

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

FORM 8-K  
CURRENT REPORT  
PURSUANT TO SECTION 13 OR 15(D) OF THE  
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): December 22, 2023



**Ascent Industries Co.**

(Exact name of registrant as specified in its charter)

<b>Delaware</b> (State or other jurisdiction of incorporation or organization)	<b>0-19687</b> (Commission File Number)	<b>57-0426694</b> (I.R.S. Employer Identification No.)
<b>1400 16th Street, Suite 270, Oak Brook, Illinois</b> (Address of principal executive offices)	<b>(630) 884-9181</b> (Registrant's telephone number, including area code)	<b>60523</b> (Zip Code)
<b>Inapplicable</b> (Former name or former address if changed since last report)		

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

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

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

<b><u>Title of each class</u></b>	<b><u>Trading Symbol</u></b>	<b><u>Name of exchange on which registered</u></b>
Common Stock, par value \$1.00 per share	ACNT	NASDAQ Global Market

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405 of this chapter) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2 of this chapter).

Emerging growth company ☐

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

**Item 1.01 Entry into a Material Definitive Agreement.****Specialty Pipe & Tube, Inc. Divestiture**

On December 22, 2023, Ascent Industries Co. (“Ascent”) and its wholly-owned subsidiary Specialty Pipe & Tube, Inc. (“SPT”) entered into an Asset Purchase Agreement (the “Purchase Agreement”) pursuant to which Ascent and SPT sold substantially all of the assets primarily related to SPT to Specialty Pipe & Tube Operations, LLC, a Delaware limited liability company (the “Purchaser”). The consideration for the transaction was approximately \$55 million of cash proceeds subject to certain closing adjustments. The transaction closed on December 22, 2023.

The Purchase Agreement contains customary representations, warranties and limited indemnification by Ascent and SPT. Ascent and Purchaser also entered into a Transition Services Agreement (the “TSA”) and an Employee Leasing Agreement (the “ELA”) each dated December 22, 2023, pursuant to which Ascent has agreed to provide certain transition services and to lease certain employees to Purchaser immediately after the closing for certain agreed upon transition periods.

The foregoing description does not purport to be complete and is qualified in its entirety by reference to (a) the other items of this Current Report on Form 8-K and (b) the Purchase Agreement and the TSA and ELA, which are filed herewith as Exhibits 2.1, 10.1 and 10.2, respectively, and are incorporated by reference herein. A copy of the Purchase Agreement has been included to provide investors with information regarding its terms. It is not intended to provide any other factual information about the parties. In particular, the Purchase Agreement contains representations, warranties and covenants that were made as of specific dates and only for the benefit of the parties to the Purchase Agreement and are qualified by information included in confidential disclosure schedules. Moreover, certain representations, warranties and covenants in the Purchase Agreement were made for the purpose of allocating risk between the parties rather than establishing matters as facts. Accordingly, the representations, warranties and covenants in the Purchase Agreement should not be relied upon as characterizations of the actual state of facts about the parties to the agreement.

**Credit Facility Amendment**

On December 22, 2023, Ascent also entered into a Limited Consent, Second Amendment to Credit Agreement and Omnibus Amendment to Loan Documents with BMO Bank N.A. and the other lenders under Ascent’s credit facility (the “Credit Facility Amendment”). The Credit Facility Amendment contains a consent for the SPT divestiture described above, released the lien on the assets of SPT and removed SPT as a loan party. The Credit Facility Amendment also reduced the maximum revolving loan commitment under the credit facility from \$105 million to \$80 million, and increased the interest rate for the credit facility from SOFR plus an interest rate margin of between 1.60% and 1.70% to SOFR plus an interest rate margin of between 1.85% and 2.10%, depending on average availability under the credit facility and Ascent’s consolidated fixed charge coverage ratio. As required by the Credit Facility Amendment, Ascent used the proceeds from the SPT divestiture to prepay in full the term loan in the original principal amount of \$5 million under the credit facility and used the remaining proceeds to prepay in part the revolving loans under the credit facility.

**Item 2.01 Completion of Acquisition or Disposition of Assets.**

The information included under Item 1.01 of this report is hereby incorporated herein by reference..

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

The information included under Item 1.01 of this report is hereby incorporated herein by reference.

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## **Forward Looking Statements**

This report may include “forward-looking statements” within the meaning of the Private Securities Litigation Reform Act of 1995 and other applicable federal securities laws. All statements that are not historical facts are forward-looking statements. Forward looking statements can be identified through the use of words such as “estimate,” “project,” “intend,” “expect,” “believe,” “should,” “anticipate,” “hope,” “optimistic,” “plan,” “outlook,” “should,” “could,” “may” and similar expressions. The forward-looking statements are subject to certain risks and uncertainties which could cause actual results to differ materially from historical results or those anticipated. Readers are cautioned not to place undue reliance on these forward-looking statements and to review the risks as set forth in more detail in Ascent Industries Co.’s Securities and Exchange Commission filings, including our Annual Report on Form 10-K, which filings are available from the SEC or on our website. Ascent Industries Co. assumes no obligation to update any forward-looking information included in this report.

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

#### **(b) Pro Forma Financial Information**

The unaudited pro forma condensed consolidated statements of income (loss) of Ascent and the unaudited pro forma consolidated balance sheet of Ascent for the nine months ended September 30, 2023, after giving pro forma effect to sale and transfer of substantially all of the assets primarily related to SPT to Purchaser, and notes to the unaudited pro forma condensed financial statements is filed as Exhibit 99.2 to this Current Report on Form 8-K and incorporated by reference herein. This information should be read in conjunction with the historical financial statements and notes of Ascent included in the Quarterly Report on Form 10-Q for the period ended September 30, 2023 and in the Annual Report on Form 10-K for the fiscal year ended December 31, 2022.

#### **(d) Exhibits**

<u>Exhibit Number</u>	<u>Description</u>
<a href="#"><u>2.1*</u></a>	<a href="#"><u>Asset Purchase Agreement by and among Specialty Pipe &amp; Tube Operations LLC, Specialty Pipe &amp; Tube, Inc., and Ascent Industries Co., as the sole shareholder of Specialty Pipe &amp; Tube, Inc. dated as of December 22, 2023</u></a>
<a href="#"><u>10.1*</u></a>	<a href="#"><u>Transition Services Agreement between Specialty Pipe &amp; Tube Operations LLC and Ascent Industries Co. dated as of December 22, 2023</u></a>
<a href="#"><u>10.2*</u></a>	<a href="#"><u>Employee Leasing Transition Services Agreement between Specialty Pipe &amp; Tube Operations LLC and Ascent Industries Co. dated as of December 22, 2023</u></a>
<a href="#"><u>10.3</u></a>	<a href="#"><u>Limited Consent, Second Amendment to Credit Agreement and Omnibus Amendment to Loan Documents with BMO Bank N.A. and the other lenders party thereto dated as of December 22, 2023</u></a>
<a href="#"><u>99.1</u></a>	<a href="#"><u>Press Release dated December 26, 2023</u></a>
<a href="#"><u>99.2</u></a>	<a href="#"><u>Unaudited pro forma condensed balance sheet of Ascent as of September 30, 2023, unaudited pro forma condensed statement of income (loss) for the nine months ended September 30, 2023, and consolidated statements of income (loss) for the years ended December 31, 2022 and 2021 and notes to the unaudited pro forma condensed financial statements</u></a>
104	Cover Page Interactive Data File (embedded within the Inline XBRL document)

\*Portions of the exhibit, marked by brackets, have been omitted because the omitted information (i) is not material and (ii) is the type that the Company treats as private or confidential.

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**SIGNATURE**

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

Dated: December 29, 2023

**ASCENT INDUSTRIES CO.**

By: /s/ William S. Steckel

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William S. Steckel

Chief Financial Officer

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS AGREEMENT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [\*\*\*] INDICATES THAT INFORMATION HAS BEEN REDACTED.

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**ASSET PURCHASE AGREEMENT**

**by and among**

**SPECIALTY PIPE & TUBE OPERATIONS LLC,**

**SPECIALTY PIPE & TUBE, INC.,**

**AND**

**ASCENT INDUSTRIES CO., AS THE SOLE SHAREHOLDER OF SPECIALTY PIPE & TUBE, INC.**

**Dated as of December 22, 2023**

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## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”) is made and entered into this 22nd day of December, 2023, by and among Specialty Pipe & Tube Operations LLC, a Delaware limited liability company (“Purchaser”), Specialty Pipe & Tube, Inc., a Delaware corporation (“SPT” or “Company”), and Ascent Industries Co., a Delaware corporation (the “Seller” and together with the Purchaser and Company, collectively, the “Parties” and each individually, a “Party”).

### RECITALS

**WHEREAS**, Company is engaged in the Business (as defined below).

**WHEREAS** Seller owns all of the issued and outstanding equity securities of SPT and manages certain operational and financial processes of the Business on behalf of the Company;

**WHEREAS**, Seller and Company wish to sell and assign to Purchaser, and Purchaser wishes to purchase and assume from each Seller and Company, substantially all the assets, and certain specified liabilities, of the Business, subject to the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the foregoing, the representations, warranties, covenants and mutual agreements hereinafter contained, and for other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

### AGREEMENT

#### **ARTICLE I DEFINITIONS AND CONSTRUCTION**

**Section 1.1 Definitions.** Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms as set forth below.

“*Affiliate*” of a Person shall mean any other Person that directly or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. The term “control” (including the terms “controlled by” and “under common control with”) shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by Contract or otherwise.

“*Benefit Plan*” shall mean (a) each “employee benefit plan” (as defined in Section 3(3) of ERISA or any comparable provision of any other applicable Law), including but not limited to each pension, retirement, 401(k), profit-sharing, IRA savings, health or welfare, bonus, deferred compensation, equity or equity-based, severance, retention, separation, employment, consulting, change-of-control, salary continuation, vacation, sick leave, paid time off, fringe benefit, incentive, or other benefit or compensation plan, policy, program, agreement, Contract or arrangement that is sponsored, maintained, administered, contributed to (or required to be contributed to) in connection with the Business or on behalf of the Business Employees, or to which or in which the Business Employees or their dependents participates or that provides benefits to one or more present or former employees, directors, agents, or independent contractors of the Business, and (b) any other arrangement, obligation, plan, program or practice, whether or not legally enforceable, to provide benefits or compensation, other than currently-paid salary, as compensation for services rendered, to one or more present or former employees, directors, agents, or independent contractors of the Business, or to which or in which the Business Employees or their dependents contributes or participates, including employment agreements, offer letters, severance policies, programs or agreements, post-employment arrangements, change in control agreements, executive compensation arrangements, deferred compensation arrangements, incentive arrangements,

consulting or other compensation arrangements, bonus plans, stock option, stock grant or stock purchase plans, tuition reimbursement programs or scholarship programs, Section 529 plans, health or medical benefits, insurance (including self-insurance), disability or sick leave, any plans subject to Section 125 of the Code or any comparable provision of any other applicable Law, any plans providing benefits or payments in the event of a change of ownership or control, and each other employee benefit plan, fund, program, agreement or arrangement.

“*Binder Agreement*” shall mean that certain binder agreement attached hereto as Exhibit B and entered into on or prior to the Closing Date by and between Purchaser and the Insurer pursuant to which the Insurer has committed, subject to the satisfaction of the conditions set forth therein, to issue the R&W Insurance Policy to Purchaser as of the Closing Date.

“*Board of Directors*” shall mean the Board of Directors of the Company.

“*Business*” shall mean the global distribution of heavy wall seamless steel pipe and tubing. In no event shall Business include all or any portion of the Unrestricted Businesses.

“*Business Day*” shall mean a day other than a Saturday, Sunday or other day on which commercial banks in the New York, New York, are authorized or obligated by Law or executive Order to close.

“*Business Employee*” means any individual employed by the Company or Seller exclusively in connection with the Business as defined in Section 4.16(a), except as may otherwise be provided in this Agreement.

“*CARES Act*” shall mean the Coronavirus Aid, Relief, and Economic Security Act (Pub. L. 116-136), as amended and/or extended, including but not limited to the amendments effected by the Consolidated Appropriations Act of 2021 (together, in each case, with all rules and regulations and guidance issued by any Governmental Entity with respect thereto).

“*Closing Cash*” shall mean as of any applicable time of determination, the Company’s cash on hand and actual cash (bank) balances and cash equivalents, which shall be (a) increased by any inbound (to the Company) but unsettled checks, drafts and wire transfers, (b) reduced by (i) any restricted cash deposits (including securities deposits), restricted cash in reserve accounts, restricted cash escrow accounts held in the name of the Company, custodial cash and cash otherwise similarly subject to any legal or contractual restriction on the ability to freely transfer or use such cash for any lawful purpose, and any (ii) any outbound but outstanding uncleared checks, drafts, ACHs, or wire transfers issued on an account held in the name of the Company, and (c) adjusted for any other proper reconciling items, in each case, determined in accordance with Company GAAP. For the avoidance of doubt, Closing Cash (y) may be a positive or negative amount and (z) shall not include any amounts to the extent otherwise included as a current asset or current liability in the calculation of Working Capital or included in the calculation of Indebtedness, as finally determined.

“*Closing Indebtedness*” shall mean all Indebtedness of the Company or relating to the Purchased Assets that remains unpaid as of the Closing (but only to the extent any such Indebtedness includes an Excluded Liability that becomes a Liability of the Purchaser).

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

“*Collective Bargaining Agreement*” has the meaning set forth in Section 4.11(x).

“*Company Fundamental Representations*” shall mean the representations and warranties of Company set forth in Section 4.1 (Organization and Qualification), Section 4.2 (Power and Authority),

Section 4.3 (Title to Purchased Assets), Section 4.4 (No Subsidiaries), Section 4.19 (Taxes), and Section 4.28 (Brokers).

“*Company GAAP*” shall mean GAAP, along with the exceptions to GAAP set forth on Schedule 4.6(a).

“*Consent*” shall mean any approval, consent, ratification, permission, waiver, filing, clearance, registration or authorization from any Person other than a Governmental Entity.

“*Contract*” shall mean any agreement, contract, subcontract, executory purchase order, instrument, note, bond, mortgage, indenture, deed of trust, lease, license, Permit, or other binding arrangement, commitment, authorization or obligation between two or more parties, whether written or oral, including any amendment or modification thereto, in each case to which Company or Seller (or one of its Affiliates) is a party or is bound and related primarily to the conduct of the Business or the operation of the Purchased Assets.

“*COVID-19*” shall mean SARS-CoV-2 (severe acute respiratory syndrome coronavirus 2), coronavirus disease or COVID-19.

“*Deductible*” means that amount set forth on Schedule 1 of the Disclosure Schedules.

“*Director*” shall mean each Director on Company’s Board of Directors.

“*Disclosure Schedules*” shall mean the Disclosure Schedules delivered by the Seller concurrently with the execution and delivery of this Agreement.

“*Encumbrance*” shall mean any mortgage, deed of trust, pledge, charge, lien, hypothecation, encumbrance, security interest, voting Contract, judgement, option, proxy, escrow, preemptive right, right of first refusal or first offer, transfer restriction, preference, priority, easement, covenant, rights of way or other similar encumbrance of any kind or nature.

“*Environmental Claims*” shall mean any Legal Proceeding by a Governmental Entity or other Person or Environmental Notice alleging liability resulting from: (a) the presence, release of, or exposure to, any Hazardous Materials; or (b) any actual or alleged non-compliance or Liability with any Environmental Law.

“*Environmental Laws*” shall mean any and all federal, state or local Laws, statutes, ordinances, rules, orders, Permits, standards or requirements (including consent decrees, judicial decisions, judgments, injunctions and administrative orders issued or approved thereunder), together with all related amendments and implementing regulations, and all common law, relating to or imposing liability or standards of conduct (including disclosure or notification) concerning the protection of human health or the environment, industrial hygiene or unsafe conditions including, but not limited to, those relating to the generation, manufacture, storage, handling, transportation, disposal, release, emission or discharge of Hazardous Materials (as hereinafter defined), those in connection with the construction, fuel supply, power generation and transmission, waste disposal or any other operations or processes relating to real properties, and those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about real properties. Environmental Laws also shall include, but not be limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Emergency Planning and Community Right-to-Know Act of 1986, the Hazardous Materials Transportation Act, the Resource Conservation and Recovery Act, the Solid Waste Disposal Act, the Clean Water Act, the Clean Air Act, the Toxic Substance Control Act, the Safe Drinking Water Act, the Occupational Safety and Health Act, and all regulations adopted in respect to the foregoing Laws, all as previously and in the future to be amended.

“*Environmental Notice*” shall mean any written directive, notice of violation or infraction, or notice relating to actual or alleged non-compliance with any Environmental Law.

“*Environmental Permits*” shall mean any Permit issued, granted, given, authorized by or made pursuant to Environmental Law.

“*Equity Interests*” shall mean any: (a) partnership interests; (b) membership interests or units; (c) shares of capital stock; (d) other interest or participation that confers on a Person the right to receive a share of the profits and losses of, or distribution of assets of, the issuing entity; (e) subscriptions, calls, warrants, options, or commitments of any kind or character relating to, or entitling any Person to purchase or otherwise acquire membership interests or units, capital stock, or any other equity securities; (f) securities convertible into or exercisable or exchangeable for partnership interests, membership interests or units, capital stock, or any other equity securities; or (g) any other equity interest classified as an equity security of a Person.

“*ERISA*” shall mean the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

“*ERISA Affiliate*” shall mean any Person that, together with the Company, is or was at any time treated as a single employer under Section 414 of the Code, Section 4001 of ERISA and any general partnership of which the Company is or has been a general partner.

“*Escrow Agent*” shall mean PNC Bank, National Association.

“*Escrow Agreement*” shall mean the Escrow Agreement among the Seller, Purchaser and the Escrow Agent, substantially in the form attached hereto as Exhibit D.

“*Escrow Amount*” shall mean that amount set forth on Schedule 1 of the Disclosure Schedules.

“*Exculpated Party*” shall mean Seller, each current or former Director and each current or former officer of the Company, together with their respective Affiliates.

“*Fundamental Representations*” shall mean the Purchaser Fundamental Representations and Company Fundamental Representations, collectively.

“*GAAP*” shall mean United States generally accepted accounting principles in effect from time to time, consistently applied.

“*Governmental Authorization*” shall mean any Permit, license, certificate of authority, certificate, consent, notice, approval, Order, authorization, clearance, confirmation, endorsement, waiver, designation, declaration, registration, or qualification issued, granted, given or otherwise made available by or under the authority of any Governmental Entity or pursuant to any Law or any right under any Contract with any Governmental Entity.

“*Governmental Entity*” shall mean any (a) nation, principality, state, commonwealth, province, territory, municipality, district or other jurisdiction of any nature, (b) federal, state, local municipal, or foreign government or political subdivision thereof, or any agency or instrumentality of such government or political subdivision, including any quasi-governmental authority or any nature (including any department, bureau, branch, office, council, commission, representative or official), (c) any multi-national organization or body, (d) any regulatory or administrative agency, branch or other body charged with the responsibility or vested with the authority to administer or enforce any Law, or (e) any arbitrator, court, authority or tribunal of competent jurisdiction.

“*Hazardous Materials*” shall mean any material, substance or waste that is listed, regulated, classified or otherwise defined as “hazardous,” “toxic,” or “radioactive,” (or words of similar intent or meaning), or which can give rise to liability, under applicable Environmental Law, including but not limited to any petroleum or petroleum products, radioactive materials, urea formaldehyde foam insulation, transformers or other equipment that contain dielectric fluid containing regulated levels of polychlorinated biphenyls (PCBs) and radon gas, asbestos or asbestos-containing material, polychlorinated biphenyls, corrosive, reactive, flammable or explosive substances, or pesticides.

