effective Date \(as defined in the Credit Agreement\), and as may be further amended](#), amended and restated, supplemented or otherwise modified from time to time, the “**Credit Agreement**”), among Eastman Kodak Company, a New Jersey corporation, as the Borrower, the Lenders party thereto, Alter Domus (US) LLC, as Administrative Agent (together with any successor Administrative Agent appointed pursuant to Article VIII of the Credit Agreement, the “**Administrative Agent**”), and (ii) the Guarantee and Collateral Agreement February 26, 2021 (as amended [by that certain First Amendment to Credit Agreement, dated as of June 30, 2023 and effective as of the First Amendment Effective Date, as may be further amended](#), amended and restated, supplemented or otherwise modified from time to time, the “**Security Agreement**”) made by the Grantors from time to time party thereto in favor of the Administrative Agent for the Secured Parties. Terms defined in the Credit Agreement or the Security Agreement and not otherwise defined herein are used herein as defined in the Credit Agreement or the Security Agreement, as applicable.

SECTION 1. Grant of Security. The undersigned hereby grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest in all of its right, title and interest in and to its Collateral consisting of the following, in each case, whether now owned or hereafter acquired by the undersigned, wherever located and whether now or hereafter existing or arising (collectively, the undersigned’s “**Collateral**”): all Equipment, Inventory, Security Collateral (including the indebtedness set forth on Schedule A hereto and the securities, and securities/deposit accounts set forth on Schedule B hereto), Receivables, Related Contracts, all commercial tort claims described on Schedule J hereto and hereafter described on Schedule X to the Security Agreement, Agreement Collateral, Account Collateral (including the deposit accounts set forth on Schedule C hereto), Intellectual Property Collateral, all documents, all money and all letter-of-credit rights, all [Plan Reversion Proceeds, all](#) books and records and documents (including databases, customer lists, credit files, computer files, printouts and other computer output materials and records and other records) of the undersigned pertaining to any of the undersigned’s Collateral, all other property not otherwise described above (except for any property specifically excluded from any clause in this section, and any property specifically excluded from any defined term used in any clause of this section), all proceeds of and payments under business interruption insurance and all proceeds of, collateral for, income, royalties and other payments now or hereafter due and payable with respect to, and supporting obligations relating to, any and all of the undersigned’s Collateral (including proceeds, collateral and supporting obligations that constitute property of the types described in this Section 1) and, to the extent not otherwise included, all (A) payments under insurance (whether or not the Administrative Agent is the loss payee thereof), or any indemnity, warranty or guaranty, payable by reason of loss or damage to or otherwise with respect to any of the foregoing Collateral, and (B) cash and cash equivalents, [including all Eligible Cash \(as defined in the ABL Agreement\), Qualified Cash \(as defined in the ABL Agreement\) and US Cash \(as defined in the ABL Agreement\)](#); provided, that, notwithstanding any of the other provisions set forth in this Section 1 or in any Loan Document, no Excluded Property shall constitute Collateral.

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SECTION 2. Security for Obligations. The grant of a security interest in, the Collateral by the undersigned under this Security Agreement Supplement and the Security Agreement secures the payment of all Obligations of the undersigned now or hereafter existing under or in respect of the Loan Documents, whether direct or indirect, absolute or contingent, and whether for principal, reimbursement obligations, interest, premiums, penalties, fees, indemnifications, contract causes of action, costs, expenses or otherwise. Without limiting the generality of the foregoing, this Security Agreement Supplement and the Security Agreement secures the payment of all amounts that constitute part of the Obligations and that would be owed by the undersigned to any Secured Party under the Loan Documents but for the fact that such Obligations are unenforceable or not allowable due to the existence of a bankruptcy, reorganization or similar proceeding involving a Loan Party.

SECTION 3. Representations and Warranties.

(a) The undersigned's exact legal name, chief executive office, type of organization, jurisdiction of organization, organizational identification number and Federal Employer Identification Number is set forth in Schedule D hereto. Within the five years preceding the date hereof, the undersigned has not changed its name, chief executive office, type of organization, jurisdiction of organization, organizational identification number or Federal Employer Identification Number from those set forth in Schedule D hereto except as set forth in Schedule E hereto. Each of the trade names owned and used by the undersigned in the operation of its business (e.g. billing, advertising, etc.) are set forth in Schedule D hereto.

(b) All Equipment having a value in excess of (i) prior to the Borrower Deleveraging Milestone Date, \$750,000 or (ii) on or after the Borrower Deleveraging Milestone Date, \$1,000,000, and all Inventory having a value in excess of (i) prior to the Borrower Deleveraging Milestone Date, \$750,000 or (ii) on or after the Borrower Deleveraging Milestone Date, \$1,000,000, as of the date hereof of the undersigned is located at the places specified therefor in Schedule H hereto.

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(c) The undersigned is not a beneficiary or assignee under any letter of credit, other than the letters of credit described in Schedule I hereto.

(d) The undersigned hereby makes each other representation and warranty set forth in Section 7 of the Security Agreement with respect to itself and the Collateral granted by it (and, for the avoidance of doubt, delivers the corresponding schedules, if any, relating to such representations and warranties).

SECTION 4. Obligations Under the Security Agreement. The undersigned hereby agrees, as of the date first above written, to be bound as a Grantor and Guarantor by all of the terms and provisions of the Security Agreement to the same extent as each of the other Grantors and Guarantors. The undersigned further agrees, as of the date first above written, that each reference in the Security Agreement to an “Additional Grantor” or a “Grantor” or a “Guarantor” shall also mean and be a reference to the undersigned, that each reference to the “Collateral” or any part thereof shall also mean and be a reference to the undersigned’s Collateral or part thereof, as the case may be, and that each reference in the Security Agreement to a Schedule shall also mean and be a reference to the schedules attached hereto.

SECTION 5. Governing Law. This Security Agreement Supplement shall be governed by, and construed in accordance with, the laws of the State of New York.

SECTION 6. Jurisdiction; Waiver of Jury Trial. The undersigned agrees to be bound by the provisions of Section 29 of the Security Agreement.

Very truly yours,  
[NAME OF ADDITIONAL GRANTOR]

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

Address for notices:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_



AMENDMENT NO. 2 TO LETTER OF CREDIT FACILITY AGREEMENT

AMENDMENT NO. 2 TO LETTER OF CREDIT FACILITY AGREEMENT, dated as of June 30, 2023 (this “Amendment No. 2”), is 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 LC Credit Agreement (as defined below), Bank of America, N.A., as party to the LC Credit Agreement as a lender (in such capacity, a “Lender”), Bank of America, N.A., as issuing bank (in such capacity, “Issuing Bank”), Eastman Kodak Company, a New Jersey corporation (the “Borrower” or “Company”), the subsidiaries of Borrower party hereto as Guarantors (individually, each a “Guarantor” and collectively, “Guarantors”).

W I T N E S S E T H :

WHEREAS, Agent, Issuing Bank, Lender, and the other parties to the Existing LC Credit Agreement (as defined below) as lenders have entered into the letter of credit facility pursuant to which Issuing Bank has issued, and may from time to time issue, letters of credit to Borrower as set forth in the Letter of Credit Facility Agreement, dated as of February 26, 2021, by and among Borrower, Guarantors, Lender, such other lenders, Issuing Bank and Agent (as amended by Amendment No. 1 to Letter of Credit Facility Agreement, dated as of March 14, 2023 and as in effect prior to the date hereof, the “Existing LC Credit Agreement) and the other Loan Documents (as defined in the Existing LC Credit Agreement);

WHEREAS, Borrower and Guarantors have requested that Agent, Issuing Bank and Lender agree to certain amendments to the Existing LC Credit Agreement, and Agent, Issuing Bank and Lender are willing to agree to such amendments, subject to the terms and conditions contained herein; and

WHEREAS, by this Amendment No. 2, Agent, Issuing Bank, Lender and the Loan Parties intend to evidence such amendments, which shall not be effective unless and until the satisfaction of the applicable conditions precedent set forth herein;

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. Additional Definitions. As used herein, the following terms shall have the meaning specified below:

- (a) “Amended LC Credit Agreement” means the Amended and Restated Letter of Credit Facility Agreement set forth in Exhibit A to this Amendment No. 2, as the same may be amended, modified, supplemented, extended, renewed, restated or replaced.
  - (b) “Amended LC Facility Fee Letter” means the Fee Letter, dated as of the date of this Amendment No. 2, by and among Agent, Borrower and Guarantors.
  - (c) “Amendment No. 2” means the Amendment No. 2 to Letter of Credit Facility Agreement, dated as of June 30, 2023, by and among Agent, Issuing Bank, Lender and Loan Parties, as the same now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.
-

(d) "Amendment No. 2 Effective Date" means the first date on which the conditions precedent set forth in Section 5 of this Amendment No. 2 are satisfied as set forth in the notice from Agent to Borrower delivered in accordance with Section 5 of this Amendment No. 2.

(e) "Existing LC Credit Agreement" has the meaning set forth in the recitals hereto.

(f) "Restatement Date" means the first date on which the conditions precedent set forth in Section 6 of Amendment No. 2 are satisfied as set forth in the notice from Agent to Borrower delivered in accordance with Section 6 of this Amendment No. 2.

1.2. Interpretation. For purposes of this Amendment No. 2, 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 Amended LC Credit Agreement.

## 2. Amendments to Existing LC Credit Agreement.

2.1. On the Restatement Date, the Existing LC Credit Agreement shall be amended and restated in its entirety such that on the Restatement Date, the terms and conditions set forth in Exhibit A hereto constituting the Amended LC Credit Agreement shall replace and supersede in their entirety the terms and conditions set forth in the Existing LC Credit Agreement. All schedules and exhibits to the Existing LC Credit Agreement, as in effect immediately prior to the Amendment No. 2 Effective Date, shall constitute schedules and exhibits to the Amended LC Credit Agreement, except, that, those schedules and exhibits which are attached to the Amended LC Credit Agreement as set forth in Exhibit A to this Amendment No. 2 shall constitute those respective schedules and exhibits on and after the Restatement Date. Agent, Issuing Bank, Lender, Borrower and Guarantors hereby consent to the amendment of the Existing LC Credit Agreement as of the Restatement Date as provided for herein pursuant to the Amended LC Credit Agreement. From and after the Restatement Date, each reference to the "Agreement", "Credit Agreement", "thereunder", "thereof", "therein" or words of like import originally applicable to the Existing LC Credit Agreement contained in any Loan Document shall mean and be a reference to the Amended LC Credit Agreement.

2.2. At all times prior to the Restatement Date, the Existing LC Credit Agreement shall be in full force and effect in accordance with the terms and conditions set forth therein, and the amendment and restatement thereof as provided in Section 2.1 above shall not be effective or otherwise govern or control the terms and conditions of the letter of credit facility provided for in the Existing LC Credit Agreement.

2.3. Notwithstanding anything to the contrary contained herein, or otherwise, in the event that the conditions to the effectiveness of the Amended LC Facility Agreement as set forth in Section 6 hereof as reasonably determined by Agent have not occurred on or before July 30, 2023 (or such later date as Agent may hereafter agree), this Amendment No. 2 shall be of no force and effect and the Existing LC Credit Agreement shall continue in all respects in full force and effect.

3. Representations and Warranties. Each Loan Party represents and warrants with and to Agent, Issuing Bank and Lender as follows, which representations and warranties shall survive the execution and delivery hereof:

3.1. As of the Amendment No. 2 Effective Date, no Default or Event of Default exists or has occurred and is continuing.

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3.2. This Amendment No. 2 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. 2 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.

3.3. 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. 2 Effective Date before and after giving effect to the provisions of this Amendment No. 2 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.

4. Amendment Fees. On the Restatement Date, concurrently with the making of the loans under the Term Loan Facility described in Section 6.2 hereof, Borrower shall pay to Agent the fees provided for in the Amended LC Facility Fee Letter, which fees shall be fully earned and payable on the Restatement Date and shall be nonrefundable in all circumstances.