“*Indebtedness*” shall mean: (a) any indebtedness or other obligation for borrowed money, whether current, short-term or long-term, secured or unsecured, and all accrued interest, premiums, penalties and other obligations relating thereto; (b) any indebtedness evidenced by any note, bond, including surety bond, debenture or other security; (c) any Liability with respect to interest rate swaps, collars, caps and similar hedging obligations; (d) all obligations of the Company as lessee under leases which constitute capital leases under GAAP (which for clarification shall not include any of the Real Property Leases); (e) future payment obligations in connection with the advance acceptance of goods or services (other than trade payables incurred in the ordinary course of business) and any customer deposits for future work; (f) any obligations in respect of banker’s acceptances or letters of credit; (g) any obligations for earn outs or other similar payments owed in connection with any acquisitions; (h) any payments owed as a result of a change of control, or otherwise, as a result of the consummation of the Transactions, including payments due under any Contract for Debt, employment agreements or compensation and benefit plans and programs and the employer portion of any payroll Taxes imposed in connection therewith; (i) all employee obligations related to deferred compensation, phantom stock obligations or any similar types of payments (other than base salaries payable), including, without limitation, all unfunded or underfunded obligations under the Benefit Plans; (j) all deferred revenue and collections in excess of earnings; (k) any obligations of a Company in respect of personal or other non-business-related expenses of Seller; (l) all accrued payroll, commissions and obligations (including for Taxes) relating thereto; (m) any unpaid Taxes of the Company deferred pursuant to the CARES Act; (n) all accrued but unpaid income Taxes of the Company for any Pre-Closing Tax Periods due on a Tax Return first required to be filed after the Closing Date (taking into account applicable extensions), provided that the amount of such income Taxes shall (i) take into account any income Tax deduction resulting from the Transactions, and (ii) not be less than zero; (o) all obligations under conditional sale or other title retention agreements; (p) credit card expenses and past due payables (excluding credit card payables paid in full each billing cycle where the incurrence and payment of which is consistent with past practice); and (q) any guaranty of any other Person for the obligations and indebtedness set forth in subsections (a) through (q) herein. For the avoidance of doubt, “Indebtedness” shall not include any (x) indebtedness or other Liabilities or obligations that are included in the calculation of Working Capital including, without limitation (1) all Liabilities relating to any commissions or bonuses, including, without limitation, with respect to the Company, all bonuses and commissions under any sales commission plan or holiday bonus plan that are formally accrued for by the Company in respect of any current employee, service provider or officer and any payroll Taxes payable in connection therewith and (2) all Liabilities for accrued time off, including vacation pay, that are formally accrued for by the Company in respect of any current employee, service provider or officer and any payroll Taxes payable in connection therewith, (y) any Assumed Liability or Liabilities of the Purchaser or (z) Transaction Expenses.

“*Indemnified Party*” shall mean any party making an Indemnification Claim as permitted in accordance with Article VII of this Agreement.

“*Indemnifying Party*” shall mean the Party against whom an Indemnification Claim is asserted in accordance with Article VII of this Agreement.

“*Indemnity Escrow Account*” shall mean the indemnity escrow account established by the Escrow Agent pursuant to the Escrow Agreement.

“*Insurer*” shall mean CFC Underwriting Ltd., in its capacity as the insurer under the R&W Insurance Policy.

*“Intellectual Property”* shall mean all United States, foreign, multi-national and other intellectual property and proprietary rights of any kind, including all: (a) Patents; (b) Trademarks; (c) copyrightable works (whether or not registered), copyrights and all applications, registrations and renewals in connection therewith; (d) Trade Secrets; (e) Software and Source Code; (f) internet domain names, IP addresses, social media accounts and websites and the images, videos and data contained therein; (g) copies and tangible embodiments of the foregoing (in whatever form or medium); (h) other proprietary, intellectual property and related proprietary rights; and (i) rights to past, present or future claims or causes of action arising out of or related to any infringement, dilution, misappropriation, improper disclosure or other violation of any of the foregoing.

*“Intellectual Property Agreements”* means all licenses, sublicenses, consent to use agreements, settlements, coexistence agreements, covenants not to sue, waivers, releases, permissions and other Contracts, whether written or oral, relating to any Intellectual Property that is used or held for use in the conduct of the Business as currently conducted to which Company or Seller on behalf of Company is a party, beneficiary or otherwise bound.

*“Intellectual Property Assets”* means all Intellectual Property that is owned by Company and used or held for use in the conduct of the Business as currently conducted.

*“Inventory”* means all inventory, finished goods, raw materials, work in progress, packaging, supplies, parts and other inventories of the Business.

*“Knowledge of Company”* or *“Company’s Knowledge”* (and similar phrases) shall mean the actual knowledge of each of Steve Baroff, Mark McAllister, Ron Lenhart, Kenny Herring, Bill Steckel and Doug Tackett.

*“Law”* shall mean any statute, legislation, constitution, law, ordinance, regulation, rule, code, constitution, treaty, common law, decree, proclamation, treaty, convention, guidance, directive, pronouncement, requirement, specification, decision, opinion or interpretation issued, enacted, adopted, passed, approved, promulgated, made, implemented or otherwise put into effect by or under any Governmental Entity or non-Governmental Entity with authority under the Law.

*“Legal Proceeding”* shall mean any action, claim, complaint, charge, demand, grievance, suit, litigation, proceeding (including any civil, criminal, administrative, arbitration, or appellate legal proceeding), prosecution, contest, hearing, inquiry, audit, examination or investigation, mediation, of any kind or nature, whether at law or in equity, which may or may not be commenced, brought, conducted or heard by or before any court, arbiter, or other Governmental Entity or non-Governmental Entity with authority under the Law.

*“Liability”* shall mean any debt, obligation, duty or liability of any nature (including any unknown, undisclosed, unmatured, unaccrued, unasserted, contingent, indirect, conditional, implied, vicarious, derivative, joint, several or secondary liability), regardless of whether such debt, obligation, duty or liability would be required to be disclosed on a balance sheet prepared in accordance with GAAP and regardless of whether such debt, obligation, duty or liability is immediately due and payable.

*“Loss”* or *“Losses”* shall mean any losses, damages, Liabilities, deficiencies, amounts paid in settlement, judgments, interest, awards, penalties, fines, costs or expenses (including interest, penalties, reasonable attorneys’ fees and expenses and amounts paid in investigation or defense, and amounts paid in settlement, of any of the foregoing) but excluding punitive damages, except in the case of fraud or to the extent actually awarded to a Governmental Entity or other Person.

*“Neutral Accountant”* shall mean Grant Thornton LLP, if such firm rejects such appointment or has provided services to any Party or its Affiliates within the then-preceding three (3) years (or if

Purchaser and Seller otherwise mutually agree), such other independent accounting firm of national reputation mutually acceptable to Purchaser and Seller.

“*Order*” shall mean any injunction, order, writ, stipulation, award, decision, ruling, subpoena, verdict or decree entered, issued or made by or with any Governmental Entity having competent jurisdiction or non-Governmental Entity with authority under the Law.

“*Organizational Documents*” shall mean, with respect to any Person that is an entity, such Person’s charter, certificate or articles of incorporation or formation, bylaws, memorandum and articles of association, operating agreement, limited liability company agreement, partnership agreement, limited partnership agreement, limited liability partnership agreement or other constituent or organizational documents of such Person.

“*Patent*” shall mean (a) patents and patent applications (including any provisional applications), and all continuations, continuations-in-part, divisional, re-examinations, reissues, revisions, and extensions thereof, and (b) utility models, industrial designs and other statutory invention registrations, and applications for any of the foregoing.

“*Permits*” shall mean all licenses, permits, registrations, accreditations, authorizations, certificates of occupancy or regulatory plans and approvals issued by any Governmental Entity used in the operation of the Business.

“*Permitted Encumbrances*” shall mean: (a) liens for Taxes not yet due and payable or being contested in good faith by appropriate procedures as disclosed in the Disclosure Schedules; (b) mechanics’, carriers’, workmen’s, repairmen’s or other like liens arising or incurred in the ordinary course of business for amounts which are not delinquent, or the amount or validity of which is being contested in good faith by appropriate proceedings by or on behalf of the Seller; (c) easements, rights of way, zoning ordinances and other similar Encumbrances affecting the Leased Real Property which do not materially impair the use or occupancy of such Leased Real Property or the operation of the business of the Company; and (d) any applicable transfer restrictions under applicable state and federal securities Laws. “Permitted Encumbrance” shall not include any Encumbrance securing a debtor claim that could prevent or interfere with the conduct of the Business as is currently being conducted or that relate to any Indebtedness.

“*Person*” shall mean any natural individual, sole proprietorship, partnership, joint venture, estate, trust, unincorporated organization, association, corporation, limited liability company, institution, bank, trust company or other entity or any Governmental Entity.

“*Pre-Closing Tax Period*” means any taxable period ending on or before the Closing Date and the portion through the end of the Closing Date for any Straddle Period.

“*Purchaser Fundamental Representations*” shall mean the representations and warranties of Purchaser set forth in Section 5.1 (Organization), Section 5.2 (Power and Authority), and Section 5.8 (Brokers).

“*Purchaser Indemnitees*” shall mean Purchaser, its Affiliates, and each of its and their respective stockholders, equity holders, officers, directors, managers, members, partners (limited and/or general), employees, agents and other Representatives (including all successors and permitted assigns of the foregoing); provided that neither Seller nor any of its Affiliates (excluding the Company if so designated in writing by Purchaser) shall constitute a Purchaser Indemnitee.

“*R&W Insurance Costs*” shall mean the costs of the R&W Insurance Policy, including the premium, Taxes and fees, and any related broker compensation, underwriting fees and due diligence fees.

“*R&W Insurance Policy*” shall mean the “buy-side” representations and warranties insurance policy to be issued by the Insurer to Purchaser, which policy is bound as of the Closing Date pursuant to the Binder Agreement.

“*Representatives*” shall mean, with respect to any Person, any and all directors, officers, members, managers, partners, employees, consultants, financial advisors, lenders, counsel, accountants and other agents of such Person.

“*Securities Act*” shall mean the Securities Act of 1933, as amended, or any successor federal statute thereto, and the rules and regulations of the Securities and Exchange Commission promulgated thereunder, all as the same shall be in effect from time to time.

“*Seller Indemnitees*” shall mean Seller (including all successors and permitted assigns), its Affiliates, and each of their respective stockholders, equity holders, officers, directors, managers, members, partners (limited and/or general), employees and other Representatives.

“*Software*” shall mean all computer programs (including any and all software implementation of algorithms, models and methodologies whether in source code or object code) of any type (including programs, applications, middleware, utilities, tools, data, drivers, firmware, computations, microcode, scripts, batch files, JCL files, instruction sets and macros) and in any form, databases, associated data and related documentation (including user manuals, developer notes and training materials) and the content and information contained in any websites, and all rights therein.

“*Source Code*” shall mean computer code which may be printed out or displayed in human readable form and which is compiled to create machine readable code or object code.

“*Straddle Period*” shall mean a Tax period beginning on or before the Closing Date and ending after the Closing Date.

“*Systems*” shall mean physical and virtual servers, computer hardware and Software, websites, databases, circuits, networks and other computer and telecommunication assets and equipment used in connection with the Business.

“*Target Working Capital*” shall mean an amount equal to \$24,671,533.

“*Tax*” or “*Taxes*” shall mean (i) any and all federal, state, provincial, local, foreign and other taxes, levies, fees, imposts, duties, contributions (to universal service programs) and similar governmental charges (including any interest, fines, assessments, penalties or additions to tax imposed in connection therewith or with respect thereto) including, without limitation (x) taxes imposed on, or measured by, income, franchise, profits or gross receipts, and (y) ad valorem, value added, capital gains, sales, goods and services, use, real or personal property, telecommunications (or similar), capital stock, license, branch, payroll, escheat, unclaimed property, estimated withholding, employment, social security (or similar), unemployment, compensation, utility, severance, production, excise, stamp, occupation, premium, windfall profits, transfer and gains taxes, and customs duties, (ii) any and all liability for the payment of any items described in clause (i) above as a result of being (or ceasing to be) a member of an affiliated, consolidated, combined, unitary or aggregate group (or being included (or being required to be included) in any Tax Return related to such group) and (iii) any and all liability for the payment of any amounts as a result of any express or implied obligation to indemnify any other person, or any successor or transferee liability, in respect of any items described in clause (i) or (ii) above.

“*Taxing Authority*” or “*Tax Authority*” means any U.S. federal, state or local or non-U.S. jurisdiction (including any subdivision and any revenue agency of a jurisdiction) imposing Taxes and the agencies, if any, charged with the collection of such Taxes for such jurisdiction.



“*Tax Return*” shall mean any return, declaration, report, claim for refund or information return or statement, including any schedules or attachments thereto, required to be filed with any Tax Authority relating to Taxes and any amendment thereof.

“*Trade Accounts Payable*” means all trade accounts payable by Company, or by Seller on Company’s behalf, to third parties (excluding any trade accounts payable between Company and Seller) in connection with the Business that remain unpaid as of the Closing Date in each case, that are reflected on the Balance Sheet, arose in the ordinary course of business consistent with past practice since the Balance Sheet Date, or are included in the calculation of Closing Working Capital.

“*Trade Secrets*” shall mean “trade secrets” as defined under the Uniform Trade Secret Act as well as all confidential, proprietary business information (including ideas, research and development, know-how, formulas, compositions, manufacturing and production processes and techniques, technical data, designs, drawings, specifications, research records, studies, reports, records of inventions, test information, customer and supplier lists, pricing and cost information, financial information and business and marketing plans and proposals), in each case, whether or not reduced to written form.

“*Trademark*” shall mean: (a) trademarks, service marks, certification marks, logos, trade dress, trade names, brand names, corporate names, domain names, and other indicia of commercial source of origin (whether registered, common law, statutory or otherwise), together with all translations, localizations, adaptations, derivations and combinations thereof; (b) all registrations and applications to register the foregoing (including any intent-to-use trademark applications); and (c) all goodwill connected with the use thereof or symbolized thereby.

“*Transaction Documents*” shall mean this Agreement, the Disclosure Schedules, the Bill of Sale and Assignment and Assumption Agreement, the Escrow Agreement, the Transition Services Agreement and all other agreements, certificates, instruments and documents required to be delivered at the Closing under the terms of this Agreement or in connection with the consummation of the Transaction.

“*Transaction Expenses*” shall mean, without duplication, (a) the fees, disbursements and other compensation payable to legal counsel, accountants, banks and other advisors of Seller and/or the Company, that are incurred but not paid prior to the Closing and that are payable by Seller and/or the Company in connection with the negotiation, preparation or execution of this Agreement or the other Transaction Documents; (b) the amount of any sale bonuses, change in control bonuses, retention bonuses or similar bonuses, severance or other payments that are incurred or otherwise become payable by the Company upon, in connection with, or as a result of the consummation of the Transactions together with the employer’s portion of any payroll, social security, unemployment or similar Taxes related thereto, but excluding, for the avoidance of doubt, any severance resulting from termination of employment of an employee by Purchaser after the Closing; and (c) fifty percent (50%) of the fees, costs or expenses of the Escrow Agent associated with the Escrow Agreement. For the avoidance of doubt, “Transaction Expenses” shall not include any fees or expenses incurred by Purchaser or its Affiliates or any of their financial advisors, attorneys, accountants, advisors, consultants or other Representatives or financing sources, regardless of whether any such fees or expenses may be paid or reimbursed by Company.

“*Transactions*” shall mean the transactions contemplated by this Agreement and all other Transaction Documents.

“*Transition Services Agreement*” shall mean collectively (i) the Transition Services Agreement between the Seller and Purchaser, substantially in the form attached hereto as Exhibit E, and (ii) the Employee Leasing Transition Services Agreement between the Seller and Purchaser, substantially in the form attached hereto as Exhibit E-1.

“*Treasury Regulations*” shall mean all income Tax regulations promulgated under the Code, including any amendments thereto; references to specific Treasury Regulations are to the Treasury Regulations in effect on the Closing Date.

“*Unrestricted Businesses*” shall mean (i) any businesses engaged in the manufacturing and distribution of chemicals, and (ii) the production and distribution of industrial tubular products including stainless steel and galvanized pipe and tube of the type of business that is engaged in immediately prior to the Closing Date by Seller, CRI Tolling, LLC, Synalloy Fabrication, LLC, Manufacturers Soap & Chemical Company, Manufacturers Chemicals, LLC, Synalloy Metals, Inc., Bristol Metals, LLC, Palmer of Texas Tanks, LLC, American Stainless Tubing, LLC and/or DanChem Technologies, Inc., provided that Unrestricted Businesses shall not include the distribution of heavy wall seamless steel pipe and tubing as such business was conducted by SPT immediately prior to the Closing Date.

“*WARN Act*” shall mean the federal Worker Adjustment and Retraining Notification Act of 1988, and similar state, local and foreign Laws related to plant closings, relocations, mass layoffs and employment losses.

“*Working Capital Principles*” shall mean the terms and conditions applicable to the determination of the Closing Working Capital as set forth in Exhibit C, and specifically “*Working Capital*” means the amount by which (a) current assets (excluding Tax assets) (but only to the extent such assets are Purchased Assets), exceeds (b) current Liabilities (excluding Tax Liabilities) (but only to the extent such Liabilities are Assumed Liabilities), in each case, determined in accordance with Company GAAP and as set forth on Exhibit C. For the avoidance of any doubt, “*Working Capital*” shall exclude Closing Cash, Indebtedness, and Transaction Expenses.

**Section 1.2 Additional Definitions.** The following terms shall have the meanings set forth in the Agreement in the sections referenced below:

<u>Term</u>	<u>Section</u>
ACA	§4.15(l)
Accounts Receivable	§2.1(a)
Agreement	Introduction
Allocation	§2.12
Annual Financial Statements	§4.6(a)
Anti-Corruption Laws	§4.10(c)
Assigned Contracts	§2.1(c)
Assumed Liabilities	§2.3
Available Insurance Policies	§6.1(a)
Balance Sheet	§4.6(a)
Balance Sheet Date	§4.6(a)
Base Purchase Price	§2.6(a)
Business Information	§4.25(c)
Cap	§7.4(a)
Claim Notice	§7.5(a)
Claims Period	§6.1(a)
Closing	§2.5
Closing Date	§2.5
Closing Funds Flow Statement	§2.8(b)
Closing Payments	§2.8(a)
Closing Working Capital	§2.9(a)
Company	Introduction
Company Intellectual Property	§4.20(b)

Company Plan	§4.15(a)
Confidential Information	§6.9(f)
Contaminants	§4.25(b)
Deductible	§7.4(b)
Direct Claim	§7.6
Disputed Matters	§2.9(d)
Effective Time	§2.5
Employees	§4.16(a)
Employee Transition Expiration Date	§6.3(a)
Estimated Closing Consideration	§2.6(b)
Estimated Closing Statement	§2.7(a)
Estimated Indebtedness	§2.7(a)
Estimated Working Capital	§2.7(a)
Estimated Working Capital Adjustment	§2.7(a)
Excluded Assets	§2.2
Excluded Contracts	§2.2(b)
Excluded Liabilities	§2.4
Export Laws	§4.10(d)
Final Closing Consideration	§2.9(e)
Final Closing Statement	§2.9(d)
Final Working Capital Adjustment	§2.9(f)(ii)
Financial Statements	§4.6(a)
Hired Employee	§6.3(a)
Indemnification Claim	§7.1
Indemnity Escrow Termination Date	§7.8
Information	§4.24(a)
Insurance Policies	§4.18
Interim Financial Statements	§4.6(a)
Inventory Date	§4.6(e)
Inventory Statement	§4.6(e)
Leased Real Property	§4.14(a)
Material Contracts	§4.11(a)
Material Customer	§4.21(a)
Material Vendor	§4.21(b)
Nonassignable Assets	§6.12
Objection Notice	§2.9(b)
Parties	Introduction
Party	Introduction
Payoff Amount	§2.10(c)(iii)
Payoff Letters	§2.10(c)(iii)
Post-Closing Adjustment	§2.9(g)
Preliminary Closing Statement	§2.9(a)

Protected Information	§8.12(b)
Purchase Price	§2.6(a)
Purchaser	Introduction
Purchased Assets	§2.1
Purchaser Tax Indemnified Parties	§6.2(a)
Qualified Plan	§4.15(a)
Real Property Leases	§4.14(a)
Registered Intellectual Property	§4.20(a)
Related Party	§4.26
Resolution Period	§2.9(c)
Restricted Period	§6.9(a)
Restricted Person	§6.9(a)
Retained Records	§6.7(a)
Review Period	§2.9(b)
Sanctioned Person	§4.10(d)
Sanctions	§4.10(d)
Seller Law Firm	§8.12
Tangible Personal Property	§2.1(e)
Tax Clearance Certificate	§6.5
SPT	Introduction
Tax Claim	§6.2(d)
Third Party Claim	§7.5(a)
Transfer Taxes	§6.2(e)

### Section 1.3 Certain References and Construction.

(a) All article, section, schedule and exhibit references used in this Agreement are to articles, sections, schedules and exhibits to this Agreement unless otherwise specified. The schedules and exhibits attached to this Agreement constitute a part of this Agreement and are incorporated herein for all purposes.