5. Conditions Precedent to Effectiveness of Amendment No. 2. This Amendment No. 2 shall be effective upon the date on which each of the following conditions is satisfied (or waived by Agent in writing) in the reasonable determination of Agent:

5.1. Agent shall have received executed counterparts of this Amendment No. 2 from each Loan Party;

5.2. Agent shall have received projected balance sheets, income statements, and statements of cash flows of Borrower and its Restricted Subsidiaries giving effect to the Term Loan Facility, the Restatement Date Refinancings 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 Restatement 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 reasonably satisfactory to Agent;

5.3. Agent shall have received (a) evidence that Borrower has entered into the Term Loan Facility, and (b) the definitive documentation in respect of the Term Loan Facility, duly executed by each party thereto, which shall be on terms and conditions reasonably satisfactory to Agent;

5.4. 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;

5.5. no Default or Event of Default under any of the Loan Documents shall exist;

5.6. no material adverse change in the business, operations, profits, assets or prospects of Loan Parties shall have occurred since December 31, 2022;

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5.7. 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 Amendment No. 2 Effective 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 provisions of this Amendment No. 2 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;

5.8. Agent shall have received the following, each dated as of the Amendment No. 2 Effective Date and in form and substance reasonably satisfactory to the Agent:

(a) the Amended LC Facility Fee Letter as duly executed and delivered by the Loan Parties,

(b) a guarantee and collateral acknowledgement and reaffirmation executed and delivered by each Loan Party,

(c) 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 such other necessary corporate action and governmental approvals, if any, with respect to each Loan Document to which it is a party,

(d) 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,

(e) 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;

(f) a certificate of the chief financial officer of the Company, in the form attached hereto as Exhibit C to the Amended LC Credit Agreement,

(g) copies of a recent Lien and judgment search in each jurisdiction reasonably requested by the Agent with respect to the Loan Parties, and

(h) a certificate from the Responsible Officer of the Company as to the matters set forth in Sections 5.5, 5.6 and 5.7.

Nothing set forth above shall be construed to mean that the Existing LC Credit Agreement is amended or amended and restated pursuant to the Amended LC Credit Agreement or otherwise as of the Amendment No. 2 Effective Date. The effectiveness of such amendments and amendment and restatement shall only occur upon the effectiveness of this Amendment No. 2 and the satisfaction of the conditions precedent set forth in Section 6 of this Amendment No. 2.

6. Conditions Precedent to Effectiveness of Amended LC Credit Agreement. The Amended LC Credit Agreement, and the amendment and restatement of the Existing LC Credit Agreement provided for therein, shall be effective on the date on which each of the following conditions is satisfied (or waived by Agent in writing) in the reasonable determination of Agent:

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6.1. Agent shall have received evidence, in form and substance reasonably satisfactory to Agent that all of the letters of credit issued under the Existing ABL Credit Facility shall be deemed to be Letters of Credit under the Letter of Credit Facility;

6.2. Agent shall have received evidence that Borrower has received (or shall concurrently with the effectiveness of the Amended LC Credit Agreement receive) not less than \$450,000,000 in gross proceeds of loans under the Term Loan Facility and the proceeds thereof shall have been used (or shall concurrently with the effectiveness of the Amended LC Credit Agreement be used) to pay all of the amounts required in connection with the Restatement Date Refinancings;

6.3. Agent shall have received the payoff notices from each lender under the Existing LC Credit Agreement (other than Lender), in form and substance reasonably satisfactory to Agent, as duly executed and delivered by such other lender to terminate the commitment of such lender thereunder;

6.4. Agent shall have received evidence that the Loan Parties have terminated the Existing ABL Credit Facility and all existing indebtedness and other obligations of the Loan Parties under the Existing ABL Credit Facility have been repaid and discharged in full in cash (except as provided in the Amended LC Credit Agreement with respect to certain letters of credit that may be deemed issued under such agreement) and all security interests and liens related thereto terminated and released;

6.5. Agent shall have received evidence that the Loan Parties have terminated the Existing Convertible Notes and all existing indebtedness and other obligations of the Company and such subsidiaries under the Existing Convertible Notes have been repaid and discharged in full in cash;

6.6. Agent shall have received in immediately available funds for credit to the LC Cash Collateral Account such amount so that the amount held in the LC Cash Collateral Account is not less than one hundred four percent (104%) of the Letters of Credit (after giving effect to the letters of credit issued pursuant to the Existing ABL Credit Facility being deemed issued under the Amended LC Credit Agreement);

6.7. no Default or Event of Default under any of the Loan Documents shall exist;

6.8. Agent shall have received a certificate from the Responsible Officer of the Company as to the matters set forth in Sections 6.2 and 6.7;

6.9. Arranger, Agent and Lender shall have received the payment of all fees required to be paid under the terms of the Amended LC Facility Fee Letter;

6.10. Agent shall have received payment of all reasonable and documented out-of-pocket costs and expenses of Agent (including, without limitation, the reasonable and documented fees and expenses of counsel for Agent);

6.11. Agent shall have received a customary legal opinion of Sullivan & Cromwell, special counsel for the Company, in form and substance reasonably satisfactory to the Agent, and

6.12. Agent shall have received a customary legal opinion of Day Pitney LLP, New Jersey counsel for the Company, in form and substance reasonably satisfactory to the Agent.

Agent shall notify Borrower and Lenders of the Restatement Date and such notice shall be conclusive and binding.

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7. [Reserved].

8. Reaffirmation. Each Loan Party acknowledges, confirms and agrees that (a) it is indebted to Agent and Lenders under the LC 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 the other Secured Parties, 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 LC Credit Agreement and each of the other Loan Documents remain in full force and effect and are hereby ratified and confirmed.

9. No Novation. Nothing in this Amendment No. 2 or the Amended LC Credit Agreement shall be deemed to be a novation of any of the Obligations as defined in the Existing LC Credit Agreement or in any way impair or otherwise affect the rights or obligations of the parties thereunder except as such rights or obligations are amended or modified pursuant to the Amended LC Credit Agreement. Notwithstanding any provision of this Amendment No. 2 or the Amended LC Credit Agreement or any instrument executed in connection herewith or therewith, on and after the Restatement Date, the incurrence of Obligations under the Amended LC Credit Agreement shall be in substitution for, but not in payment of, the Obligations owed by the Loan Parties under the Existing LC Credit Agreement (as defined therein). As of the Restatement Date, the Existing LC Credit Agreement as amended and restated pursuant to the terms of the Amended LC Credit Agreement 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 LC Credit Agreement not amended and restated in connection with the Amended LC Credit 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 LC Credit Agreement pursuant to the Amended LC Credit Agreement were set forth in an amendment to the Existing LC 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 the Existing LC Credit Agreement or such document, instrument or agreement or as otherwise agreed by the required parties hereto or thereto. The amendments provided for in the Amended LC Credit Agreement shall not, in any manner, be construed to impair, limit, cancel or extinguish, or constitute a novation in respect of, the Indebtedness and other obligations and liabilities of any Loan Party evidenced by or arising under the Existing LC Credit Agreement or the other Loan Documents.

10. Effect of Amendment No. 2. 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. 2 or with respect to the subject matter of this Amendment No. 2. To the extent of conflict between the terms of this Amendment No. 2 and the other Loan Documents, on and after the Restatement Date, the terms of this Amendment No. 2 shall control. On and after the Restatement Date, the Amended LC Credit Agreement and this Amendment No. 2 shall be read and construed as one agreement and this Amendment No. 2 shall be a Loan Document.

11. Jurisdiction. The provisions of Section 9.13 of the Existing LC Credit Agreement shall apply with like effect to this Amendment No. 2.

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12. Binding Effect. This Amendment No. 2 shall be binding upon and inure to the benefit of each of the parties hereto and their respective successors and assigns.

13. Waiver, Modification, Etc. No provision or term of this Amendment No. 2 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.

14. Further Assurances. The Loan Parties shall execute and deliver such additional documents and take such additional action as may be reasonably requested by Agent to effectuate the provisions and purposes of this Amendment No. 2.

15. Entire Agreement. This Amendment No. 2 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.

16. Headings. The headings listed herein are for convenience only and do not constitute matters to be construed in interpreting this Amendment No. 2.

17. Counterparts. This Amendment No. 1 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 and may be executed by means of (a) an electronic signature that complies with the federal Electronic Signatures in Global and National Commerce Act, state enactments of the Uniform Electronic Transactions Act, or any other relevant and applicable electronic signatures law; (b) an original manual signature; or (c) a faxed, scanned, or photocopied manual signature. Each electronic signature or faxed, scanned, or photocopied manual signature shall for all purposes have the same validity, legal effect, and admissibility in evidence as an original manual signature. Any party delivering an executed counterpart of this Amendment No. 2 by electronic method of transmission shall also deliver an original executed counterpart of this Amendment No. 2, but the failure to do so shall not affect the validity, enforceability, and binding effect of this Amendment No. 2.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the parties hereto have caused this Amendment No. 2 to be duly executed and delivered by their authorized officers as of the day and year first above written.

EASTMAN KODAK COMPANY

By: /s/ Matthew C. Ebersold  
Name: Matthew C. Ebersold  
Title: Treasurer

EASTMAN KODAK INTERNATIONAL CAPITAL COMPANY INC.  
FAR EAST DEVELOPMENT LTD.  
KODAK (NEAR EAST), INC.  
KODAK AMERICAS, LTD.

By: /s/ Matthew C. Ebersold  
Name: Matthew C. Ebersold  
Title: Treasurer

KODAK PHILIPPINES, LTD.

By: /s/ Matthew C. Ebersold  
Name: Matthew C. Ebersold  
Title: Treasurer

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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 \_\_\_\_\_

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**EXHIBIT A**

Amended and Restated Letter of Credit Facility Agreement

See attached.

[Exhibit A]

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Exhibit A  
to  
Amendment No. 2 to Credit Agreement

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**AMENDED AND RESTATED  
LETTER OF CREDIT FACILITY AGREEMENT**

Dated as of February 26, 2021  
as amended through the Restatement Date

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

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- Exhibit G - Form of Borrowing Base Certificate
- Exhibit H - Form of Bank Products Obligations Agreement



**AMENDED AND RESTATED  
LETTER OF CREDIT FACILITY AGREEMENT**

Dated as of February 26, 2021

as amended through the Restatement Date

EASTMAN KODAK COMPANY, a New Jersey corporation (the “Borrower” or “Company”), the Guarantors (as hereinafter defined), the banks, financial institutions and other institutional lenders from time to time party hereto (the “Lenders”), 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”) agree as follows:

WHEREAS, the Borrower entered into the Letter of Credit Facility Agreement, dated as of February 26, 2021, 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, and Bank of America, N.A., Issuing Bank and Agent (as amended, supplemented or otherwise modified prior to the Restatement Date, the “Existing Credit Agreement”);

WHEREAS, as of the Restatement Date, this Agreement amends and restates the Existing Credit Agreement in its entirety and without novation and shall 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 Restatement 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):

“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.

“Acquisition” means a transaction or series of transactions resulting in (a) the acquisition of a business, division or substantially all of the assets of a Person; (b) the acquisition of record or beneficial ownership of 50% or more of the equity interests of a Person; or (c) a merger, consolidation or combination of the Borrower or a Restricted Subsidiary with another Person.

“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.

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“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 Letter of Credit Facility Agreement, as amended, restated, supplemented or otherwise modified from time to time.

“Amendment No. 2” means the Amendment No. 2 to Letter of Credit Facility Agreement, dated as of June 30, 2023, by and among the Loan Parties, the Lender party thereto and the Agent.

“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, three-eighths percent (0.375%) per annum.

“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 A 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.

“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. Without limitation of the foregoing, the Existing Bank Products shall be deemed to be Bank Products for all purposes hereunder.

“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 H, 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 Restatement Date or, if such Bank Products are established by a Lender or Affiliate of a Lender after the Restatement 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 Restatement 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.

“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 G 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.

“Borrower Deleveraging Milestone Date” means the first date after the Restatement Date on which the aggregate principal amount of the Loans, as such term is defined in the Term Loan Agreement, outstanding is less than or equal to \$200,000,000, as evidenced in a certificate of a Responsible Officer delivered to the Term Loan Agent.

“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 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.

“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 four percent (104%) 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).

“Closing Date” means February 26, 2021.

“Closing Date Transactions” shall mean, collectively, (a) the execution, delivery and performance of, the Existing Credit 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.

“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 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:

(c) 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,

(d) 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,

(e) 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),

(f) 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,

(g) 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,

(h) (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 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,

(i) any after-tax effect of income (or loss) from the early extinguishment of obligations under Hedging Agreements or other derivative instruments, or Debt,

(j) 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

(k) 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.

“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.

“Customary Recourse Exceptions” means, with respect to any Non-Recourse Debt of a Non-Recourse Project Subsidiary, exclusions from the exculpation provisions with respect to such Non-Recourse Debt for breach of representations, fraud, misapplication or misappropriation of cash, waste, voluntary bankruptcy filings, violation of loan document prohibitions against transfers of assets or ownership interests therein, tax indemnifications, willful destruction, bad faith, gross negligence and other circumstances customarily excluded by lenders from exculpation provisions or included in separate indemnification agreements in non-recourse financings, including environmental liabilities to the extent so customarily excluded.

“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 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 5.02(e) 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.

“Designated Jurisdiction” means a country or territory that is the subject of any Sanction (at the Restatement Date, the so-called Donetsk People’s Republic, the so-called Luhansk People’s Republic, the Crimea Region of Ukraine, Cuba, Iran, North Korea and Syria).