(b) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded.

(c) Terms defined in the singular have the corresponding meanings in the plural, and vice versa. Unless the context of this Agreement clearly requires otherwise, words importing the masculine gender shall include the feminine and neutral genders and vice versa. The term “includes” or “including” shall mean “including without limitation.” The words “hereof,” “hereto,” “hereby,” “herein,” “hereunder” and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular section or article in which such words appear. Both the word “Dollars” and the symbol “\$” mean United States Dollars.

(d) The table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

(e) The Parties hereto have participated jointly in drafting and negotiating this Agreement. In the event that an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any Party hereto by virtue of the authorship of any provision hereof.

## ARTICLE II PURCHASE AND SALE

**Section 2.1 Purchase and Sale of Assets.** Upon the terms and subject to the conditions set forth in this Agreement and subject to the representations, warranties and covenants herein set forth, at the Closing, Seller and the Company shall sell, transfer, assign, convey and deliver to Purchaser, and Purchaser shall purchase, acquire and accept from Seller and the Company, free and clear of any Encumbrances other than Permitted Encumbrances, all of Seller's and the Company's right, title and interest in, to and under all the assets, properties and rights of every kind and nature, whether real, personal or mixed, tangible or intangible (including goodwill), wherever located and whether now existing or hereafter acquired (other than the Excluded Assets), which relate primarily to, or are used or held for use primarily in connection with the Business (collectively the "Purchased Assets"), including without limitation the following:

- (a) all accounts receivable held by the Company (or the Seller on behalf of the Company), and any security, claim, remedy or other right related to any of the foregoing ("Accounts Receivable");
- (b) all Inventory of the Company (or held by the Seller on behalf of the Company) ("Inventory");
- (c) all (i) Material Contracts set forth on Schedule 4.11(a), (ii) unfulfilled commitments, quotations, purchase orders, customer orders or work orders, issued by the Business' customers to and accepted by Company or Seller on behalf of Company on or before the Closing in the ordinary course of business and consistent with past practice, and (iii) any other Contracts which relate primarily to the Purchased Assets or the Business, including Intellectual Property Agreements, but excluding any Excluded Assets or Transaction Expenses (collectively all items in this Section 2.1(c) are referred to as the "Assigned Contracts");
- (d) all Intellectual Property Assets;
- (e) furniture, fixtures, equipment, machinery, tools, vehicles, office equipment, supplies, computers, Software, telephones and other tangible personal property in each case that relate primarily to the Business (the "Tangible Personal Property"), which shall be set forth on Section 2.1(e) of the Disclosure Schedules;
- (f) all Permits, including Environmental Permits, which are held by the Company, or the Seller on behalf of the Company, and required for the conduct of the Business as currently conducted or for the ownership and use of any of the Purchased Assets;
- (g) all rights to any Legal Proceedings of any nature available to or being pursued by Company or Seller on behalf of Company to the extent related primarily to the Business, the Purchased Assets or the Assumed Liabilities, whether arising by way of counterclaim or otherwise;
- (h) all prepaid expenses, credits, advance payments, claims, security, refunds, rights of recovery, rights of set-off, rights of recoupment, deposits, charges, sums and fees (including any such item relating to the payment of Taxes) in each case that relate primarily to the Business;
- (i) all of Company's (or Seller's on behalf of Company) rights under warranties, indemnities and all similar rights against third parties to the extent related to any Purchased Assets or the Business;

(j) all telephone numbers, electronic mail and other Business contact information and data and web domains assigned to the Company (or Seller on behalf of the Company) and used in the Systems, other than those that constitute Excluded Assets;

(k) originals, or where not available, copies, of all books and records relating primarily to the Business, including, but not limited to, books of account, ledgers and general, financial and accounting records, machinery and equipment maintenance files, customer lists, customer purchasing histories, price lists, distribution lists, supplier lists, production data, quality control records and procedures, customer complaints and inquiry files, research and development files, records and data (including all correspondence with any Governmental Entity), sales material and records (including pricing history, total sales, terms and conditions of sale, sales and pricing policies and practices), strategic plans, internal financial statements, marketing and promotional surveys, material and research and files relating to the Intellectual Property Assets and the Intellectual Property Agreements (“Books and Records”); provided that to the extent the foregoing are combined with Excluded Assets or Excluded Liabilities, Company and Seller shall provide copies of the foregoing that redact information for such Excluded Assets or Excluded Liabilities without removing the content of the same for all of the foregoing to Purchaser; and

(l) all goodwill and the going concern value of the Business.

**Section 2.2 Excluded Assets.** Notwithstanding the foregoing, the Purchased Assets shall not include the following assets (collectively, the “Excluded Assets”):

(a) Closing Cash;

(b) Contracts, including Intellectual Property Agreements, that are not Assigned Contracts (the “Excluded Contracts”);

(c) the corporate seals, organizational documents, minute books, stock books, Tax Returns, books of account or other records having to do with the corporate organization of Company or Seller;

(d) all stocks, certificates of deposit and similar investments, bonds, guaranties in lieu of bonds, letters of credit and similar instruments obtained or held by Company or Seller, and all rights relating thereto;

(e) all documents relating to proposals to acquire the Business by Persons other than Purchaser;

(f) all Benefit Plans and assets attributable thereto subject to the rights of Purchaser pursuant to the Transition Services Agreement;

(g) the assets, properties and rights specifically set forth on Section 2.2(g) of the Disclosure Schedules;

(h) subject to rights of Purchaser pursuant to Section 6.2, all Tax Returns and financial statements, Tax reports and Tax records and all records (including working papers) related thereto of Company or Seller;

(i) all Contracts related to the Company’s or Seller’s Indebtedness;

(j) the rights which accrue or will accrue to the Company or Seller under this Agreement and the Transaction Documents; and

(k) any Collective Bargaining Agreements.

**Section 2.3 Assumed Liabilities.** Subject to the terms and conditions set forth herein, Purchaser shall assume and agree to pay, perform and discharge only the following Liabilities of Company (collectively, the “Assumed Liabilities”), and no other Liabilities:

- (a) all Trade Accounts Payable; and
- (b) all Liabilities in respect to the Assigned Contracts but only to the extent that such Liabilities thereunder are required to be performed after the Closing Date, and do not relate to any failure to perform, improper performance, warranty or other breach, default or violation by Company or Seller on or prior to the Closing.

**Section 2.4 Excluded Liabilities.** Notwithstanding any other provision in this Agreement to the contrary, Purchaser shall not assume and shall not be responsible to pay, perform or discharge any Liabilities of Company or Seller or any of their Affiliates of any kind or nature whatsoever other than the Assumed Liabilities (the “Excluded Liabilities”) and Company and Seller shall retain all their respective Excluded Liabilities without recourse to Purchaser, whether or not accrued and whether or not disclosed, prior to, as of or on the Closing Date other than the Assumed Liabilities. Without limiting the generality of the foregoing, the Excluded Liabilities shall include, but not be limited to, the following:

(a) any Liabilities of Company or Seller arising or incurred in connection with the negotiation, preparation, investigation and performance of this Agreement, the Transaction Documents and the transactions contemplated hereby and thereby, including, without limitation, Transaction Expenses, fees and expenses of counsel, accountants, consultants, advisers and others;

(b) any Liability for (i) Taxes of Company or Seller (or any stockholder or Affiliate of Company or Seller) or relating to the Business, the Purchased Assets or the Assumed Liabilities for any Pre-Closing Tax Period; (ii) Taxes that arise out of the consummation of the transactions contemplated hereby or that are the responsibility of Company or Seller; or (iii) other Taxes of Company or Seller (or any stockholder or Affiliate of Company or Seller) of any kind or description (including any Liability for Taxes of Company or Seller (or any stockholder or Affiliate of Company or Seller) that becomes a Liability of Purchaser under any common law doctrine of de facto merger or transferee or successor liability or otherwise by operation of contract or Law);

(c) any Liabilities relating to or arising out of the Excluded Assets;

(d) any Liabilities in respect of any pending or threatened Legal Proceeding arising out of, relating to or otherwise in respect of the operation of the Business or the Purchased Assets to the extent such Action relates to such operation on or prior to the Closing Date;

(e) any Liabilities of Company or Seller arising under or in connection with any Benefit Plan providing benefits to any present or former employee of Company or Seller (subject to certain reimbursement obligations set forth in the Transition Services Agreement);

(f) any Liabilities of Company or Seller for any present or former employees, officers, directors, retirees, independent contractors or consultants of Company or Seller, including, without limitation, any Liabilities associated with any claims for damages, costs, expenses, wages or other benefits, bonuses, accrued vacation, workers’ compensation, severance, retention, termination, retaliation, discrimination, or related matters or other payments including without limitation under any employment agreement or Collective Bargaining Agreement (subject to certain reimbursement obligations set forth in the Transition Services Agreement);

(g) any Environmental Claims, or Liabilities under Environmental Laws, to the extent arising out of or relating to facts, circumstances or conditions existing on or prior to the Closing or otherwise to the extent arising out of any actions or omissions of Company or Seller;

(h) any accounts payable of Company or Seller (i) which constitute intercompany payables owing to Affiliates of Company or Seller; (ii) which constitute debt, loans or credit facilities to financial institutions; or (iii) which are not Trade Accounts Payable;

(i) any Liabilities of the Business relating or arising from unfulfilled commitments, quotations, purchase orders, customer orders or work orders that (i) do not constitute part of the Purchased Assets issued by the Business' customers to Company or Seller on or before the Closing; (ii) did not arise in the ordinary course of business; or (iii) are not validly and effectively assigned to Purchaser pursuant to this Agreement;

(j) any Liabilities to indemnify, reimburse or advance amounts to any present or former officer, director, employee or agent of Company or Seller (including with respect to any breach of fiduciary obligations by same) (subject to reimbursement obligations expressly set forth in the Transition Services Agreement);

(k) any Liabilities under the Excluded Contracts or any other Contracts, including Intellectual Property Agreements, (i) which are not validly and effectively assigned to Purchaser pursuant to this Agreement; (ii) which do not conform to the representations and warranties with respect thereto contained in this Agreement; or (iii) to the extent such Liabilities arise out of or relate to a breach by Company or Seller of such Contracts prior to Closing;

(l) any Liabilities associated with debt, loans or credit facilities of Company or Seller and/or the Business owing to financial institutions;

(m) any Liabilities arising out of, in respect of or in connection with the failure by Company or Seller or any of its Affiliates to comply in any material respect with any Law or Governmental Authorization;

Provided, however, that, to the extent that any such Excluded Liabilities also constitute covered claims under the R&W Insurance, following depletion of the deductible under the R&W Insurance, prior to seeking recovery from Company or Seller pursuant to Article VII, Purchaser shall first use commercially reasonable efforts to pursue recovery for such claims from the R&W Insurance.

**Section 2.5 Closing.** The closing of the Transactions (the "Closing") shall take place simultaneously with the execution and delivery of this Agreement as of the date hereof, and the Closing shall take place by conference call and electronic (i.e. email/PDF) delivery of signatures. The actual date of the Closing is herein referred to as the "Closing Date" and the Closing shall be effective as of 12:01 a.m. Central Time on the Closing Date (the "Effective Time").

#### **Section 2.6 Purchase Price and Closing Consideration.**

(a) The aggregate purchase price to be paid hereunder by Purchaser as consideration for the acquisition of the Purchased Assets shall be an amount equal to Fifty-Five Million Dollars (\$55,000,000) (the "Base Purchase Price"), and as further and finally adjusted in accordance with the terms of this Agreement (the "Purchase Price").

(b) For purposes of this Agreement, the "Estimated Closing Consideration" shall mean an amount equal to: (i) the Base Purchase Price (part of which may be directed by Seller to pay Transaction Expenses and/or Indebtedness) *plus/minus* (ii) the Estimated Working Capital Adjustment, *minus* (iii) any Estimated Indebtedness, all as more fully set forth in and determined in accordance with the Estimated Closing Statement. The Estimated Closing Consideration shall be paid to Seller at the Closing in accordance with Section 2.8(a).



## Section 2.7 Closing Adjustment.

(a) At least three (3) Business Days prior to the Closing Date, Seller shall prepare and deliver to Purchaser a statement (the “Estimated Closing Statement”) setting forth an estimated balance sheet of Company as of the Closing Date and including a good faith estimate (which estimate includes the following on both an aggregate basis of the Company and, if applicable, on an individual basis of Company) of the: (i) estimated Closing Indebtedness (the “Estimated Indebtedness”); (ii) Working Capital at Closing (the “Estimated Working Capital”); (iii) estimated Transaction Expenses to be paid at Closing, (iv) the Estimated Working Capital Adjustment (as determined in accordance with Section 2.7(b)); and (v) the Estimated Closing Consideration resulting from the foregoing. The Estimated Closing Statement shall be prepared in accordance with the terms set forth in the Working Capital Principles. Except as otherwise provided in this Section 2.7 or in the definition of Working Capital Principles, Indebtedness or Closing Cash, the Estimated Closing Statement shall be prepared in accordance with GAAP. The worksheets and data used by the Seller to prepare the Estimated Closing Statement shall be delivered to the Purchaser concurrent with the delivery of the Estimated Closing Statement.

(b) If, as set forth in the Estimated Closing Statement, the Estimated Working Capital (i) exceeds the Target Working Capital, then the Estimated Closing Consideration will be increased, dollar-for-dollar, in an amount equal to such excess, or (ii) is less than the Target Working Capital, then the Estimated Closing Consideration will be decreased, dollar-for-dollar, in an amount equal to such shortfall (in either case, such adjustment, the “Estimated Working Capital Adjustment”) pursuant to Section 2.6.

## Section 2.8 Payments at the Closing.

(a) At the Closing, Purchaser shall pay, or cause to be paid, by wire transfer of immediately available funds, to the applicable accounts and in accordance with the wire instructions set forth in the Closing Funds Flow Statement, the: (i) Estimated Indebtedness and any other Indebtedness in accordance with the terms set forth in the Payoff Letters and the Closing Funds Flow Statement; (ii) Escrow Amount to the Escrow Agent; (iii) the Transaction Expenses directed to be paid by Seller at Closing in accordance with the Closing Funds Flow Statement; and (iv) Estimated Closing Consideration *minus* the Escrow Amount to Seller (collectively, the “Closing Payments”).

(b) At least three (3) Business Days prior to the Closing, Seller shall prepare and deliver to Purchaser a funds flow statement (the “Closing Funds Flow Statement”), setting forth in reasonable detail (i) the specific amount of consideration to be paid to each applicable Party under Section 2.8(a), and (ii) the account, wiring instructions and other material information necessary for Purchaser’s payment of such amounts.

## Section 2.9 Post-Closing Adjustment.

(a) As soon as practicable, but no later than ninety (90) days following the Closing Date, Purchaser shall prepare and deliver to Seller, a statement (the “Preliminary Closing Statement”) setting forth a balance sheet of Company as of the Closing Date and including its good faith calculation of the (i) Closing Indebtedness, (ii) Working Capital at Closing (the “Closing Working Capital”), (iii) final Transaction Expenses at Closing, (iv) Final Working Capital Adjustment (as determined in accordance with Section 2.9(f)), and (v) the Final Closing Consideration (defined in Section 2.9(e)), which statement will include reasonable supporting documentation of Purchaser’s calculation of each of the foregoing amounts. The worksheets and data used by the Purchaser to prepare the Preliminary Closing Statement shall be delivered to the Seller concurrent with the delivery of the Preliminary Closing Statement. The Preliminary Closing Statement will be prepared in accordance with the Working Capital Principles and in a manner consistent with the Estimated Closing Statement.

(b) Seller shall have sixty (60) days to review the Preliminary Closing Statement from the date of delivery thereof by Purchaser to Seller (the “Review Period”). During the Review Period,

Purchaser shall provide Seller and its Representatives with reasonable access during normal business hours and after reasonable advance notice to the books, records and other documents (including work papers, schedules, financial statements and memoranda) of Purchaser and the Company for purposes of their review of the Preliminary Closing Statement. If Seller objects to any aspect of the Preliminary Closing Statement, Seller must deliver a written notice of objection (the “Objection Notice”) to Purchaser on or prior to the expiration of the Review Period. The Objection Notice shall specify any adjustment to the Preliminary Closing Statement that is objected to in reasonable detail the nature and amount of any disagreement so asserted and attach documentation supporting the calculations.

(c) If Seller delivers an Objection Notice to Purchaser prior to the expiration of the Review Period, Purchaser and Seller shall, for a period of thirty (30) days thereafter (the “Resolution Period”), attempt to resolve the matters contained in such Objection Notice, all such discussions and communications related thereto shall (unless otherwise agreed to in writing by Purchaser and Seller) be governed by Rule 408 of the Federal Rules of Evidence and any applicable similar state rule, and any written resolution, signed by Purchaser and Seller, as to any such matter shall be final, binding, conclusive and non-appealable for all purposes hereunder. Except to the extent properly challenged in an Objection Notice, or in the event Seller does not, prior to the expiration of the Review Period, deliver an Objection Notice to Purchaser, Seller shall be deemed to have agreed to the Preliminary Closing Statement in its entirety, which Preliminary Closing Statement or undisputed portions thereof (as the case may be) shall be final, binding, conclusive and non-appealable for all purposes hereunder.

(d) If, at the conclusion of the Resolution Period, Purchaser and Seller have not reached an agreement with respect to all disputed matters contained in the Objection Notice, then as soon as practical but within ten (10) Business Days thereafter, Purchaser and Seller shall submit for resolution those matters remaining in dispute (such matters, the “Disputed Matters”) to the Neutral Accountant. The Neutral Accountant shall act as an expert and not an arbiter to resolve (based solely on the written presentations of Purchaser and Seller and not by independent review) only the Disputed Matters. Purchaser and Seller shall direct the Neutral Accountant to render a resolution of all such Disputed Matters within thirty (30) days after its engagement or such other period agreed upon in writing by Purchaser and Seller. In deciding any matter, the Neutral Accountant shall be bound by the provisions of this Section 2.9(d) and may not assign a value to any item greater than the greatest value for such item claimed by Purchaser or Seller or less than the smallest value for such item claimed by Purchaser or Seller. If issues are submitted to the Neutral Accountant for resolution: (i) the Seller and the Purchaser shall furnish or cause to be furnished to the Neutral Accountant such work papers and other documents and information relating to the Disputed Matters as the Neutral Accountant may request and are available to that party or its agents and shall be afforded the opportunity to present to the Neutral Accountant relating to the Disputed Matters and to discuss the issues with the Neutral Accountant (including explicitly providing such party’s calculations of the Disputed Matters); and (ii) the determination by the Neutral Accountant, as set forth in a notice to be delivered to both the Seller and the Purchaser within sixty (60) days of the submission to the Neutral Accountant of the issues remaining in dispute, shall be final, binding and conclusive on the parties and shall be used in the calculations of the Disputed Matters. Purchaser shall pay a portion of the fees and expenses of the Neutral Accountant equal to one hundred percent (100%) multiplied by a fraction, (i) the numerator of which is the dollar amount of the Disputed Matters that are resolved in favor of Seller, and (ii) the denominator of which is the total dollar amount of the Disputed Matters. Seller shall pay that portion of the fees and expenses of the Neutral Accountant that Purchaser is not required to pay hereunder. For example, should the items in dispute total in amount to \$1,000 and the Neutral Accountant awards \$600 in favor of the Seller’s position, sixty percent (60%) of the costs of its review would be borne by the Purchaser and forty percent (40%) of the costs would be borne by the Seller. The Neutral Accountant shall, as part of its final determination, specify the allocation of fees in accordance with the immediately preceding sentence. The resolution of the Neutral Accountant shall be set forth in a written statement delivered to Purchaser and Seller and, absent manifest error, shall be final, binding, conclusive and non-appealable for all purposes hereunder. Once modified and/or agreed to in accordance with Section 2.9(c) or this Section 2.9(d), the Preliminary Closing Statement shall become the “Final Closing Statement”.