“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 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 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 90<sup>th</sup> 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 90<sup>th</sup> 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, 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 occur as a result of the transactions contemplated by the KPP Settlement Agreement solely to the extent that (i) [reserved] 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, (i) any Non-Recourse Project Subsidiary and (j) 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 (other than any Foreign Subsidiary) 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 ABL Credit Agreement” means 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.

“Existing ABL Facility” means the senior secured asset-based credit facility provided to the Company pursuant to the Existing ABL Credit Agreement.

“Existing Bank Products” means the bank products provided by Bank of America, N.A. for the account of Borrower listed on Schedule 1.01(e) hereto.

“Existing Convertible Notes” means 5.0% convertible promissory notes, in an aggregate original principal amount of \$25,000,000, issued by the Borrower, dated February 26, 2021.

“Existing Credit Agreement” has the meaning set forth in the recitals.

“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.

“Existing Term Loan Agent” means Alter Domus (US) LLC in its capacity as administrative agent pursuant to the Existing Term Loan Agreement.

“Existing Term Loan Agreement” means the Credit Agreement, dated as of February 26, 2021, among the Company, as borrower, the lenders from time to time parties thereto, and the Existing Term Loan Agent, as in effect prior to the Restatement Date.

“Existing Term Loan Facility” means the senior secured term loan facility provided to the Company pursuant to the Existing Term Loan Agreement.

“Facility Reduction Date” means August 30, 2023.



“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%).

“Fee Letter” means the Fee Letter, dated as of the Restatement Date, 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.

“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 His 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).

“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, and (b) 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)(viii); 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.

“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.

“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 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) four percent (4%) 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) \$100,000,000, until the Facility Reduction Date, and \$50,000,000 on and after the Facility Reduction Date or (b) the aggregate amount of the Commitments, as such amount may be reduced pursuant to Section 2.06.

“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; 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).

“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) the fifth anniversary of the Restatement Date, (b) ninety (90) days prior to the maturity of the Term Loan Facility as such date may be extended pursuant to the terms thereof (or the maturity date of any refinancing thereof), (c) ninety (90) days prior to the date required for the redemption of the Series B Preferred Stock (or, if the Series B Preferred Stock shall have been replaced, refinanced or otherwise retired with proceeds of any preferred equity interests or unsecured convertible debt, then ninety (90) days prior to the mandatory redemption date of such preferred equity interests and/or the mandatory redemption date or maturity date of such unsecured convertible debt, as the case may be), or (d) ninety (90) days prior to the date required for the redemption of the Series C Preferred Stock (or, if the Series C Preferred Stock shall have been replaced, refinanced or otherwise retired with proceeds of any preferred equity interests or unsecured convertible debt, then ninety (90) days prior to the mandatory redemption date of such preferred equity interests and/or the mandatory redemption date or maturity date of such unsecured convertible debt, as the case may be; 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 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.

“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).

“Non-Recourse Debt” means Debt as to which (i) no Loan Party provides credit support of any kind, or is directly or indirectly liable as a guarantor or otherwise (other than guarantees solely to the extent the provision of such guarantee is permitted under Sections 5.02(d) and (i)) and (ii) the lenders of such Non-Recourse Debt will not have any recourse to any Loan Party, in each case, except for Customary Recourse Exceptions.

“Non-Recourse Project Subsidiary” means any Subsidiary of the Borrower or any of its Subsidiaries formed after the Restatement Date for the purpose of engaging in a specific project or a series of related projects consisting of the acquisition, construction and/or improvement of fixed or capital assets and other assets specifically related thereto and/or the operation of such assets.

“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 B 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 and all Bank Product Obligations, 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; 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).

“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); and (d) 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.

“Permitted Holders” means any of (a) George Karfunkel, Renee Karfunkel, Moses Marx, Joseph Fink, Phillippe Katz, B. Thomas Golisano and Staley Cates, (b) George Karfunkel Family LLC, Congregation Chemdas Yisroel and Chesed Foundation of America (in each case, so long as no Person that is not a direct or indirect holder of an equity interest in any such entity as of the First Amendment Effective Date acquires an ownership interest in such entity after the Restatement Date for the purpose of evading the Change in Control provisions hereunder), (c) in the case of any natural person in the foregoing clause (a), such person’s spouses, children, step-children and lineal descendants or trusts established by or for any of such natural persons the ultimate beneficiaries of which are one or more of such natural persons, (d) any Person or group of Persons a majority of the voting interests of which are held directly or indirectly by one or more of the persons listed in clauses (a) and (c) above (or, in the case of a group of Persons, a Person described in this clause (d)), and (e) KLIM and any Affiliate of KLIM.

“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 of cash or Cash Equivalents made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance, healthcare and other social security laws or regulations or other applicable law;

(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) [reserved]; 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.

“Replacement ABL Facility” means any revolving or asset-based revolving, term loan and/or letter of credit facility incurred after the Restatement Date constituting a Replacement ABL Facility as such term is defined in the Term Loan Agreement as in effect on the Restatement Date.

“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 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 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.

“Restatement Date” has the meaning set forth in Amendment No. 2.

“Restatement Date Refinancings” means, collectively, (a) the termination of the Existing ABL Credit Facility and the repayment in full in cash of all existing indebtedness and other obligations of the Loan Parties under the Existing ABL Credit Facility cash (except as provided herein with respect to the Existing Letters of Credit and the Existing Bank Products) and the termination and release of all security interests and liens related thereto, (b) the amendment and restatement of the Existing Term Loan Facility pursuant to the Term Loan Agreement, the repayment in full in cash of all existing loans thereunder outstanding immediately prior to such amendment and restatement and the funding of the “Refinancing Term Loans” pursuant to the Term Loan Agreement as provided therein, and (c) the termination of the Existing Convertible Notes and the repayment in full in cash of all existing indebtedness and other obligations of the Loan Parties under the Existing Convertible Notes.

“Restatement Date Transaction Costs” means fees, premiums, expenses and other transaction costs (including original issue discount or upfront fees) payable or otherwise borne by any Loan Party and/or its Subsidiaries in connection with the Restatement Date Transactions and the transactions contemplated thereby.

“Restatement Date Transactions” means, collectively, (a) the execution, delivery and performance by the Loan Parties of this Agreement and the issuance of the Existing Letters of Credit deemed to occur hereunder on the Restatement Date, (b) the consummation of the Restatement Date Refinancings, (c) the execution, delivery and performance by the Loan Parties of the Term Loan Documents to which they are a party and the incurrence of Indebtedness thereunder on the Restatement Date, and (d) the payment of the Restatement Date Transaction Costs.

“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 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.

“Secured Parties” means, collectively, the Agent, each Lender, 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).

“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 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 B 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).

“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 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 Amended and Restated Credit Agreement, dated as of the date 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 Facility” means the senior secured term loan facility provided to the Company pursuant to the Term Loan Agreement.

“Term Loan Intercreditor Agreement” means the Intercreditor Agreement, dated as of the Restatement Date, among the 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.

“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.

“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” 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) 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, (iii) without duplication of clause (ii), the value of and investments in such Subsidiary will constitute Investments, (iv) 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 and Permitted Refinancing of the Term Loan Debt, if applicable, and shall not be designated a Restricted Subsidiary for purposes of such Debt, (v) 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, (vi) (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 (vii) 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 (vi), and containing the calculations and information required by the preceding clause (vi). 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) 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 (3) 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).

“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.

“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 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.

“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. 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 1.07, then the applicable test or covenant shall be calculated to give pro forma effect thereto in accordance with this Section 1.07.

(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 1.08. 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 Restatement 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 Restatement 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 Facility Cash Collateral; Release of LC Facility 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 four percent (104%) 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 four percent (104%) 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 F 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 four percent (104%) 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 Restatement 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.

(c) Additional Fees. Borrower shall pay to Agent, for the account of the Lenders which execute this Agreement, the fees provided for in the Fee Letter, dated of even date herewith, between Agent and Borrower, which fees shall be fully earned and payable on the Restatement Date and shall be nonrefundable in all circumstances.

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.

(i) On or prior to the Facility Reduction Date, Agent shall have received the originals of one or more Letters of Credit from the beneficiaries thereof, together with written instructions from such beneficiaries to cancel and terminate such Letters of Credit and confirming that no draw has been made, and with such other terms as Issuing Bank may require, so that after giving effect to such cancellation and termination the Stated Amount of the remaining Letters of Credit do not exceed the Letter of Credit Facility as reduced on the Facility Reduction Date.

(ii) 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 such Letter of Credit Obligation becomes payable 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 conditions precedent set forth in Section 6 of Amendment No. 2 in the reasonable determination of Agent.

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 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) 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, 2022, 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, 2022, 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 Restatement 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 Restatement 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 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, 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 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 Section 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, 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 G shall be furnished to the Agent on or before the twenty-first (21<sup>st</sup>) 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) [reserved].

(xv) Promptly upon the effectiveness thereof, copies of any amendment, supplement, waiver or other modification with respect to any of the Term Loan 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 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 D 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,

(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 re-register 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) [reserved].

(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. 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 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 Restatement 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 Restatement 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 Letter of Credit 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 (A) prior to the Borrower Deleveraging Milestone Date, \$45,000,000 and (B) on or after the Borrower Deleveraging Milestone Date, \$100,000,000, in each case, at any time outstanding,

(viii) Liens on property other than Letter of Credit Priority Collateral that secure Debt permitted by Section 5.02(d)(xi),

(ix) Liens securing any Replacement ABL Facility, to the extent permitted under the Term Loan Agreement (as in effect on the Restatement Date), provided, that, such Liens shall be subject to an intercreditor agreement in form and substance satisfactory to Agent (it being agreed that the intercreditor agreements substantially in the form of the intercreditor agreements in effect immediately prior to the Restatement Date in connection with the Existing ABL Facility to which the Agent was party shall be deemed satisfactory to the Agent),

(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 LC Facility Cash Collateral) 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 LC Facility Cash 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 assets of Non-Recourse Project Subsidiaries to secure Non-Recourse Debt,

(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 LC Facility Cash Collateral) securing obligations of the Company or any Restricted Subsidiary in an aggregate amount not to exceed (A) prior to the Borrower Deleveraging Milestone Date, \$22,500,000 and (B) on or after the Borrower Deleveraging Milestone Date, \$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 must be permitted under Section 5.02(i)(ix) and (B) Debt of any Subsidiary that is not a Loan Party owing to any Loan Party shall be permitted under Section 5.02(i)(ix),

(ii) Debt existing on the Restatement 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 and permitted by clauses (iii), (iv) and (xv) of this Section 5.02(d) at any time outstanding shall not exceed (1) prior to the Borrower Deleveraging Milestone Date, \$20,000,000 and (2) on or after the Borrower Deleveraging Milestone Date, 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: (1) prior to the Borrower Deleveraging Milestone Date, \$30,000,000 and (2) on or after the Borrower Deleveraging Milestone Date, the greater of (x) \$45,000,000 or (y) 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 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 each case in connection with any Permitted Acquisition, any permitted Investment or any Disposition of any business, assets or Equity Interests of any Restricted Subsidiary permitted under Section 5.02(e),

(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 and permitted under clauses (iii), (iv) and (xv) of this Section 5.02(d) at any time outstanding shall not exceed (1) prior to the Borrower Deleveraging Milestone Date, \$30,000,000 or (2) on or after the Borrower Deleveraging Milestone Date, the greater of (x) \$45,000,000 or (y) 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, the aggregate principal amount of such Debt shall not exceed (A) prior to the Borrower Deleveraging Milestone Date, \$22,500,000 and (B) on or after the Borrower Deleveraging Milestone Date, \$50,000,000, in each case at any time outstanding,

(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) [reserved],

(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 in each case at any time outstanding (A) prior to the Borrower Deleveraging Milestone Date, \$30,000,000 and (B) on or after the Borrower Deleveraging Milestone Date, the greater of (1) \$40,000,000 and (2) 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 permitted to be incurred hereunder; provided, that, such Guarantee by any Loan Party of any Debt of any Subsidiary that is not a Loan Party or such Guarantee by any Subsidiary that is not a Loan Party of any Debt of any Loan Party, in each case, shall be subject to Section 5.02(i),

(xxvii) Term Loan Debt in an aggregate principal amount not to exceed \$450,000,000 at any time outstanding, plus any interest paid in kind, and any Permitted Refinancing thereof,

(xxviii) Debt arising under a Replacement ABL Facility, to the extent permitted under the Term Loan Agreement (as in effect on the date hereof),

(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 Closing 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)),

(xxxii) 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,

(xxxiii) 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,

(xxxiv) 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,

(xxxv) additional Debt of Loan Parties and any Restricted Subsidiaries not to exceed \$60,000,000 at any time outstanding,

(xxxvi) issuance of Disqualified Stock, and

(xxxvii) (A) any Non-Recourse Debt of Non-Recourse Project Subsidiaries and (B) obligations of the Borrower or its Restricted Subsidiaries pursuant to Customary Recourse Exceptions in connection with such Non-Recourse Debt.