(e) For purposes of this Agreement, the “Final Closing Consideration” shall mean, as fully and finally determined and set forth in the Final Closing Statement in accordance with this Section 2.9, an amount equal to (i) the Base Purchase Price, *plus/minus* (ii) the Final Working Capital Adjustment, *minus* (iii) the Closing Indebtedness.

(f) If, as finally determined and set forth in the Final Closing Statement, the Closing Working Capital (i) exceeds the Estimated Working Capital, then the Final Closing Consideration will be increased, dollar-for-dollar, in an amount equal to such excess, or (ii) is less than the Estimated Working Capital, then the Final Closing Consideration will be decreased, dollar-for-dollar, in an amount equal to such shortfall (such adjustment, the “Final Working Capital Adjustment”), pursuant to Section 2.9(e).

(g) Following the determination of the Final Closing Statement, a final adjustment shall be made, which adjustment shall be an amount equal to the Final Closing Consideration (as finally determined and set forth in the Final Closing Statement) minus the Estimated Closing Consideration (the “Post-Closing Adjustment”). If the Post-Closing Adjustment is a positive number, Purchaser will pay to Seller an amount equal to such Post-Closing Adjustment. If the Post-Closing Adjustment is a negative number, then Seller shall promptly cause an amount equal to the Post-Closing Adjustment to be paid to Purchaser. Payment of the Post-Closing Adjustment shall be made within three (3) Business Days after the Preliminary Closing Statement becoming the Final Closing Statement by wire transfer of immediately available funds to such account as is directed by Purchaser or Seller, as the case may be. For Tax purposes and unless otherwise required by applicable Law, any payments made pursuant to this Section 2.9 shall be treated by the Parties as an adjustment to the Purchase Price.

(h) For the avoidance of doubt, the Parties hereto acknowledge and agree that, from and after the Closing, the provisions of this Section 2.9 and the arbitration provisions contemplated hereby shall be the exclusive remedy and exclusive forum of the Parties with respect to the matters that are or that may be addressed through the Purchase Price adjustments contemplated hereby.

#### **Section 2.10 Transactions to be Effected at the Closing.**

(a) At or prior to the Closing, Purchaser will deliver, or cause to be delivered, to Seller or each other applicable Person specified in this Section 2.10(a), the following:

- (i) the Closing Payment in accordance with, and to the payees designated in, Section 2.8(b) and the Closing Funds Flow Statement;
- (ii) a certificate of the Secretary (or equivalent officer) of Purchaser certifying that attached thereto are true and complete copies of all resolutions adopted by the board of directors of Purchaser authorizing the execution, delivery and performance of this Agreement and the other Transaction Documents to which Purchaser is a party and the consummation of the Transactions, and that all such resolutions are in full force and effect and are all the resolutions adopted in connection with the Transactions;
- (iii) a copy of the R&W Insurance Policy and evidence of the final issuance thereof;
- (iv) [reserved];
- (v) a counterpart to the Escrow Agreement;
- (vi) a counterpart to the Transition Services Agreement; and
- (vii) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Seller, as may be required to give effect to this Agreement.

(b) At or prior to the Closing, the Seller shall deliver, or cause to be delivered, to Purchaser, the following:

(i) the Bill of Sale and Assignment and Assumption Agreement, in the form attached hereto as Exhibit A (the “Bill of Sale and Assignment and Assumption Agreement”), executed by the Seller;

(ii) a properly executed certificate of non-foreign status of Seller conforming to the requirements of Treasury Regulations Section 1.1445-2(b)(2);

(iii) a counterpart to the Escrow Agreement, duly executed by the Seller;

(iv) [reserved];

(v) a counterpart to the Transition Services Agreement, duly executed by the Seller;

(vi) the Books and Records, which will be deemed delivered by Seller or Company to the extent Seller deposits or maintains such Books and Records at the headquarter offices for the Business;

(vii) satisfactory evidence that, in accordance with Section 6.11, Seller and Company are prepared to file with the applicable Governmental Entities upon Closing of any corporate or limited liability company name change documents as are necessary to permit Purchaser to use any corporate, assumed business names or other trade names of the Business; and

(viii) such other customer instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Purchaser, as may be required to give effect to this Agreement.

(c) At or prior to the Closing, the Company shall deliver, or cause to be delivered, to Purchaser, the following:

(i) a certificate of the Secretary of Company certifying that attached thereto are true and complete copies of all resolutions adopted by the Board of Directors authorizing SPT's execution, delivery and performance of this Agreement and all other Transaction Documents to which SPT is a party and the consummation of the Transactions, and that all such resolutions are in full force and effect and are all the resolutions of SPT adopted in connection with the transactions contemplated hereby and thereby;

(ii) a certificate of good standing with respect to Company from the Secretary of State of Delaware dated no earlier than fifteen (15) days prior to the Closing Date;

(iii) one or more payoff letters (the “Payoff Letters”) setting forth all amounts necessary to be paid by the Company on or prior to the Closing Date in order to fully repay and discharge the Indebtedness of the Company outstanding as of the Effective Time (collectively, the “Payoff Amount”) and release any Encumbrances related thereto;

(iv) resignations, effective as of the Closing Date, of each Director and officer of the Company;

(v) the Bill of Sale and Assignment and Assumption Agreement, executed by the Company;

(vi) (A) each of the Consents and Governmental Authorizations set forth in Section 4.5, each in a form reasonably acceptable to the Purchaser and (B) evidence satisfactory to the Purchaser

of the release of any and all Encumbrances (other than Permitted Encumbrances) with respect to the assets of Company;

(vii) a counterpart to the Transition Services Agreement, duly executed by the Company; and

(viii) such other customer instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Purchaser, as may be required to give effect to this Agreement.

**Section 2.11 Withholding Rights.** Notwithstanding anything in this Agreement to the contrary, Purchaser or its designee and Company shall be entitled to withhold and deduct from the consideration payable pursuant to this Agreement such amounts as any such Person shall determine in good faith it is required to deduct and withhold with respect to the making of such payment under the Code or any provision of state, local or foreign Tax Law. To the extent that amounts are so withheld, such amounts (a) shall be timely remitted by the applicable withholding agent to the applicable Governmental Entity, and (b) to the extent timely remitted to the appropriate Governmental Entity, treated for all purposes of this Agreement as having been paid to the Person in respect of whom such deduction and withholding was made.

**Section 2.12 Allocation of Purchase Price.** Seller and Purchaser agree to (and agree to cause their respective Affiliates to) allocate the Purchase Price, any liabilities assumed and any other amounts treated as consideration for U.S. federal income Tax purposes among the assets acquired by Purchaser in accordance with Sections 338 and 1060 of the Code and the Treasury Regulations promulgated thereunder (the "Allocation"). No later than sixty (60) days after the Closing Date, Purchaser shall deliver to Seller the Allocation determined in a manner consistent with Sections 338 and 1060 of the Code and the Treasury Regulations promulgated thereunder. The Allocation shall be adjusted, as necessary, to reflect any subsequent adjustments to the Purchase Price pursuant to this Agreement. Seller and Purchaser agree (and agree to cause their respective Affiliates) to prepare and file all relevant federal, state, local and foreign Tax Returns in accordance with the Allocation. None of Seller or Purchaser shall (and each shall cause its Affiliates not to) take any position inconsistent with the Allocation on any Tax Return or in any Tax Claim, in each case, except to the extent otherwise required pursuant to a "determination" within the meaning of Section 1313(a) of the Code (or any similar provision of applicable state, local or foreign Law).

### ARTICLE III Intentionally Omitted.

### ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLER AND COMPANY

In order to induce the Purchaser to enter into this Agreement and consummate the Transactions, the Seller and Company hereby represent and warrant to Purchaser, jointly and severally, that, except as set forth in the Disclosure Schedules attached hereto, the statements contained in this Article IV are true and correct as of the date hereof:

**Section 4.1 Organization and Qualification.** SPT is a corporation duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has all requisite power and authority to own, lease and operate its properties and assets and to carry on the Business as it is now being conducted. Company is duly qualified or licensed as a foreign limited liability company to do business, and is in good standing, in each jurisdiction where the character of the properties or assets owned, leased or operated by it or the nature of its activities makes such qualification or licensing necessary, except where the failure to be so qualified or licensed would not be reasonably expected to have, individually or in the aggregate, a material adverse effect. Except as set forth on Schedule 4.1, Company has never

conducted any business under or otherwise used, for any purpose or in any jurisdiction, any fictitious name, assumed name, trade name or other name.

**Section 4.2 Power and Authority.** Each of Seller and Company has the requisite power and authority to enter into this Agreement and each other Transaction Document to which Company or Seller is a party, to carry out its obligations hereunder and thereunder and to consummate Transactions. Seller is the legal and beneficial owner of the outstanding equity securities of the Company free and clear of any Encumbrances, and no other Person has any right or interest in any ownership or equity of Company. The execution and delivery by Company and Seller of this Agreement and each other Transaction Document, the performance of its obligations hereunder and thereunder, and the consummation of the Transactions, have been duly authorized by all requisite action on the part of Company and the Seller. This Agreement, and each other Transaction Document to which Company or the Seller is a party, has been duly executed and delivered by Company and, assuming the due authorization, execution and delivery by each other party hereto and thereto, constitute a legal, valid and binding obligation of such party, enforceable against Company or Seller, as applicable, in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at Law or in equity).

**Section 4.3 Title to Purchased Assets.** Except as disclosed on Schedule 4.3, Company, or Seller on behalf of Company, has good and valid title to (or, in the case of Purchased Assets that are leased, valid and enforceable leasehold interests in) the Purchased Assets, including those reflected in the Financial Statements, other than assets sold or otherwise disposed of in the ordinary course of business. The Purchased Assets are free and clear of any Encumbrances other than Permitted Encumbrances or Encumbrances released concurrent with Closing which are expressly set forth on Schedule 4.3 of the Disclosure Schedules.

**Section 4.4 No Subsidiaries.** Company does not own, beneficially or otherwise, or have any interest in any equity interests of any other Person.

**Section 4.5 Noncontravention; Consents.** Except as set forth in Schedule 4.5, the execution, delivery and performance by Company of this Agreement, and the consummation of the Transactions, do not and will not: (a) contravene, conflict with, or result in a violation or default (with or without notice or lapse of time, or both), of any Law or Order binding upon or applicable to Company, Seller, the Business or Purchased Assets or by which the Company, Seller, the Business, or any of the Purchased Assets may be bound or affected or give any Governmental Entity the right to revoke, withdraw, suspend, cancel, terminate or modify, any Governmental Authorization that is held by the Company, Seller, Business Employee, or applicable to the Business or Purchased Assets; (b) violate, contravene, or conflict with any provision of the Organizational Documents of Company; or (c) contravene, conflict with, result in a violation or breach of any Material Contract (including any Collective Bargaining Agreement, or give any Person the right to (i) declare a default or exercise any remedy under any Material Contract (including any Collective Bargaining Agreement), (ii) accelerate the maturity or performance of any Material Contract, (iii) cancel, terminate or modify any Material Contract, or (iv) impose or result in the imposition of any Encumbrance upon the Company's assets or properties. No Consents or Governmental Authorizations are required in connection with Company's execution and delivery of this Agreement, the performance by Company of its obligations hereunder, and the consummation of the Transactions, other than (y) the Consents and Governmental Authorizations set forth in Schedule 4.5, and (z) such Consents and Governmental Authorizations. The approval by the Seller and the Company of this Agreement and the Transactions, each of which has been obtained by the Company, are the only approvals of any Person that are necessary to approve this Agreement, the Transactions and to effect the performance of the Transactions hereunder under the laws of the State of Delaware and the Organizational Documents of the Company.

#### Section 4.6 Financial Statements; Undisclosed Liabilities.

(a) Copies of Company's (i) financial statements consisting of the balance sheet of Company as of December 31 in each of the years 2022 and 2021 and the related statements of operations, members' or stockholders', as applicable, equity for the years then ended (the "Annual Financial Statements"), and (ii) financial statements consisting of the balance sheet Company (the "Balance Sheet") as of October 31, 2023 (the "Balance Sheet Date") and the related statements of operations, members' or stockholders', as applicable, equity for the ten month period then ended showing revenues and expenses of the Business (the "Interim Financial Statements") and together with the Annual Financial Statements, the "Financial Statements") have previously been delivered and/or made available to Purchaser. The Financial Statements (i) have been prepared consistent with past practices, based on the books and records of the Company, the Business and Purchased Assets and fairly present, the financial condition of Company, the Business and Purchased Assets as of the respective dates thereof and the results of the operations of Company and the Business for the periods indicated, in each case in accordance with GAAP, subject, in the case of Interim Financial Statements, to normal recurring year-end adjustments (the effect of which will not, individually or in the aggregate, be material) and the absence of notes, (ii) contain and reflect all adjustments, accruals (including, without limitation, accruals for incentive-based compensation), provisions and allowances necessary for a fair presentation of the financial condition and the results of operations of the Company and the Business for the periods covered by such Financial Statement in accordance with GAAP, (iii) to the extent applicable contains and reflects adequate provisions for all reasonably anticipated Liabilities for all Taxes with respect to the periods covered by such Financial Statement and all prior periods in accordance with GAAP, and (iv) reflects the consistent application of GAAP throughout the periods covered. Except as set forth on Schedule 4.6(a), neither the Company nor the Seller on behalf of the Business and the Purchased Assets, have any material Liabilities of a type required to be reflected or disclosed on a balance sheet prepared in accordance with GAAP, other than (i) those reflected on the Balance Sheet as of the Balance Sheet Date, (ii) those which have been incurred in the ordinary course of business consistent with past practice since the Balance Sheet Date (none of which is a Liability for breach of contract, breach of warranty, tort, infringement, violation of Law or Legal Proceeding), or (iii) those under (A) Contracts described on Schedule 4.11, or (B) under Contracts entered into in the ordinary course of business (none of which under (A) or (B) is a Liability resulting from noncompliance with any Contract, or any breach of contract or breach of warranty). The reserves reflected in the Financial Statements are adequate, appropriate and reasonable and have been calculated in a consistent matter. Except as set forth on Schedule 4.6(a), the books and records of the Company have been maintained in accordance with GAAP and properly reflect all of the transactions entered into by the Company.

(b) The internal controls of the Seller over financial reporting are effective in providing reasonable assurance regarding the reliability of financial reporting and preparation of financial statements and such internal controls are sufficient to (i) ensure that the records accurately and fairly reflect the transactions of the Company, (ii) provide reasonable assurance that transactions are recorded as necessary to permit preparation of financial statements, and that receipts and expenditures of the Company and the Business are being made only in accordance with authorizations of the directors, managers or officers of the Company, and (iii) provide reasonable assurance that unauthorized acquisition, use or disposition of the Purchased Assets or the Business, intentional misconduct and fraud that could adversely affect its financial statements is prevented or timely detected.

(c) All accounts and notes receivable of the Company or the Business or Purchased Assets (i) are bona fide and valid arising from sales actually made or services actually performed and were incurred in the ordinary course of business, (ii) are properly reflected on the Company's books and records and balance sheets with regard to the Business and Purchased Assets in accordance with GAAP, and (iii) are, except as set forth on Schedule 4.6(c) and subject to an Allowance for Bad Debt Expense consistent with historic rates, not subject to any setoffs, counterclaims, discounts, credits or other offsets and are current and collectible and will be collected in accordance with their terms at their recorded amounts within ninety (90) days. Except as set forth on Schedule 4.6(c), no Person has any Encumbrance on any accounts or notes receivable or any part thereof, and no agreement for deduction, free goods or services,

discount or other deferred price or quantity adjustment has been made by the Company or with regard to the Business or Purchased Assets with respect to any accounts receivable. In the last three (3) years, Company and the Business has continued all pricing, sales, receivables and payables practices in accordance with its ordinary course of business and have not engaged in (i) any trade loading practices or any other promotional sales or discount activity with any customers or distributors with the intent to accelerate to pre-Closing periods sales to the trade or otherwise that would otherwise be expected (based on past practice) to occur in post-Closing periods, (ii) any practice intended to have the effect of accelerating to pre-Closing periods collections of receivables that would otherwise be expected (based on past practice) to be made in post-Closing periods or (iii) any practice intended to have the effect of postponing to post-Closing periods payments by the Company or in connection with the Business or the Purchased Assets that would otherwise be expected (based on past practice) to be made in pre-Closing periods.

(d) Schedule 4.6(d) provides: (i) an accurate and complete breakdown and aging of the accounts payable of the Company with regard to the Business and the Purchased Assets as of the day immediately preceding the Closing Date; (ii) an accurate and complete breakdown of any customer deposits or other deposits held by the Company as of the day immediately preceding the Closing Date; and (iii) an accurate and complete breakdown of all notes payable and other Indebtedness of the Company with regard to the Business and the Purchased Assets as of the day immediately preceding the Closing Date. Neither the Company, nor the Seller on behalf of the Business and the Purchased Assets, has not delayed the payment of any of its accounts payable in a manner which is not consistent with historical practices.

(e) All Inventory of Company and the Business reflected on the statement of inventory attached as Schedule 4.6(e)(i) (the “Inventory Statement”) or acquired after the date set forth thereon (the “Inventory Date”) consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged or defective items that have been written off or written down to fair market value or for which adequate reserves have been established on the Balance Sheet. All Inventory contained in the Inventory Statement and shown on the Balance Sheet reflects write-downs to realizable values in the case of items which have become obsolete or unsalable (except at prices less than cost) through regular channels in the ordinary course of business consistent with past practice. The Inventory recorded on the Balance Sheet or acquired thereafter reflects items and quantities of Inventory of the Company with regard to the Business or the Purchased Assets accounted for at the lower of cost or net realizable value and such items and quantities are supported by historical counts. Such Inventories are in compliance with all applicable Laws, whether domestic or foreign, and are in conformity with all applicable product registrations and specifications. The values of the Inventory contained in the Inventory Statement and shown on the Balance Sheet reflect the normal inventory valuation policies of Company and were determined in accordance with GAAP and the Inventory Statement reflects all of the Inventory of the Business owned by the Company or by the Seller on behalf of the Company. The Company’s commitments for the purchase of Inventory are attached as Schedule 4.6(e)(ii).

**Section 4.7 Guaranties; Indebtedness.** Except as set forth on Schedule 4.7, (i) the Company is not a guarantor for any Liability (including Indebtedness) of any other Person, and (ii) no other Person is a guarantor for any Liability (including Indebtedness) of the Company. Except as set forth on Schedule 4.7 or on the Estimated Closing Statement, the Company does not have any outstanding Indebtedness. Except as set forth on Schedule 4.7, the Company is not in default with respect to any Indebtedness or any contracts relating thereto, and no such Indebtedness or any contracts relating thereto purports to limit the sale of the Purchased Assets or the operation of the Business of the Company by Purchaser. True, correct and complete copies of all contracts (including all amendments, supplements, waivers and consents) relating to any Indebtedness of the Company have been delivered to Purchaser prior to Closing.