(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) [reserved],

(vi) Dispositions of assets to the Borrower or a Restricted Subsidiary, provided, that, any such sales, transfers or Dispositions of assets shall be made in compliance with Section 5.01(k),

(vii) 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 (A) 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 (B) 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 5.02(e), 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 (vii) shall not permit Dispositions of the Equity Interests of any Subsidiary other than (1) in connection with the sale of substantially all Equity Interests of such Subsidiary permitted under this Agreement.

Notwithstanding anything to the contrary herein, (i) all Dispositions permitted hereby shall be made for fair value and (ii) at least seventy-five percent (75%) consideration consisting of Cash and Cash Equivalents; 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 5.02(e)(vii), in an amount up to \$5,000,000 in the aggregate shall be deemed cash for these purposes.

(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 Restatement 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 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

(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) 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 prepayment of Term Loan Debt in a principal amount at least equal to the face amount of preferred stock being repurchased,

(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 Closing 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 Closing 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 Closing 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 issue 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 Restatement 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) Investments in Non-Recourse Project Subsidiaries consisting solely of obligations pursuant to Customary Recourse Exceptions in connection with Non-Recourse Debt,

(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) in (i) joint ventures or Non-Recourse Project Subsidiaries not constituting any Unrestricted Subsidiary and (ii) Unrestricted Subsidiaries to fund operating or capital expenses in the ordinary course of business and consistent with past practice; provided, that, (A) any Investment by a Loan Party to a Person that is not a Loan Party must be for a bona fide business purpose, (B) 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, (C) immediately before and after giving effect to such Investment, no Default or Event of Default shall have occurred and be continuing, and (D) 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, Non-Recourse Project Subsidiaries or Unrestricted Subsidiaries pursuant to this clause (ix) shall not exceed in the aggregate (1) prior to the Borrower Deleveraging Milestone Date, \$60,000,000 and (2) on or after the Borrower Deleveraging Milestone Date, \$75,000,000, in each case 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 (D) 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, Non-Recourse Project Subsidiaries 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) and to the extent any Unrestricted Subsidiary is designated as a Restricted Subsidiary that becomes a Loan Party, or any Restricted Subsidiary that was not a Loan Party otherwise becomes a Loan Party, any Investment previously made in such Unrestricted Subsidiary or Restricted Subsidiary under the cap set forth in clause (D) of the proviso above shall be deemed an Investment in a Loan Party and shall no longer count against such cap),

(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 Restatement Date (other than with Intellectual Property) 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, and (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 LC Facility Cash Collateral) is equal to or greater than \$450,000,000 both immediately prior to and after giving effect to such Investment,

(xvii) other Investments (other than with Intellectual Property) in an aggregate amount not to exceed (A) prior to the Borrower Deleveraging Milestone Date, \$20,000,000 and (B) on or after the Borrower Deleveraging Milestone Date, \$30,000,000, in each case 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, and

(xviii) Investments in the form of 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 or any Term Loan 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), including any Debt of Foreign Subsidiaries permitted by Sections 5.2(d)(xvii) and (xxxiii); provided, that, with respect to any intercompany Debt permitted under Section 5.2(d)(i), (1) such regularly scheduled payments shall be made in the ordinary course of business and consistent with past practices, and (2) with respect to any intercompany Debt owed by any Loan Party to any Subsidiary organized or formed in China, after giving effect to such payment, the sum of the aggregate amount of Cash and Cash Equivalents of the Loan Parties shall not be less than (x) with respect to any such repayment on or prior to December 31, 2024, \$30,000,000 and (y) with respect to any such repayment after December 31, 2024, \$50,000,000,

(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),

(C) any voluntary prepayments of the Term Loan Debt, Series B Preferred Stock, Series C Preferred Stock or unsecured Debt,

(D) Non-Recourse Project Subsidiaries may make payments in respect of Non-Recourse Debt, or

(E) 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 (x) the Term Loan Documents except as permitted by the Term Loan Intercreditor Agreement, or (y) any Replacement ABL Facility except as permitted by the applicable 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 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 Closing Date in the case of the 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 Borrower 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 Closing Date in the case of the 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 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 Closing 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).

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 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 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; provided, that, this Section 6.01(d) shall not apply to any Debt by and among the Borrower and/or one or more of its directly or indirectly wholly-owned Subsidiaries; 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 Facility Cash Collateral is not less than one hundred four percent (104%) 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 Facility Cash Collateral is not less than one hundred four percent (104%) 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 Facility 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;

Tenth, to payment of the Bank Product Obligations ratably among the Bank Product Providers in proportion to the respective amounts described in this clause Tenth 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 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 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 D 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 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) [reserved].

(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) 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

SECTION 8.14.

(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 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 8.15. 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 8.16. 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 8.17. 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 as of the Restatement Date 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 A 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. Reaffirmation; Amendment and Restatement; No Novation.

(a) Each Loan Party acknowledges, confirms and agrees that (i) 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, (ii) Agent has had and shall on and after the date hereof continue to have, for itself and the benefit of the other Secured Parties, 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, (iii) 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 (iv) the Existing Credit Agreement and each of the other Loan Documents remain in full force and effect and are hereby ratified and confirmed.

(b) On and after the Restatement Date, 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 Existing Letters of Credit 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 as of the Restatement Date 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 Restatement 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:

*[Signature Page to Letter of Credit Facility Agreement]*

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BANK OF AMERICA, N.A., as Agent, Issuing Bank and Lender

By: \_\_\_\_\_  
Name:  
Title:

*[Signature Page to Letter of Credit Facility Agreement]*

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**SCHEDULE I**  
**COMMITMENTS**

**COMMITMENTS**

Lender	Letter of Credit Commitment
Bank of America, N.A.	\$100,000,000.00 until Facility Reduction Date, and \$50,000,000 on and after such date

**AMENDMENT TO LETTER AGREEMENT**

This AMENDMENT (this “**Amendment**”) is entered into as of June 30, 2023, by and among Eastman Kodak Company, a New Jersey corporation (the “**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**”).

**RECITALS**

A. Reference is made to (i) that certain 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**”), by and among the 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**”) and (ii) that certain letter agreement, dated as of February 26, 2021 (as amended, restated, amended and restated, supplemented or otherwise modified from time to time, the “**Letter Agreement**”) by and among the Company and KLIM.