**Section 4.8 Absence of Changes.** Except as expressly contemplated by this Agreement, or as set forth in Schedule 4.8, since the Balance Sheet Date:



- (a) there has not been any Company or Business material adverse effect;
- (b) there has not been any loss, damage or destruction to, or any interruption in the use of, any of the Company's assets (whether or not covered by insurance), other than ordinary wear and tear;
- (c) neither the Company nor the Seller on behalf of the Business has purchased or otherwise acquired any material asset (including any Intellectual Property) from any other Person, except for purchases or acquisitions of assets by the Company in the ordinary course of business;
- (d) neither the Company nor the Seller on behalf of the Business has leased or licensed any material asset (including any Intellectual Property) from any other Person outside the ordinary course of business;
- (e) neither the Company nor the Seller on behalf of the Business has made any capital expenditure except for capital expenditures that in the aggregate do not exceed \$50,000;
- (f) neither the Company nor the Seller on behalf of the Business has sold or otherwise transferred, assigned or agreed to assign, or leased or licensed, any asset (including any Intellectual Property) to any other Person outside the ordinary course of business;
- (g) neither the Company nor the Seller on behalf of the Business has written off as uncollectible, or established any extraordinary reserve with respect to, any account receivable or other Indebtedness;
- (h) neither the Company nor the Seller on behalf of the Business has made any loan or advance to any other Person, other than payroll advances and other advances to employees for customary business purposes;
- (i) made or changed any business practice material to the Company's Business (in anticipation of the transactions contemplated hereby or otherwise);
- (j) other than as set forth in Schedule 4.8(j) and other than in the ordinary course of business, neither the Company nor the Seller on behalf of the Business has (i), established, adopted, entered into, modified, amended or terminated any Benefit Plan or increased any benefits or compensation provided thereunder, (ii) paid or granted, as applicable, any cash bonus, incentive, performance or other incentive compensation, equity or equity-linked awards, or made any profit sharing or similar payment to, any of its officers, employees or independent contractors, (iii) hired or terminated any officers, employees or independent contractors, (iv) accelerated the vesting or payment of any compensation or benefits under any Benefit Plan (other than as required under such Benefit Plan pursuant to terms of such Benefit Plan in existence as of the date hereof), or (v) established or increased, or committed to establish or increase, any salary, wage rate or other compensation or benefits of, or granted any severance or termination payments to, any of its officers, employees or independent contractors;
- (k) no Contract that would constitute a Material Contract by which the Company, the Business or the Purchased Assets is or was bound, or under which the Company has or had any rights or interest, has been amended in a manner that has materially increased the obligations of the Company or the Business thereunder or terminated (other than terminations of Contracts due to the expiration of the stated term thereof);
- (l) neither the Company nor the Seller on behalf of the Business has discharged any Encumbrance or discharged or paid any Indebtedness or other Liability, except for accounts payable that (i) are reflected as current liabilities in the "liabilities" column of the Balance Sheet included in the Interim Financial Statements or have been incurred by the Company since the Balance Sheet Date, in

bona fide transactions entered into in the ordinary course of business, and (ii) have been discharged or paid in the ordinary course of business;

(m) neither the Company nor the Seller on behalf of the Business has forgiven any debt or otherwise released or waived any right or claim with respect to any debt;

(n) neither the Company nor the Seller on behalf of the Business has taken any action or failed to take any action that has had, or could reasonably be expected to have, the effect of accelerating to pre-Closing periods sales to customers or others that would otherwise be expected to occur after the Closing, outside the ordinary course of business;

(o) neither the Company nor the Seller on behalf of the Business has changed any of its methods of accounting or accounting practices in any respect, except as required by GAAP since December 31, 2022;

(p) neither the Company nor the Seller on behalf of the Business has: (i) changed or revoked any Tax election; (ii) settled or compromised any claim, notice, audit report or assessment in respect of Taxes (other than the payment of Taxes or collection of refunds in the ordinary course of business); (iii) changed any annual Tax accounting period; (iv) filed any amended Tax Return; (v) entered into any Tax allocation agreement, Tax sharing agreement, Tax indemnity agreement or closing agreement relating to any Tax; (vi) surrendered any right to claim a material Tax refund; or (vii) consented to any extension or waiver of the statute of limitations period applicable to any Tax claim or assessment;

(q) neither the Company nor the Seller on behalf of the Business has failed to maintain in full force and effect any insurance policy in effect, except for any policy replaced by a new or successor policy of substantially similar coverage;

(r) neither the Company nor the Seller on behalf of the Business has terminated, amended, or failed to renew any (i) material permit or (ii) registration or application for any material Intellectual Property Rights, except for amendments, terminations, expirations completed or occurring in the ordinary course of business;

(s) neither the Company nor the Seller on behalf of the Business has waived, released, assigned, settled or compromised any Legal Proceeding; or

(t) neither the Company nor the Seller on behalf of the Business has agreed, committed or offered (in writing or otherwise) to take any of the actions referred to in clauses (c) through (s) above.

**Section 4.9 Legal Proceedings.** Except as set forth in Schedule 4.9, there are no (and, for the five (5) years preceding the date hereof, there have not been any) Legal Proceedings pending or, to the Company's Knowledge, threatened against or by Company or the Seller in connection with the Business (or to Company's Knowledge, pending or threatened against any of the officers, partners or employees of the Company with respect to their activities for or on behalf of the Company), or pending or threatened in writing by the Company or the Seller in connection with the Business against any Person, at law or in equity, or before or by any Governmental Entity or non-Governmental Entity with authority over a matter (including any Actions with respect to the transactions contemplated by this Agreement). Except as set forth on Schedule 4.9, the Company is not subject to any unfair labor practice, grievance or arbitration proceeding under any Collective Bargaining Agreements or, to Company's Knowledge, any governmental investigation or inquiry. Neither the Company, the Business nor the Purchased Assets is subject to any judgment, Order, award or decree of any Governmental Entity or non-Governmental Entity with authority over a matter. There are no Legal Proceedings pending or, to the knowledge of Company or Seller, threatened by or against Company or Seller that seek to challenge, enjoin, prevent, alter or could otherwise reasonably be expected to delay the Transactions or affect the performance under this Agreement of the Transaction Documents. Company and Seller is not subject to any Order that

challenges, enjoins, prevents, alters or could otherwise reasonably be expected to delay or affect Company's or Sellers's performance of any obligations hereunder or in connection with the Transactions.

**Section 4.10 Compliance with Laws; Permits.** Except as set forth on Schedule 4.10:

(a) Each of the Company and the Seller on behalf of the Business is in material compliance with each Law (other than Benefit Plan Laws, labor and employment Laws, Tax Laws and environmental Laws which are addressed in Sections 4.15, 4.16, 4.17 and 4.18 respectively) that is applicable to them or to the conduct of the Business or the ownership or use of any of the Purchased Assets, and have, at all times during the past five (5) years been, in material compliance with each Law that is or was applicable to them or to the Business or the ownership or use of any of the Purchased Assets. No event has occurred in the past five (5) years, and no condition or circumstance exists, that would reasonably be expected to (with or without notice or lapse of time) constitute or result directly or indirectly in a material violation by the Company of, or a material failure on the part of the Company to comply with, any Law in connection with the Business or the Purchased Assets. Neither the Company nor the Seller on behalf of the Business has received, at any time during the past five (5) years, any written notice from any Governmental Entity, non-Governmental Entity with authority over a matter or any other Person regarding (i) any actual or alleged violation of, or failure to comply with, any Law, or (ii) any actual or alleged obligation on the part of the Company to undertake, or to bear all or any portion of the cost of, any cleanup or any remedial, corrective or response action of any nature. The Company has delivered to the Purchaser an accurate and complete copy of each material report, study, survey or other document to which the Company or the Seller has received or requested in connection with permitting or certifications involving the Business and its operations from any Governmental Entity or administrative or quasi regulatory authority.

(b) Schedule 4.10 identifies each Governmental Authorization that is held by the Company or the Business. Each Governmental Authorization identified or required to be identified in Schedule 4.10 is valid and in full force and effect. Each of the Company and the Business is and has been in the past five (5) years in compliance with all of the terms and requirements of each Governmental Authorization identified or required to be identified in Schedule 4.10. No event has occurred in the past five (5) years, and no condition or circumstance exists, that would reasonably be expected to (with or without notice or lapse of time) (i) constitute or result directly or indirectly in a violation of or a failure to comply with any term or requirement of any Governmental Authorization identified or required to be identified in Schedule 4.10, or (ii) result directly or indirectly in the revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Authorization identified or required to be identified in Schedule 4.10. The Company has not received, at any time, in the past five (5) years, any written notice from any Governmental Entity or any other Person regarding (i) any actual, alleged, possible or potential violation of or failure to comply with any material term or requirement of any Governmental Authorization, or (ii) any actual, proposed, possible or potential revocation, withdrawal, suspension, cancellation, termination or modification of any Governmental Authorization.

(c) Neither the Company nor any of the Company's directors or officers, or, to the Knowledge of the Company, its employees, agents or third-party representatives (in each case, acting for or on behalf of the Company) has, directly or indirectly, given, offered, promised, or authorized or agreed to give, or received, any money or thing of value to or from any Person, or otherwise taken any action, in any case as would cause the Company to be in violation of the U.S. Foreign Corrupt Practices Act of 1977, the U.K. Bribery Act 2010 or other similar applicable Laws ("Anti-Corruption Laws").

(d) Neither the Company nor any of its directors or officers, nor, to the Knowledge of the Company, its employees, agents or third-party representatives: (i) is (A) on any list of designated or blocked Persons in relation to trade, economic or financial sanctions applicable Laws or restrictive measures ("Sanctions"), (B) in the government of, resident in, or organized under the Laws of a country or territory that is the subject of comprehensive Sanctions, or (C) majority-owned or controlled by any of the foregoing (a "Sanctioned Person"); (ii) acting for or on behalf of the Company has transacted business with or for the benefit of any Sanctioned Person in violation of Sanctions; nor (iii) except as set forth on

Schedule 4.10(d), has violated any applicable Laws relating to export, re-export, transfer, customs, and import controls (“Export Laws”).

(e) In the past five (5) years neither the Company nor the Business has (i) received from any Governmental Entity or any other Person any notice, inquiry, or internal or external allegation, (ii) except as set forth on Schedule 4.10(e), made any voluntary or involuntary disclosure to a Governmental Entity, or (iii) conducted any internal investigation or audit concerning any actual or potential violation or wrongdoing, in each case related to Anti-Corruption Laws, Sanctions, Export Laws or applicable Laws relating to anti-boycott.

(f) Company currently maintains International Organization for Standardization (ISO) Quality Systems certifications, including ISO 9001, in connection with the Business as a supplier of Alloy Welding Products, Bar and Wire Rod, and such certifications will be transferred in connection with the Purchased Assets and there is no pending or threatened repeal, failure to renew, or challenge to any such certificate and to the Company’s Knowledge, there is no circumstance that causes or is likely to cause that such ISO certification (if any) to not be transferred as part of the Purchased Assets or be used in connection with the Business by Purchaser. Company has provided all audits conducted in the past five (5) years associated with such ISO certifications to Purchaser prior to Closing.

#### **Section 4.11 Material Contracts.**

(a) Schedule 4.11(a) sets forth a list of the following types of Contracts to which Company or Seller is a party as of the date hereof (collectively, the “Material Contracts”) that relate to the Business or the Purchased Assets:

(i) Any single Contract or series of related or unrelated Contracts (other than unfulfilled commitments, quotations, purchase orders, customer orders or work orders that constitute part of the Purchased Assets issued by the Business’ customers to and accepted by Company or Seller on or before the Closing) between the Company, on one hand, and the same third party, on the other hand, that contemplates or might reasonably be expected to involve in the twelve (12) months following the Closing Date, (A) the payment or delivery of cash or other consideration in an amount or having a value in excess of \$100,000 in the aggregate, or (B) the performance of services or delivery of goods having a value in excess of \$100,000 in the aggregate;

(ii) any Contract that relates to the sale of any of Company’s assets, other than in the ordinary course of business;

(iii) any Contract that relates to Company’s acquisition of any business, a material amount of stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(iv) any Contract creating or involving any agency relationship, distribution arrangement or franchise relationship;

(v) any Contract creating or relating to any partnership or joint venture or any sharing of revenues, profits, losses, costs or Liabilities;

(vi) any Contract that limits or purports to limit, in any material respect, the ability of Company to compete in any line of business or with any Person or in any geographic area or during any period of time (excluding, as applicable, any use limitations on the Leased Real Property as set forth in the Real Property Leases);

(vii) any Contract providing for indemnification by Company, except for any such Contract that was (A) entered into in the ordinary course of business, or (B) entered into in connection with the purchase or sale of any entity or business and is otherwise disclosed under this Section 4.11;

(viii) any Contracts related to any Indebtedness for borrowed money of Company, or to the mortgaging or pledging of, or otherwise placing an Encumbrance on the Purchased Assets; any Contract involving or incorporating any guaranty, any pledge, any performance or completion bond, any indemnity or any surety arrangement;

(ix) (A) relating to the employment, consulting or other service relationship of any employee, consultant or independent contractor of the Company, except for agreements entered into by employees, consultants or independent contractors on the Company's standard form consistent with the Company's customary employment practices, complete copies of which have been provided previously to the Purchaser or (B) any agreements entered into under a Benefit Plan, that is a severance, bonus, or similar Contract with any employee, consultant or independent contractor of the Company;

(x) any collective bargaining agreement or other Contract with a labor union or organization (collectively, a "Collective Bargaining Agreement");

(xi) any Contract providing for the payment of any cash or other compensation or benefits upon the sale of all or a material portion of the Purchased Assets, the Business or a change of control of Company;

(xii) any Contract under which the Company is lessee of or holds or operates any personal property owned by any other Person, which involves annual rental payments of greater than \$50,000 or group of such Contracts with the same Person which involve consideration in excess of \$50,000 in the aggregate;

(xiii) any material broker, distributor, dealer, manufacturer's representative, agency, marketing and advertising Contracts;

(xiv) any Contract relating to the acquisition, transfer, use, development, sharing or license or grant of any other right of any Intellectual Property including any Intellectual Property License other than (A) any Contract under which commercially available "off-the-shelf" software is licensed or made available to the Company pursuant to standard commercial terms for a fee of less than \$35,000 per year, and (B) any non-exclusive license that is merely incidental to the transaction contemplated in the Contract in which such license is granted, the commercial purpose of which is primarily for something unrelated to Intellectual Property;

(xv) any Contract imposing any restriction on the Company's right or ability (A) to compete with any other Person, (B) to acquire any product or other asset or any services from any other Person, to sell any product or other asset to or perform any services for any other Person or to transact business or deal in any other manner with any other Person, or (C) to develop or distribute any products or services;

(xvi) any Contract relating to any Legal Proceeding or Order;

(xvii) any Contract with a Governmental Entity;

(xviii) any Contracts that require Company to purchase its total requirements of any product or service from a third party or that contain "take or pay" provisions;

(xix) any Contracts between or among Company, on the one hand, and Seller or any Affiliate of Seller (other than the Company) on the other hand and any Contract relating to the purchase

or sale of any product or other asset by or to, or the performance of any services by or for, any Related Party;

(xx) any Contract entered into outside the ordinary course of business not previously disclosed pursuant to this Section 4.11(a); and

(xxi) any other Contract deemed material by Company to the conduct of its Business and/or the ownership or operation of the Purchased Assets and not previously disclosed pursuant to this Section 4.11(a).

(b) Neither Company nor, to the Knowledge of Company, any other party, is in, or, has received written notice of, any breach, violation of or default under any Material Contract. A copy of each Material Contract has previously been made available to Purchaser. Each Material Contract is a legal, valid and binding agreement of Company and is in full force and effect, and is enforceable against Company and, to the Knowledge of Company, each other party thereto, in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at Law or in equity). (i) The Company has not, and to the Knowledge of the Company no other Person has, violated or breached, or declared or committed any default under, any Material Contract; (ii) no event has occurred, and, the Knowledge of the Company, no circumstance or condition exists (including the execution of this Agreement and the consummation of the transactions contemplated hereby), that might (with or without notice or lapse of time) (A) result in a violation or breach of any of the provisions of any Material Contract, (B) give any Person the right to declare a default or exercise any remedy under any Material Contract, (C) give any Person the right to accelerate the maturity or performance of any Material Contract, or (D) give any Person the right to cancel, terminate or modify any Material Contract; (iii) the Company has not received any notice or other communication (in writing or otherwise) regarding any violation or breach of, or default under, any Material Contract; and (iv) the Company has not waived any right expressly provided for any Material Contract. The Purchaser has been provided with a true, correct and complete copy of all Material Contracts, together with all supplements, amendments, waivers or other changes thereto.

#### **Section 4.12 Reserved.**

#### **Section 4.13 Equipment Etc.**

(a) Schedule 4.13(a) sets forth an accurate list of the Company's capitalized fixed assets as carried in the Company's fixed asset reporting system.

(b) Schedule 4.13(b) sets forth a list of all Purchased Assets leased to the Company.

(c) Each asset identified or required to be identified in Schedule 4.13(a) or Schedule 4.13(b) complies in all material respects with, and is being operated and otherwise used in material compliance with, all applicable Laws and Orders. Except as set forth on Schedule 4.13(c), Company has good and valid title to, or a valid and enforceable leasehold interest in, all buildings, machinery, equipment, and other Tangible Personal Property assets (including any assets reflected on the Interim Financial Statements) used in or necessary for the conduct of its Business as presently conducted and as presently proposed to be conducted, free and clear of all Encumbrances (other than Permitted Encumbrances). Each such Tangible Personal Property asset (i) has been maintained in accordance with normal industry practice, (ii) is in good operating condition and repair (subject to normal wear and tear), (iii) is usable in the ordinary course of business and suitable for the uses intended therefor, (iv) has been installed, constructed, inspected and maintained by Company in accordance with customary practices and standards in the industry in which the Business operates, (v) is free from any latent defects and without material disruptions, and (vi) conform in all material respects to all applicable Law relating to its use and operation. To the Knowledge of the Company, there are no facts or conditions affecting any Purchased

Assets that would reasonably be expected, individually or in the aggregate, to materially interfere with the current use or operation of such properties and assets.

(d) Except as set forth on Schedule 4.13(d), all of the Tangible Personal Property assets and properties of Company (other than goods in transit and items stored for an interim basis) are located on the Leased Real Property and none of the Inventory of Company is subject to any consignment, bailment, warehousing or similar Contract.

#### **Section 4.14 Real Property.**

(a) Company does not own any real property. Schedule 4.14(a) contains a list, by street address or location, of all real property subject to any lease or sublease to which Company is a party, and under which Company is a lessee (collectively, the “Real Property Leases” and the real property to which such Real Property Leases relate, the “Leased Real Property”). Company is in lawful possession of its applicable Leased Real Property and Company has made available to Purchaser true, correct and complete copies of all Contracts, or other leases, lease guarantees, subleases, agreements for the leasing, use or occupancy of, or otherwise granting a right in or relating to the Leased Real Property to which the Company is a party, including all amendments, terminations and modifications thereof. The Real Property Leases: (i) are in full force and effect, are valid, binding and enforceable and effective in accordance with their terms; (ii) neither the Company nor, to the Knowledge of the Company, any other party to the Real Property Leases is in breach or default, and, to the Knowledge of the Company, no event has occurred which, with notice or lapse of time or both, would constitute such a breach or default or permit termination, modification or acceleration under the Real Property Leases; (iii) the Real Property Leases have not been modified, except to the extent that such modifications are disclosed by the documents delivered to Purchaser; (iv) the Company is exclusively entitled to all rights and benefits as lessee under the Real Property Leases and the Company has not assigned, transferred, conveyed, mortgaged, deeded in trust or encumbered any interest in the Real Property Leases; and (v) the terms and conditions of the Real Property Leases will not be affected by, nor will the Real Property Leases be in default as a result of, the completion of the Transactions, subject to receipt of the consents set forth on Schedule 4.14(a). To the Knowledge of the Company, there is not now pending nor contemplated any reassessment of any parcel included in the Real Property Leases that could result in a change in the rent or assessment, additional rent, assessment or other sums and charges payable by the Company under any agreement relating to the Real Property Leases.

(b) With respect to each piece of Leased Real Property: (i) the current use of such Leased Real Property by the applicable Company and the operation of Company’s business thereon does not, to Company’s Knowledge, violate any instrument of record or Contract affecting such Leased Real Property; (ii) Company has not subleased, assigned or otherwise granted to any Person the right to use or occupy its Leased Real Property or any portion thereof; (iii) there are no Persons in possession of such Leased Real Property except the Company; and (iv) to the Company’s Knowledge is used in a manner consistent with and permitted by applicable zoning ordinances without special use Permits, is served by all water, sewer, electrical, telephone, drainage and other utilities required for normal operations of the business, and is in good condition and repair.

(c) No Governmental Entity has issued any Order (that remains pending or in effect), or the Company’s Knowledge no Government Entity has threatened in writing to issue any Order, that adversely affects the use or operation of the Leased Real Property, or requires any material repairs, alterations, additions or improvements thereto. To the Company’s Knowledge, there is no pending or threatened, appropriation, condemnation, eminent domain or like proceedings relating to the Leased Real Property.

#### **Section 4.15 Employee Benefit Plans.**

(a) Schedule 4.15(a) contains a list of each Benefit Plan in which the employees assigned to the Company participate or is sponsored for such employees (the “Company Plan”). The Company has not made any plan or commitment, whether or not legally binding, to create any additional Benefit Plan or

to modify or change any existing Company Plan that would increase the Company's Liability after the date of this Agreement. All Company Plans may be amended or terminated without penalty to the Company at any time on or after the Closing. Each Company Plan materially complies, in form and operation, and has been maintained, funded and administered in all material respects in compliance with its terms and all applicable Laws, including ERISA and the Code. Each Benefit Plan intended to meet the requirements of Section 401(a) or Section 408 of the Code (a "Qualified Plan") is so qualified and exempt from Tax under Section 501(a) of the Code and has received a current favorable determination letter from the IRS, or is comprised of a preapproved plan that has received a current favorable opinion or advisory letter from the IRS, and to the Company's Knowledge, nothing has occurred that would adversely affect the qualification of any such Qualified Plan. To the Company's Knowledge, nothing has occurred with respect to the design or operation of any Qualified Plan that could reasonably be expected to cause the loss of such qualification or exemption or the imposition of any Liability or Encumbrance, penalty, or Tax under ERISA or the Code or any other applicable Law, and each Qualified Plan has been timely amended to comply with current Law. There are no unfunded liabilities pursuant to any Company Plan. All Qualified Plans are marked as such on Schedule 4.15(a), and the Company has not maintained or contributed to, and the employees of the Company are not covered by any other Qualified Plans. With respect to this Section 4.15, the term "Company" includes only Specialty Pipe & Tube, Inc. and not any other ERISA Affiliate of the Company.

(b) With respect to each Company Plan, the Company has delivered to Purchaser true, correct and complete copies of all material documents in connection with each such Company Plan, including (where applicable): (i) the plan document as in effect on the date hereof, together with all amendments thereto, including, in the case of any Benefit Plan not set forth in writing, a written description thereof; (ii) all current summary plan descriptions, summaries of material modifications, and material communications, including all materials relating to any governmental investigation or audit or any submissions under any voluntary compliance programs; (iii) the most recent determination letter received from the IRS; (iv) the three (3) most recent IRS Form 5500 annual report (with all applicable attachments) as filed (and any similar forms filed with any other Governmental Entity); (v) all related trust agreements, service agreements, insurance Contracts, and other funding arrangements (and the latest financial statements thereto); (vi) all reports submitted within the preceding three (3) years by third party administrators, actuaries, investment managers, auditors, consultants, or other independent contractors; (vii) all notices that were issued within the preceding three (3) years by the IRS, Department of Labor, or any other Governmental Entity with respect to the Company Plans; and (viii) all employee manuals or handbooks containing personnel or employee relations policies.

(c) All required reports and descriptions (including IRS Form 5500 annual reports, summary annual reports, and summary plan descriptions, as applicable) have been timely filed or distributed with respect to each Company Plan in accordance with the requirements of the Code, ERISA, and other applicable Laws the preceding seven (7) years. With respect to each Company Plan, all contributions (including all employer contributions and employee salary reduction contributions), distributions, reimbursements and premium payments that are due have been timely made by the Company or on behalf of the Company.

(d) Except as set forth on Schedule 4.15(d), Company does not maintain, sponsor, contribute to, have any obligation to contribute to, or have any Liability under or with respect to, either on its own behalf or on behalf of Business Employees, their beneficiaries or any former employees or contractors of the Business, (i) any plan that is or was subject to Section 412 of the Code or Title IV of ERISA or any comparable provisions of any other applicable Law, (ii) a "multiple employer plan" (within the meaning of Section 210 of ERISA or Section 413(c) of the Code), or (iii) a "multiple employer welfare arrangement" (as such term is defined in Section 3(40) of ERISA), including any Liability by reason of at any time being treated as a single employer under Section 414 of the Code with any other Person. Company does not have, and have never had, any obligation to contribute to or any Liability under or with respect to any "multiemployer plan," as defined in Section 3(37) of ERISA, including any Liability by reason of at any time being treated as a single employer under Section 414 of the Code with any other Person. Company is not bound by, or Liable on behalf of its Business Employees, their beneficiaries or



any former employees or contractors of the Business, any Contract addressing, and does not have any Liability described in, Section 4204 of ERISA. Neither Company or any of its subsidiaries or any Affiliate acting as its agent, has (i) failed to timely pay premiums under any Company Plan, (ii) withdrawn from any Company Plan, or (iii) engaged in any transaction which would give rise to Liability under Section 4069 or Section 4212(c) of ERISA.

(e) With respect to any Company Plan that is an employee welfare benefit plan (within the meaning of Section 3(1) of ERISA): (i) each such plan for which contributions are claimed as deductions under any provision of the Code is in compliance with all applicable requirements pertaining to such deduction; (ii) with respect to any welfare benefit fund (within the meaning of Section 419 of the Code) there is no disqualified benefit (within the meaning of Section 4976(b) of the Code) that would result in the imposition of a Tax under Section 4976(a) of the Code; (iii) any Company Plan that is a group health plan (within the meaning of Section 733(a) of ERISA, Section 4980B(g)(2) of the Code, or any other applicable Law) complies with all of the applicable requirements of the Code, ERISA, Title XXII of the Public Health Service Act, the applicable provisions of the Social Security Act, the Health Insurance Portability and Accountability Act of 1996, and other applicable Laws; and (iv) the Company does not have any Liability with respect to the provision of post-retirement or post-termination medical, health, or life insurance or other welfare type benefits for any Person (other than in accordance with COBRA and for which the beneficiary pays the entire premium cost).

(f) There have been no “prohibited transactions” within the meaning of Section 4975 of the Code or Sections 406 or 407 of ERISA that are not otherwise exempt under Section 408 of ERISA and no breaches of fiduciary duty (as described in Section 404 of ERISA) with respect to any Company Plan that could result in any Liability for the Company, or any stockholder, officer, director or employee of Company.

(g) No Legal Proceeding or audit with respect to any Company Plan (other than routine claims for benefits) is pending or, to the Company’s Knowledge, threatened by the IRS, the Department of Labor, or any other Governmental Entity, and to the Company’s Knowledge, there is no fact or circumstance that would give rise to any such Legal Proceeding or audit and no matters are pending with respect to any Company Plan under any IRS or Department of Labor correction program. There are no claims pending or threatened in writing by or with respect to any Person claiming benefit payments or entitlement to benefits under any Company Plan, other than those made in the ordinary operation of such plans, nor, to the Company’s Knowledge, is there any basis for any such claim. The Company has not incurred any Liability for any excise, income or other taxes or penalties with respect to any Company Plan, and, to the Company’s Knowledge, no event has occurred and no circumstance exists or has existed that could reasonably be expected to give rise to any such Liability.

(h) Except as otherwise provided in Schedule 4.15(h), neither the execution of this Agreement nor the consummation of the transactions contemplated hereby, either alone or in conjunction with any other event (including a termination of any employee, officer, director, stockholder or other service provider of the Company or any subsidiary of the Company (whether current, former or retired) or their beneficiaries), will (i) give rise to any payment or compensation or other liability to any current or former employee or other service provider to the Company or (ii) accelerate the time of payment or vesting or increase the amount of compensation or benefits due to any employee, officer, director, stockholder or other service provider of the Company or any subsidiary of the Company (whether current, former or retired) or their beneficiaries.

(i) No amounts paid or payable under any Company Plan to or with respect to any individual (including any such amounts that may be payable as a result of the execution of this Agreement or the consummation of the transactions contemplated hereby or thereby) will fail to be deductible for United States Federal Income Tax purposes by reason of Section 280G of the Code or any amount that will not be fully deductible as a result of Section 162(m) of the Code.

(j) The Company has no indemnity obligation on or after the date hereof for any Taxes imposed under Section 4999 or 409A of the Code.

(k) The Company has classified all individuals who perform services correctly under each Company Plan, ERISA, the Code and other applicable Law (including the Fair Labor Standards Act and any state wage and hour Law) as common law employees, independent contractors or leased employees. All such independent contractors have in the past been and continue to be properly and appropriately treated as non-employees for all federal, state, local and foreign Tax purposes, and all compensation for such individuals has been fully and accurately reported compensation on IRS Forms 1099 (or otherwise in accordance with applicable Law) when required to do so, and there exists no Liability to provide benefits with respect to such Persons under the Company Plans or otherwise. There has been no determination, inquiry, or audit by any Governmental Entity that any such independent contractor of the Company or acting in connection with the Business (or any other independent contractor who has previously rendered services to the Company or the Business, at any time) constitutes an employee of the Company. At no time during the preceding six (6) years has any independent contractor brought a claim against the Company, whether formally or informally, challenging his or her status as an independent contractor or made a claim for additional compensation or any benefits under any Company Plan or otherwise. No Persons are currently providing, or have ever provided, services to the Company pursuant to a leasing agreement or similar type of arrangement, nor has the Company entered into any agreement whereby services will be provided by such individuals.

(l) The Company and each Company Plan that is an employee welfare benefit plan (within the meaning of Section 3(1) of ERISA) is in compliance, in all material respects, with the Patient Protection and Affordable Care Act of 2010, as amended by the Health Care and Education Reconciliation Act of 2010 (collectively, the “ACA”), including (i) compliance with the rules regarding offers of affordable, minimum value health insurance coverage under Sections 4980H(a) and (b) of the Code to all employees and consultants who meet the definition of a “full time employee” under the ACA and (ii) establishment of sufficient internal systems to record and document ACA and other welfare plan coverage enabling accurate reporting on Forms W-2 and Forms 1094-C and 1095-C. All required Taxes or penalties due and payable under the ACA have been paid, and no excise Tax or penalty under the ACA is outstanding, has accrued, or will become due with respect to any period prior to the Closing.

#### **Section 4.16 Labor and Employment Matters.**

(a) Schedule 4.16(a) sets forth: (i) a true and complete list of all of the Company’s employees (the “Business Employees” or “Employees”), contractors and consultants; (ii) the base compensation, variable compensation, benefits, and other remunerations owed (including but not limited to accrued paid time off, commissions, bonuses or other incentive compensation) of each such Employee, contractor and consultant; (iii) the title, position office location, status as part-time or full-time, and/or job classification held by each such Employee, contractor and consultant, whether each Person is and has been treated as “exempt” or “non-exempt” for purposes of federal, state and/or local Laws governing the potential payment of overtime, and whether such Person is currently on a leave of any kind; (iv) hire retention date; and (v) a true and complete list of all Employees performing work covered by any Collective Bargaining Agreement. All Employees who are performing services for the Company in the United States are legally permitted to work in the United States, and, to the Company’s Knowledge, if any such Employees are employed by Purchaser, they will be legally permitted to work in the United States following the consummation of the Transactions. The employment of all Employees, contractors and consultants may be terminated at any time with or without cause and without any severance or other liability to the Company. No former employee, officer, manager or director of the Company, or their dependents, are receiving (or are scheduled to receive) from the Company pension benefits, retiree medical insurance coverage, retiree life insurance coverage or other welfare benefits. No current officer, employee or group of employees, consultant or contractor has given notice to the Company that such individual(s) has any present plans to terminate his/her/its employment or engagement with the Company in the one (1) year following the date hereof.

(b) Each individual who provides services to the Company and who is classified by the Company as an employee, is properly classified with respect to employment status for all purposes, including for employment, labor and Tax purposes. The Company has no material outstanding liabilities arising out of any misclassification of any Person as an independent contractor rather than as an employee or with respect to any employee leased from another employer.

(c) Except as set forth on Schedule 4.16(c), the Company is not a party to or bound by any Collective Bargaining Agreement or other Contract or relationship with any labor organization, there is not any labor organization representing or purporting to represent any employee of the Company, and no labor organization or group of employees is seeking or has sought to organize employees for the purpose of collective bargaining. During the past five (5) years, there has been no, and to the Company's Knowledge there is not threatened, occurrence or threat of any (i) strike, slowdown, picketing, work stoppage, or other material labor dispute against or affecting the Company, (ii) charge, complaint, grievance, Legal Proceeding or other claim against or affecting the Company relating to the alleged violation of any Law, including any Collective Bargaining Agreement, including those pertaining to labor relations or employment matters, including any charge, grievance or complaint filed by an employee or labor organization with the National Labor Relations Board, the Equal Employment Opportunity Commission or any comparable Governmental Entity or non-Governmental Entity with authority over a matter, (iii) union organizational or decertification activity or other labor or employment dispute against or affecting the Company, or (iv) application for certification of a collective bargaining agent with respect to the employees of the Company. Further, the Company has not been put on notice by any Governmental Authority that it is out of compliance with any applicable Laws pertaining to employment, labor relations, or collective bargaining practices.

(d) The Company is, and has remained, in compliance in all material respects, with all Laws, Collective Bargaining Agreements or Employment Agreements relating to the employment of labor, employment and personnel, including without limitation: those requirements relating to collective bargaining or any Collective Bargaining Agreements or Employment Agreements, wages and hours, overtime, vacation or paid time off, meal and other breaks; classification of and payment of employees, independent contractors and consultants; employment equity and all fair labor practices, including but not limited to: non-discrimination, non-harassment and non-retaliation in employment; equitable and appropriate provision of leave, accommodations or benefits in accordance with any federal, state or local Law providing such leave; benefits, compensation, or entitlements to any employees or independent contractors; affirmative action; workplace safety; occupational health and safety (including any guidance published by any applicable governmental authority related to the COVID-19 pandemic); immigration and visa sponsorship and employment authorization verification; layoffs; employment and unemployment insurance; workers' compensation; and the collection and payment of Taxes and other withholdings. The Company is not liable for any assessments, penalties or other sums for failing to comply with any such Laws, Collective Bargaining Agreements or Employment Agreements and there are no Legal Proceeding pending, or, to the Company's Knowledge, threatened, nor are there any orders, decisions, settlements or awards currently outstanding against or in respect of the Company under or in respect of any Laws relating to labor, employment, and personnel.

(e) The Company is not delinquent in the payment of any wages, salaries, bonuses, commissions, wage premiums, or any other compensation that has become due and payable to its employees, independent contractors, or other service providers, pursuant to any Law, Contract (including, any Collective Bargaining Agreements or Employment Agreements), or employment policy. Each Seller has paid all amounts that it or the Company is required to pay as contributions to the Benefit Plans as of the last day of the most recent fiscal year of each of the Benefit Plans, and as required in accordance with applicable Law. All compensation, commissions and benefits accrued under any Benefit Plan will have been paid, and all monies withheld from employee paychecks with respect to Benefit Plans have been transferred to the appropriate Benefit Plan in a timely manner as required by applicable Laws.

(f) In the past five (5) years, there have been no labor or employment related Legal Proceedings pending or threatened in writing against the Company, including but not limited to any act or

allegation of or relating to unfair labor practices, discrimination, harassment or misconduct on the basis of any characteristics protected by applicable Law, or breach of any Company policy relating to the foregoing, in each case involving the Company or any current or former employee, director, manager, officer or independent contractor (in relation to his or her work at the Company) of the Company, nor has there been any settlement or similar out-of-court or pre-litigation arrangement relating to any such matters. The Company is not a party to, or otherwise bound by, any labor or employment related Order. There are no consensual or non-consensual sexual relationships between any legal or beneficial owner, officer or, to the Company's Knowledge, supervisor-level employee of the Company, on the one hand, and any direct report or other subordinate of any of the foregoing individuals, on the other hand.

(g) The Company and the Seller on behalf of the Business and the Business Employees has materially complied with its obligations to collect and maintain a U.S. Citizenship and Immigration Services Form I-9 in accordance with applicable Law for each current or former employee of the Company with respect to whom such form is required to be maintained by the Company. The Company has not knowingly hired, continued to employ or otherwise used the services of any unauthorized workers. The Company has not been the subject of any audit of its immigration, employment verification or Form I-9 practices by any Governmental Entity.

(h) The Company has not implemented any plant closings, employee layoffs or actions involving loss of employment implicating the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar or related Law and no such events are currently planned, anticipated or announced. Schedule 4.16(h) sets forth by date and location any employees terminated within the ninety (90) days preceding the Closing.

(i) There are no workers' compensation claims pending against the Company nor, to the Company's Knowledge, are there any facts that could reasonably be expected to give rise to such a claim or claims not covered by workers' compensation insurance.

(j) The Company has no severance plans or policies, does not maintain the practice of providing severance or other benefits upon termination to all or some employees, and the Company has no agreements obligating the Company to pay any compensation or other benefits upon termination of any employee for any reason.

(k) In the past three (3) years, the Company has not sought to enforce any non-competition or customer non-solicitation agreement covering a former employee of the Company. To the Company's Knowledge, no current or former employee or contractor of the Company has any claim with respect to any Company intellectual property rights.

(l) To the extent required by this Agreement, Law, contract (including any Collective Bargaining Agreements) or past practice relating to Business Employees, the Company or Seller has (i) properly and timely notified all labor organizations representing Business Employees of the transfer of the Purchased Assets, (ii) properly and timely notified all labor organizations representing Business Employees of the requirements under the Transition Services Agreement as it relates to Business Employees; (iii) fully bargained over the Company's or Seller's decision to transfer the Purchased Assets to the Purchaser; and (iv) obtained the requisite approvals from all labor organizations representing Business Employees of the Employee Leasing Transition Services Agreement as it relates to Business Employees and of the Purchaser's intent effective on the Employee Transition Expiration Date (as defined in Section 6.3(a)) to either adopt any Collective Bargaining Agreements limited to only matters, claims, grievances, or obligations occurring or arising after the Employee Transition Expiration Date or to recognize any labor organizations representing Business Employees commencing the period after the Employee Transition Expiration Date. Seller and Company shall take no actions that would otherwise create obligations on the part of the Purchaser to be deemed a successor employer of the Business Employees.

**Section 4.17 Environmental Matters.**

(a) Except as set forth in Schedule 4.17(a), Company (i) is in material compliance with all Environmental Laws, and (ii) has not received from any Person any (A) Environmental Notice or Environmental Claim, or (B) written request for information pursuant to Environmental Law, which, in each case, either remains pending or unresolved, or is the source of ongoing obligations or requirements as of the Closing Date. Company has obtained all Environmental Permits necessary for the ownership, lease, operation or use of the Business or Purchased Assets and Company and Seller on behalf of the Business is not in default or violation of any term, condition or provision of any Environmental Permit. The Company holds all Environmental Permits necessary for the operation of its Business and Purchased Assets and which are listed on Schedule 4.17(a), to the Company's Knowledge, there are not facts or circumstances that exist that might prevent or impede, after the Closing Date, the conduct and operations of the Business as currently conducted or the ownership, lease, operation or use of the Purchased Assets as currently used.

(b) Except as set forth in Schedule 4.17(b), there has been no release of Hazardous Materials in contravention of Environmental Laws with respect to the Business or Purchased Assets or any real property owned, operated or leased by Company, and Company has not received any Environmental Notice, written notice, Order, report or other information regarding actual or alleged material violation of, or material Liability under any Environmental Law or Environmental Permit, or that any real property owned, operated or leased by Company has been contaminated with any Hazardous Material in violation of Environmental Laws by Company. Except as set forth in Schedule 4.17(b), the Company and the Business has not manufactured, distributed, treated, stored, disposed of, arranged for the disposal of, transported, handled, exposed any Person to, or released any substance, or owned or operated any property or facility contaminated by any substance, in each case so as to give rise to any material Liabilities pursuant to Environmental Laws. No real property currently or formerly owned, operated or leased by the Company is listed on, or has been proposed for listing on, the National Priorities List (or CERCLIS) under CERCLA, or any similar state list. The Company has not assumed, undertaken, become subject to, or provided an indemnity with respect to any material Liability of any other Person relating to or arising under Environmental Laws. The Company has provided Purchaser with copies of all environmental reports, assessments and audits and all other documents relating to any material environmental, health or safety Liabilities in the Company's possession or control, in each case relating to the Company or any of its current or former businesses, operations, properties or facilities.