B. The Company and the Lenders desire to amend and restate the Credit Agreement, pursuant to an amendment entered into on the date hereof (the “**Credit Agreement Amendment**”), to be effective on the First Amendment Effective Date (as defined in the Credit Agreement Amendment).

C. In connection with the Credit Agreement Amendment and subject to the terms and conditions set forth in this Amendment, the Company and KLIM have agreed to amend certain provisions of the Letter Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing, the terms, covenants and conditions contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. Definitions.** Unless otherwise defined in this Amendment, capitalized terms used herein shall have the meanings ascribed to such terms in the Letter Agreement or the Credit Agreement, as applicable.

**SECTION 2. Amendments.** Subject to the terms and conditions set forth in this Amendment, as of the Amendment Effective Date (as defined below):

The first two paragraphs of the Letter Agreement are hereby amended and restated in their entirety as follows (with strikethrough text showing the deletions and double underlined text showing the insertions):

“Reference is made to that certain Credit Agreement, dated as of February 26, 2021 and as amended and restated pursuant to that certain First Amendment to Credit Agreement (the “**Credit Agreement Amendment**”) on the First Amendment Effective Date (as defined in the Credit Agreement~~the date hereof~~ (as amended and restated, 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**") ~~entered~~desire to enter into this letter agreement (as amended, 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:"

The second sentence of Section 1.(a) of the Letter Agreement is hereby amended to delete the following text:

"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";

and replace it with the following text:

"such time as KLIM ceases to hold at least \$200,000,000 of the original principal amount of the Loans outstanding in respect of the Credit Agreement".

The fifth sentence of Section 1.(a) of the Letter Agreement is hereby amended to delete the following text:

"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";

and replace it with the following text:

"at such time as KLIM ceases to hold at least \$200,000,000 of the original principal amount of the Loans outstanding in respect of the Credit Agreement".

Section 9 of the Letter Agreement is hereby amended and restated by adding the following paragraph in its entirety as a new section 9(d):

“(d) The Board has ratified and approved, and provided to KLIM evidence of such ratification and approval reasonably satisfactory to KLIM, of certain previous acquisitions of the outstanding voting stock of the Company by certain funds affiliated with KLIM, as described on the Schedule 13D filed by KLIM with the U.S. Securities and Exchange Commission on March 28, 2022, for the purposes of the New Jersey Shareholders Protection Act (NJBCA Section 14A:10A-1 et seq.).”

**SECTION 3. Representations of the Company.** To induce KLIM to execute and deliver this Amendment, the Company represents and warrants to KLIM as of the Amendment Effective Date (as defined below) that:

(a) the execution, delivery and performance by the Company of this Amendment (i) are within its organizational powers, and have been duly authorized by all necessary organizational actions and, if required, actions by equity holders; (ii) does not violate any provision of the organizational documents of the Company; (iii) requires no order, consent, approval, license, authorization or validation of, or filing, recording or registration, except for those as have been obtained or will be obtained on or before the Amendment Effective Date; (iv) does not violate any Requirement of Law applicable to the Company; and (v) does not violate or result in a default under any indenture, agreement or other instrument binding upon the Company or the assets of the Company, or give rise to a right thereunder to require any payment to be made by the Company;

(b) this Amendment has been duly executed and delivered by the Company and constitutes, when executed and delivered by the Company, a legal, valid and binding obligation of the Company, enforceable against the Company 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; and

(c) after giving effect to this Amendment, no Default or Event of Default has occurred and is continuing or will immediately result from the consummation of the transactions contemplated by this Amendment.

**SECTION 4. Effectiveness.** This Amendment shall become effective on the date (such date of such effectiveness being referred to herein as the “**Amendment Effective Date**”) on which each of the following conditions precedent have been satisfied):

(a) KLIM shall have received duly executed signature pages for this Amendment signed by the Company;

(b) the representations and warranties of the Company contained in this Amendment shall be true and correct in all material respects (or, if such representation or warranty is subject to a materiality or Material Adverse Effect qualification, in all respects) on and as of the Amendment Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct in all material respects (or, if such representation or warranty is subject to a materiality or Material Adverse Effect qualification, in all respects) as of such earlier date; and



(c) the First Amendment Effective Date (as defined the Credit Agreement Amendment) shall have occurred.

**SECTION 5. Effect of Agreement.** The execution, delivery and effectiveness of this Amendment shall not directly or indirectly (i) create any obligation to make any Loans or other extensions of credit, (ii) constitute a consent or waiver of any future violations of any provisions of the Letter Agreement or any Loan Document, (iii) constitute a novation of the Letter Agreement or any Loan Document, (iv) other than the amendment to the Letter Agreement set forth in Section 2 hereof, impair, limit, prejudice, amend or modify any terms, conditions, obligations, covenants or agreements of the Letter Agreement or any Loan Document, or any right, power or remedy of any Lender, whether such right, power or remedy exists now or in the future, or (v) constitute a course of dealing or other basis for altering any obligations under the Letter Agreement, any Loan Document or any other contract or instrument. Except as expressly set forth herein, KLIM reserves all of its rights, powers, and remedies under the Letter Agreement, the Credit Agreement and applicable law.

**SECTION 6. Governing Law; Submission to Jurisdiction.** Section 12 of the Letter Agreement is incorporated herein, *mutatis mutandis*, as if a part hereof.

**SECTION 7. Counterparts.** Section 11 of the Letter Agreement is incorporated herein, *mutatis mutandis*, as if a part hereof.

**SECTION 8. Severability.** Section 14 of the Letter Agreement is incorporated herein, *mutatis mutandis*, as if a part hereof.

**SECTION 9. Amendments.** This Amendment may not be amended, and no provision hereof may be waived, except by an instrument signed by KLIM and the Company.

[Signature pages to follow]

IN WITNESS WHEREOF, this Amendment has been executed by the parties hereto as of the date first written above.

**COMPANY:**

**EASTMAN KODAK COMPANY**

By: /s/ Matthew C. Ebersold

Name: Matthew C. Ebersold

Title: Treasurer

[KODK - Signature Page to Side Letter Amendment]

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**KLIM:**

**KENNEDY LEWIS INVESTMENT MANAGEMENT LLC**

By: /s/ Anthony Pasqua

Name: Anthony Pasqua

Title: Partner

[KODK - Signature Page to Side Letter Amendment]