**Section 4.18 Insurance.** Company, the Business and Purchased Assets are insured to the extent specified under the insurance policies listed in Schedule 4.18 (the "Insurance Policies"). All such insurance policies with respect to the properties, Purchased Assets or Business of the Company are in full force and effect and all premiums due and payable thereon have been paid in full, no premiums will be required to be made after the Closing Date with respect to periods prior to the Closing, and the Company is not in default with respect to its material obligations under any such policies and there exists no event, occurrence, condition or act which, with the giving of notice, the lapse of time or the happening of any other event or condition, including the completion of the Transactions, would become a default of the Company. No written notice of cancellation or termination has been received by Company with respect to any such policies. In the past three (3) years, the Company has given timely notice to the insurer of all material claims that may be insured thereby. The Company has not been denied insurance or suffered the cancellation of any insurance in the past three (3) years. There are no claims by Company pending under any Insurance Policies where coverage has been questioned, denied or disputed by the underwriters of such Insurance Policies or in respect of which such underwriters have reserved their rights and there are no known circumstances which might result in any such claim. In addition, Schedule 4.18 contains a list of all pending claims and all claims submitted during the previous three (3) years under any Insurance Policy. This Section 4.18 shall not apply to any Company Benefit Plans or other employee benefit arrangements.

**Section 4.19 Taxes.**

- (a) All Tax Returns required to be filed with respect to the Purchased Assets, the Assumed Liabilities or the Business have been timely filed, and all such Tax Returns are true, correct and complete in all material respects.
- (b) All Taxes due and payable with respect to the Purchased Assets, the Assumed Liabilities or the Business, whether or not shown to be due on any Tax Return, have been or, to the extent first due and payable between the date hereof and the Closing Date, will be, timely paid in full. With respect to any period for which Tax Returns have not yet been filed or for which Taxes are not yet due or payable, the Sellers have made sufficient accruals for such Taxes on the Financial Statements. No liability for Taxes has been incurred with respect to the Purchased Assets, the Assumed Liabilities or the Business since the date of the most recent Financial Statements, except for Taxes incurred in the ordinary course of business.
- (c) All amounts of Taxes required to have been withheld and paid, deducted or collected by the Seller under applicable Law with respect to the Purchased Assets, the Assumed Liabilities or the Business, including in connection with amounts paid or owing to any current or former employee, independent contractor, creditor, shareholder or other Person, have been timely withheld, deducted or collected and paid to the appropriate Taxing Authority, and all IRS Forms W-2 and 1099 and other applicable forms required with respect thereto have been properly completed and timely filed.
- (d) Seller has timely collected all sales, use, value-added and similar Taxes required to be collected by them with respect to the Purchased Assets, the Assumed Liabilities or the Business, and have remitted, or will remit, in each case on a timely basis, such amounts to the appropriate Governmental Entity. Seller has timely and properly collected and maintained all resale certificates, exemption certificates and other documentation required to qualify for any exemption from the collection of sales Taxes imposed on or due from Seller.
- (e) No deficiency with respect to Taxes has been claimed, proposed, asserted or assessed against or with respect to any Seller with respect to the Purchased Assets, the Assumed Liabilities or the Business which has not been fully paid or finally settled.
- (f) There is no audit, claim or assessment pending, proposed, contemplated, asserted or threatened in writing with respect to any Tax or Tax Return related to the Purchased Assets, the Assumed Liabilities or the Business, and no Taxing Authority has indicated in writing an intent to investigate, commence or open such an audit, claim or assessment with respect to any such Tax or Tax Return.
- (g) Neither the Business nor any of the Purchased Assets or Assumed Liabilities is subject to any Tax allocation, indemnity or sharing agreement or similar agreement, arrangement or understanding to which such Person is a party or is otherwise subject.
- (h) No closing agreements (as described in Section 7121 of the Code or any corresponding, analogous or similar provision of state, local or non-U.S. Law), private letter rulings, technical advice memoranda or similar agreements or rulings have been entered into or requested with respect to the Purchased Assets, the Assumed Liabilities or the Business.
- (i) There are no Encumbrances with respect to Taxes upon any of the Purchased Assets.
- (j) No claim has been made in writing by a Taxing Authority in a jurisdiction where any Seller does not file Tax Returns or Taxes are not paid with respect to the Purchased Assets, the Assumed Liabilities or the Business that such Seller is subject to taxation by that jurisdiction or such Taxes are required to be paid.

(k) There are no currently outstanding agreements, consents or applications to extend or waive any statute of limitations with respect to any Tax Returns or Taxes with respect to the Purchased Assets, the Assumed Liabilities or the Business that will remain in effect as of the Closing Date. No power of attorney has been granted with respect to any matter relating to Taxes payable with respect to the Purchased Assets, the Assumed Liabilities or the Business that will be in effect as of the Closing Date.

(l) No tax election has been made with respect to any of the Purchased Assets, the Assumed Liabilities or the Business that has, or may have, continuing effect for Tax purposes, after the Closing Date.

(m) None of the Purchased Assets or the Assumed Liabilities is, nor is any property relating to the Business, “tax-exempt use property” within the meaning of Section 168(h) of the Code.

(n) None of the Purchased Assets or the Assumed Liabilities is, nor is any property relating to the Business subject to any Tax exemptions, Tax holidays or other Tax reduction agreements or orders to which the Business or any of the Purchased Assets or Assumed Liabilities is currently subject. Seller have made available to Purchaser all documents relating to such Tax exemptions, Tax holidays or other Tax reduction arrangements or orders. Seller are in compliance with the requirements for any such Tax exemption, Tax holiday or other Tax reduction arrangement or order.

(o) No Purchased Asset or Assumed Liability is a “United States real property interest” under Section 897 of the Code.

(p) No Purchased Asset or Assumed Liability is an equity interest in a Person for Tax purposes.

(q) No power of attorney with respect to any Tax matter is currently in force with respect to the Purchased Assets, the Assumed Liabilities or the Business that would, in any manner, bind, obligate, or restrict the Purchaser following the Closing Date.

#### **Section 4.20 Intellectual Property.**

(a) Schedule 4.20(a) sets forth a list of the following Company Intellectual Property that, in each case, is subject to any issuance, registration or application to or with any Governmental Entity or authorized private registrar in any jurisdiction: (i) all Patents and pending Patent applications, including any and all extensions, continuations, continuations-in-part, divisions, reissues, reexaminations, substitutes, renewals, and foreign counterparts thereof; (ii) all Trademark registrations and pending Trademark registration applications; (iii) all copyright registrations and pending copyright registration applications; (iv) all domain name registrations and pending domain name registrations; and (v) social media accounts (collectively, the “Registered Intellectual Property”). All required filings and fees related to the Registered Intellectual Property have been timely filed with and paid to the relevant Governmental Entities and authorized registrars, and all Registered Intellectual Property is otherwise in good standing. Except as set forth in Schedule 4.20(a), Company is the sole owner of the registrations and/or applications related to its applicable Registered Intellectual Property and is entitled to use any and all such Registered Intellectual Property in connection with the operation of its Business. All of Company’s Registered Intellectual Property is valid and enforceable and, to the Knowledge of Company, none of such Registered Intellectual Property is being misappropriated, violated, or infringed by any third party in any manner.

(b) Excluding the Registered Intellectual Property, Schedule 4.20(b) contains a complete and accurate list of all of the following that are owned by the Company: (i) Internet domain names; (ii) unregistered trademarks, trade names, logos, service marks, and design marks; (iii) material trade secrets and know-how and Software owned by the Company. Schedule 4.20(b) also lists any Intellectual Property owned or held by the Company that is material to the conduct of the Company’s Business as presently

conducted, including any such Intellectual Property embodied or used in any past or current products (for any trade secrets, the description should be limited to a high-level description that will not jeopardize its trade secret status). The attached Schedule 4.20(b) contains a complete and accurate list of all licenses and other rights granted to or by the Company by or to any third party with respect to any Intellectual Property, in each case to the extent material to or used in the Business (other than licenses for generally available commercial, unmodified, “off the shelf” Software used solely for the Company’s own internal use for an aggregate fee, royalty or other consideration for any such Software or group of related Software licenses of no more than \$35,000). Except as set forth on Schedule 4.20(b), the Company owns and possesses all right, title and interest in and to all Intellectual Property set forth on Schedule 4.20(a) and 4.20(b) and owns and possesses all right, title and interest in and to or has the right to use pursuant to a valid and enforceable license set forth on Schedule 4.20(b), all material Intellectual Property used in or necessary for the operation of its Business, free and clear of all Encumbrances (other than Permitted Encumbrances) (collectively, the “Company Intellectual Property”).

(c) The Company has taken commercially reasonable steps to maintain, enforce and protect the proprietary nature of the Company Intellectual Property, including trade secrets, that is owned by the Company and, to the Company’s Knowledge, has not taken any actions that would materially impair or adversely affect the Company Intellectual Property. No present or former employee, officer, consultant or contractor of the Company has any ownership, license or other right, title or interest in any Intellectual Property rights of the Company. Except as set forth on Schedule 4.20(c), each current employee, equity holder, and independent contractor of the Company has entered into written agreements with the Company pursuant to which he, she or it (i) agrees to protect the confidential and proprietary information of the Company and (ii) assigns, has an obligation to assign to the Company all right, title and interest in and to all Intellectual Property created in the course of his, her or its employment or other relationship with the Company. Such form agreement is included on Schedule 4.20(c).

(d) Except as set forth in Schedule 4.20(d): (i) no claims have been made, are pending or, to the Knowledge of Company, threatened challenging the ownership (as applicable), enforceability, scope, validity, or use by Company of any Company Intellectual Property, or alleging that Company is violating, misappropriating or infringing the rights of any Person with regard to any Intellectual Property and to the Company’s Knowledge, there is no basis for such claim; (ii) the Company Intellectual Property as currently licensed or used by Company, and Company’s conduct of its Business as currently conducted, does not infringe, misappropriate or otherwise violate (directly, contributory, by inducement, or otherwise) the Intellectual Property of any Person; and (iii) to the Company’s Knowledge, no Person is infringing, misappropriating or otherwise violating any Company Intellectual Property. Except as set forth in Schedule 4.20(d), the Company has not entered into any Contract to indemnify any Person against any claim of infringement, misappropriation, misuse, dilution or violation of any Intellectual Property or Software of any other Person.

#### **Section 4.21 Material Relationships.**

(a) Schedule 4.21(a) sets forth a complete and accurate list of the twenty-five (25) largest customers (by revenue dollar value) of Company during (i) the twelve (12)-month period ended December 31, 2022 and (ii) the period from January 1, 2023 through October 31, 2023 (each, a “Material Customer”), which list includes the following information: (i) customer account name, and (ii) annual revenue for fiscal year 2022, and January 1, 2023 through October 31, 2023. None of the Material Customers has cancelled, terminated or materially decreased its usage or purchases of the products or services with Company since January 1, 2023 or otherwise notified Company that it is (A) canceling or terminating its relationship with Company or (B) adversely modifying its relationship or its usage or purchases of the products or services with Company.

(b) Schedule 4.21(b) sets forth a complete and accurate list of the ten (10) largest suppliers (by dollar value) of Company during (i) the twelve (12)-month period ended December 31, 2022 and (ii) the period from January 1, 2023 through October 31, 2023 (each, a “Material Vendor”), which list includes those vendors that accounted for (1) more than three percent (3%) of the gross revenues of



Company in 2022, or (2) more than three percent (3%) of the gross revenues of the Company in the first ten (10) months of 2023. None of the Material Vendors has cancelled, terminated or materially and adversely modified its relationship or its provision of products or services with Company since January 1, 2023 or otherwise notified Company that it is (A) canceling or terminating its relationship with Company or (B) adversely modifying its relationship or its provision of products or services with Company.

**Section 4.22 Powers of Attorney.** The Company does not have any general or special powers of attorney outstanding (whether as grantor or grantee thereof).

**Section 4.23 Warranty and Related Matters.** Schedule 4.23 sets forth a complete list of all outstanding product and service warranties, guarantees and make good agreements in connection with any of the products and services and Purchased Assets, outside the ordinary course of business for Company. There are no existing or, to the Knowledge of the Company, threatened, claims against the Company relating to any work performed by the Company or the Purchased Assets, product liability, warranty or other similar claims against the Company alleging that any products and services or Purchased Assets are defective or fails to meet any product or service warranties. Except as set forth on Schedule 4.23, to the Company's Knowledge, the Company has no Liability arising out of any injury to individuals or property as a result of the ownership, possession or use of any products distributed, procured, sold or delivered by any of the Company or with respect to any services rendered by any of the Company. Each product sold or delivered and each service rendered by the Company has been in conformity in all material respects with contractual commitments and express and implied warranties and the Company has no Liability or obligation for replacement or repair thereof. There have been and there are no product recalls or withdrawals or requests for product recalls or withdrawals by any Governmental Entity or by any customer of the Company.

**Section 4.24 Privacy and Data Security.** The Company's privacy practices are materially consistent with and comply with standards that are customary in the industry. Except as set forth on Schedule 4.24, the Company has: (a) complied with the Company's privacy policies and materially complied with all applicable Laws to which the Company is subject governing the receipt, collection, use, storage, processing, sharing, security, disclosure or transfer of Personally Identifiable Information that is possessed by or otherwise subject to the control of the Company (collectively, "Information"); (b) in connection with each third party servicing, outsourcing, or similar arrangement involving Information acquired from or with respect to the Company, contractually obligated any service provider to (i) protect, and secure from loss, damage, unauthorized access, use, disclosure, modification, or any other misuse, Information, (ii) restrict use of Information to those authorized or required under the servicing, outsourcing, or similar arrangement, and (iii) certify or guarantee the return or adequate disposal of Information; and (c) taken reasonable measures to ensure that all Information is protected against loss, damage, and unauthorized access, use, disclosure, modification, or other misuse. Except for disclosures of Information required by applicable Law, authorized by the provider of Information or provided for in the Company's privacy policies, the Company has not sold, leased or otherwise made available to third parties any Information. Except as set forth on Schedule 4.24, to the Company's Knowledge, there has not been (and neither the Company nor any other Person has issued or delivered any written notice regarding) any loss, damage, or unauthorized access, use, disclosure, modification, or other misuse of any Information. The execution of this Agreement and all of the other agreements and instruments contemplated hereby and the consummation of the transactions contemplated hereby and thereby, do not violate any Contract or applicable Laws relating to the use, dissemination, or transfer of any Information. For the avoidance of doubt, the term "privacy" as used in this Section 4.24 includes the concepts of data protection and data security.

**Section 4.25 IT Systems.**

(a) Schedule 4.25 lists all Systems and Software that is duly and validly licensed to, or owned by, the Company. Except as set forth on Schedule 4.25 all Systems are owned or leased, and operated by and are under the control of the Seller.

(b) To the Company's Knowledge, the Software used by the Company is free of any material defects, bugs and errors, and does not contain or make available any disabling codes or instructions, spyware, Trojan horses, worms, viruses or other Software routines that permit or cause unauthorized access to, or disruption, impairment, disablement, or destruction of, Software, data, or other materials ("Contaminants"). The Company employs commercially reasonable practices and safeguards to ensure that the Systems are free from Contaminants.

(c) All data and information which is owned or purported to be owned by, or has been collected by or provided to, the Company or the Seller in connection with the Business (the "Business Information") has been collected solely for purposes related to the Business, and no Business Information is used in or has been collected in connection with any other operations or business. All of the Business Information is stored on the Company's information technology systems, or has been segregated and can be exported from the Seller's information technology systems, all of which are included in the Purchased Assets. The execution, delivery, and performance of this Agreement complies with all applicable and will not require the consent of any individuals from whom Business Information has been collected.

(d) During the past three (3) years, there has been no material failure, breakdown or continued substandard performance of any Systems that has caused a material disruption or interruption in or to any customer's use of the Systems or the operation of the Company's business.

**Section 4.26 Related Party Transactions.** No direct or indirect equity holders, controlling Persons, shareholders, directors, officers, employees, agents, Affiliates, members, managers, general or limited partners or assignees (each a "Related Party") has any direct or indirect interest of any nature in any of the Purchased Assets, other than an equity holder's ownership of the units or other ownership interests, as applicable, of the Company. No Related Party is indebted to the Company. No Related Party has entered into, or has had any direct or indirect financial interest in, any Contract, transaction or business dealing of any nature involving the Company, other than through or in connection with an employment relationship with the Company. No Related Party is competing, directly or indirectly, with the Company. No Related Party has any claim or right against the Company, other than through or in connection with an employment relationship with the Company. No event has occurred, and no condition or circumstance exists, that might (with or without notice or lapse of time) directly or indirectly give rise to or serve as a basis for any claim or right in favor of any Related Party against the Purchased Assets or the Business.

**Section 4.27 Bank Accounts.** Schedule 4.27 contains a list showing (a) the name of each bank, safe deposit company or other financial institution in which the Company has an account, lock box or safe deposit box, and (b) the names of all Persons authorized to draw thereon or to have access thereto and the names of all Persons, if any, holding powers of attorney from the Company.

**Section 4.28 Brokers.** Except as set forth in Schedule 4.28, there is no investment banker, broker, finder or other intermediary who has been retained by or is authorized to act on behalf of Company that might be entitled to any fee or commission in connection with the Transactions.

## ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER

In order to induce the Seller to enter into this Agreement and consummate the Transactions, Purchaser hereby represents and warrants to Seller that, except as set forth in the Disclosure Schedules attached hereto:

**Section 5.1 Organization.** Purchaser is a limited liability company duly organized, validly existing and in good standing under the Laws of the State of Delaware, and has all requisite power and authority to own, lease and operate its properties and assets and to carry on its business as it is now being conducted.

**Section 5.2 Power and Authority.** Purchaser has the requisite power and authority to enter into this Agreement and each other Transaction Document to which Purchaser is a party, to carry out its obligations hereunder and thereunder and to consummate the Transactions. This Agreement has been, and each other Transaction Document to which Purchaser is a party, has been duly executed and delivered by Purchaser and, assuming the due authorization, execution and delivery by each other party hereto and thereto, constitute a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with their respective terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar Laws affecting creditors' rights generally and by general principles of equity (regardless of whether enforcement is sought in a proceeding at Law or in equity).

**Section 5.3 Noncontravention; Consents and Governmental Authorizations.** The execution, delivery and performance by Purchaser of this Agreement and the other Transaction Documents to which Purchaser is a party, and the consummation of the Transactions, do not and will not: (a) contravene, conflict with, or result in a violation of or constitute a default (whether after the giving of notice, lapse of time or both) under, any provision of any Law or Order or any restriction imposed by, any court or Governmental Agency binding upon or applicable to Purchaser; (b) violate, contravene, or conflict with any provision of the Organizational Documents of Purchaser; or (c) result in a violation, default or breach (whether after the giving of notice, lapse of time or both) under, accelerate any obligation under, or give rise to a right of termination of any Contract to which Purchaser is a party or otherwise bound. No Consents or Governmental Authorization are required in connection with Purchaser's execution and delivery of this Agreement, the performance by Purchaser of its obligations hereunder, and the consummation of the Transactions, other than the Consents and Governmental Authorizations set forth in Schedule 5.3.

**Section 5.4 Legal Proceedings.** There are no Legal Proceedings pending or, to the knowledge of Purchaser, threatened by or against Purchaser that seek to challenge, enjoin, prevent, alter or could otherwise reasonably be expected to delay the Transactions or affect the performance under this Agreement of the Transaction Documents. Purchaser is not subject to any Order that challenges, enjoins, prevents, alters or could otherwise reasonably be expected to delay or affect Purchaser's performance of any obligations hereunder or in connection with the Transactions.

**Section 5.5 Intentionally Omitted.**

**Section 5.6 Solvency.** Purchaser and Company will, after giving effect to all of the Transactions, including the payment of the Purchase Price and all other amounts required to be paid, borrowed or refinanced in connection with the consummation of the Transactions and all related fees and expenses, be solvent under applicable Law.

**Section 5.7 Sufficiency of Funds.** Purchaser has sufficient cash on hand or other sources of immediately available funds to enable it to make payment of the Purchase Price and consummate the Transactions.

**Section 5.8 Brokers.** Neither Purchaser nor any of its Affiliates has any liability or obligation to pay fees or commissions to any broker, finder or agent with respect to the Transactions. Any fees, commissions and other obligations payable in connection with the Transactions shall be paid at or prior to the Closing by Purchaser.

## ARTICLE VI COVENANTS

### Section 6.1 Insurance Policies.

(a) For a period of 5 years following the Closing (the “Claims Period”), Purchaser shall be allowed to make claims under any of the insurance policies that provide occurrence-based coverage for the Company, the Business or the Purchased Assets (the “Available Insurance Policies”) with respect to any claims, acts, omissions, events, circumstances, occurrences or losses in respect of the Business. During the Claims Period, and thereafter until all claims made under the Available Insurance Policies pursuant to this Section 6.1 have been finally resolved, the Seller shall: (i) add Purchaser as a named insurance party on the Available Insurance Policies, (ii) keep the Available Insurance Policies, or comparable replacements therefor (which shall be considered Available Insurance Policies hereunder) in full force and effect to cover claims, acts, omissions, events, circumstances, occurrences or losses in respect of the Business, and (iii) not take any action that would impair the ability of Purchaser to make claims thereunder or to obtain the benefits afforded them thereby; provided, however, that under no circumstance shall any Seller Party be obligated to incur out-of-pocket costs related to the foregoing in excess of such costs that are de-minimis in nature. Seller shall reasonably cooperate with and use commercially reasonable efforts to assist Purchaser in either directly making claims or seeking coverage under the Available Insurance Policies by means of claims made on their behalf by Seller or other Affiliates of Seller under such Available Insurance Policies upon reasonable request and reasonable grounds, promptly provide to Purchaser true, correct copies of any replacement Available Insurance Policy; provided, however, that under no circumstance shall Seller be obligated to incur out-of-pocket costs related to the foregoing in excess of such costs that are de-minimis in nature.

### Section 6.2 Certain Tax Matters.

(a) Tax Indemnification. Seller shall pay or cause to be paid, and shall indemnify Purchaser and its Affiliates (collectively, the “Purchaser Tax Indemnified Parties”) and hold each Purchaser Tax Indemnified Party harmless from and against, without duplication, (i) all Taxes of Seller and any of its Affiliates with respect to the Business and the Purchased Assets for Pre-Closing Tax Periods; Taxes of any affiliated, consolidated, combined or unitary group of which the Seller is or was a member on or prior to the Closing Date, including pursuant to Treasury Regulation Section 1.1502-6 or any analogous or similar state, local, or non-U.S. Law; (ii) any and all Taxes imposed upon the Purchaser as a transferee or successor, by contract or otherwise, which Taxes relate to an event or transaction occurring before the Closing Date; (iii) any Taxes attributable to any breach by Seller of any covenant or agreement of Seller contained in this Agreement or inaccuracy in any representation or warranty made in Section 4.19; (iv) any Taxes for which Seller is responsible under Section 6.2(e) and (v) reasonable out-of-pocket fees and expenses attributable to any item described in clauses (i) to (v).

#### (b) Tax Returns.

(i) Seller shall, at its expense, prepare, or cause to be prepared by its Affiliates (as applicable), and file when due all income Tax Returns with respect to the Business and the Purchased Assets for Pre-Closing Tax Periods. Seller shall pay (or cause to be paid) any Taxes due in respect of such Tax Returns.

(ii) Except for the Tax Returns described in Section 6.2(b)(i), Purchaser shall prepare, or cause to be prepared, and file, or cause to be filed, when due, all Tax Returns required to be filed with respect to the Business and the Purchased Assets and shall pay (or cause to be paid) any Taxes due in respect of such Tax Returns.

(c) Straddle Period Allocation. In the case of any Straddle Period, (a) property, ad valorem, and similar Taxes of the Company charged on a periodic basis allocable to the pre-Closing portion of such Straddle Period shall be equal to the amount of such Taxes for the entire Straddle Period multiplied

by a fraction, the numerator of which is the number of days during the Straddle Period that include or precede the Closing Date, and the denominator of which is the number of days in the entire Straddle Period; and (ii) Taxes other than Taxes described in clause (b) above of the Company allocable to the pre-Closing portion of such Straddle Period shall be computed as if such taxable period ended as of the end of the day of the Closing Date; provided that, exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions) shall be allocated between the period ending on the Closing Date and the period beginning after the Closing Date in proportion to the number of calendar days in each period.

(d) Tax Contest. If a Party, or an affiliate of such Party, receives written communication from a Taxing Authority concerning any pending or threatened audit, claim, demand, proposed adjustment or deficiency, assessment or administrative or judicial proceeding with respect to the Company for a Pre-Closing Tax Period or a Straddle Period (a "Tax Claim"), then the Party to this Agreement first receiving notice of such Tax Claim promptly shall provide written notice thereof to the other Party to this Agreement; *provided, however*, that the failure of such Party to give such prompt notice shall not relieve the other Party of any of its obligations under Section 6.2(a) hereof, except to the extent that the other Party is actually prejudiced by such failure. Such notice shall specify in reasonable detail the basis for such Tax Claim and shall include a copy of the relevant portion of any correspondence received from the Tax Authority. Seller, at its own expense, shall have the right to control any pre-closing Tax Claim, provided, however, that, with respect to any Seller controlled Tax Claim which may give rise to additional Tax liability or loss of any Tax attribute with respect to the Purchased Assets or the Business following the Closing Date, (i) Purchaser shall have the right to participate, at its own expense, in any such Tax Claim, (ii) Seller shall consider in good faith any reasonable comments of Purchaser with respect to the conduct of such Tax Claim, (iii) Seller shall keep Purchaser reasonably informed of the status of such matter (including providing Purchaser with copies of all material written correspondence with a Tax authority regarding such matter) and (iv) Seller shall not settle or compromise any such Tax Claim without the prior consent of Purchaser, which consent shall not be unreasonably withheld, conditioned or delayed. Tax Claims for any Tax period following the Closing Date shall be under the sole control of Purchaser.

(e) Transfer Taxes. All transfer, documentary, sales, use, stamp, registration, value added and other such Taxes and fees incurred in connection with the transactions contemplated by this Agreement (including the costs of preparing and filing any Tax Returns related to such Taxes and any real property transfer Tax and any similar Tax) (collectively "Transfer Taxes") shall be paid equally, one-half by Purchaser and one-half by Seller when due. The party responsible under applicable Law to file Tax Returns with respect to Transfer Taxes shall file all necessary Tax Returns and other documentation with respect to all such Transfer Taxes and fees, and, if required by applicable Law, the other party will, and will cause its respective Affiliates to, join in the execution of any such Tax Returns and other documentation. Purchaser and Seller each agree to timely sign and deliver (or to cause to be timely signed and delivered) such certificates or forms as may be necessary or appropriate and otherwise to cooperate to establish any available exemption from (or otherwise reduce) any such Transfer Taxes in accordance with applicable Law.

(f) Cooperation. Each of Seller and Purchaser shall (and shall cause their respective Affiliates to) (i) assist the other party, as may be reasonably requested, in connection with (A) preparing and filing any Tax Returns which such other party is responsible for preparing and filing in accordance with Section 6.2(b) and (B) any audit, examination or proceeding with respect to the Company, and (ii) retain (and provide the other party and its Affiliates with reasonable access to) all records or information which are reasonably relevant to such Tax Returns, audit, examination or proceeding; provided that the foregoing shall be done in a manner so as not to interfere unreasonably with the conduct of the business of the parties and provided that the party requesting assistance shall reimburse the other party's reasonable costs and expenses in providing such assistance.

(g) Overlap. To the extent of any inconsistency between this Section 6.2 and any other provision of this Agreement, this Section 6.2 shall control as to Tax matters.

### Section 6.3 Employment Matters.

(a) Before and after the Closing, the Seller shall retain sole authority over, responsibility for and obligations to all of the Business Employees, except that the Seller shall terminate the employment of any Business Employee who becomes a Hired Employee. Seller shall continue to employ the Business Employees and comply with any Collective Bargaining Agreements applicable to such Business Employees after the Closing Date, and shall make the services of the Business Employees available to Purchaser pursuant to the terms of the Employee Leasing Transition Services Agreement, provided, however, Seller shall retain the right to terminate any Business Employee for poor performance, rule or policy violation, or any other reason that constitutes “cause” pursuant to the terms of the Employee Leasing Transition Services Agreement, any employment agreement, or any Collective Bargaining Agreement. Prior to the expiration or termination by Purchaser of the Employee Leasing Transition Services Agreement, Purchaser shall use commercially reasonable efforts to offer employment to all qualified Business Employees upon such terms and conditions as set forth in this Section 6.3(a) and Section 6.3(b). Seller shall cooperate with Purchaser in accordance with the terms of the Employee Leasing Transition Services Agreement to transition Business Employees’ employment to Purchaser be effective immediately upon the expiration or termination by Purchaser of the Employee Leasing Transition Services Agreement (the “Employee Transition Expiration Date”). An offer of employment from Purchaser does not guarantee any Business Employee continued employment for any period of time. During the effective time of the Transition Services Agreement, Seller will pay in full all compensation (including wages, benefits, bonuses (including any sale, change-of-control, retention or similar bonuses, compensation or payments in connection with the transactions contemplated hereby), accrued vacation, workers’ compensation, severance, retention, termination, indemnification, advancements and other payments) earned by or owed to the Business Employees during the time of the Employee Leasing Transition Services Agreement and other compensatory amounts and any Taxes related thereto) earned and owed to each of the Business Employees for all employment periods as an employee of Seller or Company during the time of the Employee Leasing Transition Services Agreement as required under applicable Laws or Contracts (including any Collective Bargaining Agreements, Employment Agreements, or the Employee Leasing Transition Services Agreement) through the end of the Employee Leasing Transition Services Agreement, subject in all cases to the Purchaser’s obligations under the Employee Leasing Transition Services Agreement to reimburse Seller for certain compensation costs and expenses (as outlined therein) during the period of such Employee Leasing Transition Services Agreement. Purchaser shall not have any obligation to pay compensation (including wages, benefits, bonuses (including any sale, change-of-control, retention or similar bonuses, compensation or payments in connection with the transactions contemplated hereby), accrued vacation, workers’ compensation, severance, retention, termination, indemnification, advancements and other payments) earned by or owed to the Business Employees prior to the Closing Date and prior to the time of the Employee Leasing Transition Services Agreement as required under applicable Laws or Contracts (including any Collective Bargaining Agreements, Employment Agreements) including the obligation to directly pay the compensation, benefits, perquisites and other terms and conditions that such employees were entitled to receive from Seller or Company immediately prior to the Closing Date. For purposes of this Section, each Business Employee who accepts Purchaser’s offer of employment and completes or satisfies all required new hire documentation and requirements (including I-9 verification) with Purchaser is referred to as a “Hired Employee.”

(b) The Purchaser agrees that any conditional offer of employment to Business Employees after the Closing will offer terms of employment no less favorable to the Business Employee than such employees were entitled to receive immediately prior to Closing Date or at the end of the Employee Leasing Transition Services Agreement with regard to compensation, benefits, perquisites and other terms and any other employment conditions or obligations; provided that all such Business Employees will only be hired upon satisfactory completion of all new hire paperwork provided by Purchaser.

(c) The Purchaser and Seller shall execute the Transition Service Agreement at Closing to ensure Business Employees are provided with the same compensation and benefits to perform the same

services after the Closing as such employees received and performed for the Business immediately prior to Closing.

(d) This Section 6.3 shall be binding upon and inure solely to the benefit of each of the Parties, and nothing in this Section 6.3, express or implied, shall confer upon any other Person any rights or remedies of any nature whatsoever under or by reason of this Section 6.3 as a third-party beneficiary or otherwise. Nothing contained herein, express or implied, shall be construed to establish, amend, modify or create any Benefit Plan, program, agreement or arrangement and the Parties acknowledge and agree that the terms set forth in this Section 6.3 shall not create any right in any Company Employee or any other Person.

**Section 6.4 Receivables.** From and after the Closing, if either Company or Seller or any of its Affiliates receives or collects any funds relating to any accounts receivable or any other Purchased Asset, then such Party or its Affiliate shall remit such funds to Purchaser on the first Monday after its receipt thereof. From and after the Closing, if Purchaser or its Affiliate receives or collects any funds relating to any Excluded Asset, Purchaser or its Affiliate shall remit any such funds to the Seller on the first Monday after its receipt thereof. With regards to this Section 6.4, if Monday is a federal holiday observed by the United States government, the remittance of funds shall occur on the Tuesday immediately following the Monday holiday.

**Section 6.5 Consents and Governmental Authorizations.** With respect to those Consents or Government Authorizations identified on Schedule 6.5, each Party shall, as promptly as possible, use its commercially reasonable efforts to obtain or cause to be obtained such Consents and Governmental Authorizations. Each Party shall cooperate fully with the other Parties and their Affiliates in promptly seeking to obtain all such Consents and Governmental Authorizations and no Party will take any action that could have the effect of delaying, impairing or impeding the receipt thereof. If requested by Purchaser, Company or the Seller shall notify all of the Taxing Authorities in the jurisdictions that impose Taxes on the Company or where the Company or the Seller on behalf of the Business has a duty to file Tax Returns of the transactions contemplated by this Agreement in the form and manner required by such Taxing Authorities, if the failure to make such notifications or receive any available tax clearance certificate (a “Tax Clearance Certificate”) could subject the Purchaser to any Taxes of Company or Seller on behalf of the Business in connection with the Transaction. If any Taxing Authority asserts that the Company or Seller on behalf of the Business is liable for any Tax, Seller shall promptly pay any and all such amounts and shall provide evidence to the Purchaser that such liabilities have been paid in full or otherwise satisfied.

**Section 6.6 Public Announcements.** From and after the date hereof, none of Seller, Purchaser or any of their Representatives shall issue or cause the publication of any press release or public announcement related to this Agreement or the Transactions without the joint approval of Purchaser and the Seller; provided, however, that the foregoing shall not apply to announcements and communications in connection with Purchaser’s and/or its Affiliates fundraising, marketing, informational or reporting activities of the kind customarily provided to investors and prospective investors with respect to investments of this kind by private equity fund sponsors, including announcements regarding consummation of the Transaction. Notwithstanding the foregoing, any Party that is subject to disclosure requirements under the Securities Exchange Act of 1934 or similar applicable Laws shall have the right to make the final determination about its required disclosures, and may disclose as such Party deems necessary and appropriate to comply with Applicable Laws in such Party’s sole discretion and may make such disclosure without first providing copies to any other Person hereunder.

**Section 6.7 Books and Records.**

(a) After the Closing Date, Purchaser and Company shall agree that they each shall preserve and keep the records held by their respective Affiliates relating to the Business and for a period of two (2) years from the Closing Date and shall make such records and personnel available to the other Party as may be reasonably required in connection with, among other things, any insurance claims by, Legal

Proceedings or Tax audits or government investigations or in order to enable the Parties to comply with their obligations under this Agreement and the Transaction Documents. Such availability shall include reasonable access upon reasonable advance notice to Purchaser, subject to restrictions under applicable Law, to the Books and Records transferred to Purchaser to the extent necessary for the preparation of financial statements, regulatory filings or Tax Returns of Seller or its Affiliates in respect of periods ending on or prior to Closing, or in connection with any Legal Proceedings during such period.

(b) Subject in all cases to the restrictions set forth in Section 8.12, neither Purchaser nor its Affiliates shall be required to provide any access or information to Seller or its representatives (i) in the event of any actual or threatened proceeding or dispute brought by Seller or their respective Affiliates against Purchaser or by Purchaser or its Affiliates against Seller under or arising out of this Agreement or (ii) which Purchaser reasonably believes it or the Company is prohibited from providing to Seller or their respective representatives by reason of applicable Law, which, for the avoidance of doubt, (A) constitutes access to information protected by attorney-client privilege or which the Company is required to keep confidential or (B) by reason of a contract with a third party or which would otherwise expose Purchaser or any of its Affiliates to a material risk of Liability.

(c) Within thirty (30) days after the Closing Date, Seller shall deliver to Purchaser an electronic copy of the virtual Data Room and all documents and information made available to Purchaser therein, as well as provide access to copies of all Books and Records

**Section 6.8 Transition Services Agreement.** At Closing, the Seller and Purchaser shall execute the Transition Services Agreement effective as of the Closing Date for Seller to provide the services set forth therein to Purchaser for the periods set forth therein (subject to reasonable extensions) following the Closing in accordance with the terms and conditions of such agreement.

**Section 6.9 Restrictive Covenants.** In consideration of the mutual covenants provided for herein and for other good and valuable consideration the sufficiency of which is hereby acknowledged, Seller hereby agrees as follows:

(a) Seller on its own behalf and on behalf of each of its subsidiaries (other than the Company) (each, a “Restricted Person”), hereby agrees that for the five (5)-year period from and after the Closing (the “Restricted Period”), such Restricted Person shall not, without the prior written consent of Purchaser, directly or indirectly, or as agent or employee of, or on behalf of, or in conjunction with any Person, or as an employee or as a partner of any partnership, or as a shareholder, officer or director of any corporation or as a member of any limited liability company, or in any other manner or capacity, own, manage, engage in, operate, control, work for, assist, consult with, render services for, do business with, maintain any interest in (proprietary, financial or otherwise) or participate in the ownership, management, operation or control of, any business, whether in corporate, proprietorship or partnership form or otherwise, that engages in the sale of heavy wall seamless steel pipe and tubing (the “Restricted Business”) anywhere in the world. Notwithstanding the foregoing, the following activities shall not constitute a breach of this Section 6.9(a): ownership by a Restricted Person, as a passive investment, in the aggregate of less than two percent (2%) of the outstanding shares or other Equity Interests of capital stock of any corporation or other entity listed on a national securities exchange or publicly traded on any nationally recognized over-the-counter market. In addition, Purchaser acknowledges and agrees that Seller and its subsidiaries are and will remain actively engaged in the Unrestricted Businesses and Purchaser acknowledges and agrees that the conduct of the Unrestricted Businesses shall not constitute a breach of this Section 6.9(a).

(b) During the Restricted Period, each Restricted Person shall not on behalf of such Restricted Person, entice, encourage, cause or invite any vendor, customer or client to (i) discontinue doing business relating to the Restricted Business with Company, Purchaser or any of their respective Affiliates, (ii) interfere with the relationships relating to the Restricted Business between Company, Purchaser or their respective Affiliates and any vendor, customer or client, or (iii) purchase any products relating to the Restricted Business other than from Company, Purchaser or any of their respective



Affiliates. During the Restricted Period, Restrictive Persons shall refer all customer inquiries with respect to the Restricted Business to the Company. Purchaser acknowledges and agrees that Seller and its subsidiaries are and will remain actively engaged in the Unrestricted Businesses and in such capacity does business with vendors, customers and clients of the Company and Purchaser acknowledges and agrees that the conduct of the Unrestricted Businesses with any such vendors, customers and clients shall not constitute a breach of this Section 6.9(b).

(c) During the Restricted Period, no Restricted Person shall on behalf of such Restricted Person, in any manner take or cause to be taken any action which is designed or intended to discourage any vendor or other business relations of the Company and relating to the Restricted Business from maintaining the same business relationship with the Company relating to the Restricted Business after the Closing as was maintained with the Company prior to the Closing. Purchaser acknowledges and agrees that Seller and its subsidiaries are and will remain actively engaged in the Unrestricted Businesses and in such capacity do business with vendors and other business relations of the Company and Purchaser acknowledges and agrees that the conduct of the Unrestricted Businesses with any such vendors or other business relations shall not constitute a breach of this Section 6.9(c).

(d) During the Restricted Period, no Restricted Person shall, directly or indirectly, on behalf of any other Person, solicit to employ, hire or employ (or engage as an independent contractor) any Person who was employed by the Company as of the Closing Date or at any time during the six (6)-month period preceding the Closing Date; provided, that the foregoing restriction shall not prohibit any solicitation of any such employee pursuant to or as a result of any public advertisement or posting or other form of general solicitation that is not directed at any or all of such employees.

(e) Each Restricted Person agrees that during the Restricted Period such Restricted Person shall not disparage the Company, Purchaser or any of their respective officers, directors, shareholders, members or employee in any matter likely to be harmful to such Person or his, her or its personal or business reputation with respect to the Restricted Business; provided, that the foregoing shall not prohibit any Person from (i) responding accurately and fully to any question, inquiry, or request for information required by legal or administrative process, and (ii) enforcing such Person's rights under, or defending such Person against claims under, the Transaction Documents.

(f) From and after the Closing and until the expiration of the Restricted Period, Restricted Persons shall keep secret and retain in strictest confidence, and shall not use, directly or indirectly, for the benefit of themselves or others, all non-public, confidential and proprietary information relating to the Restricted Business, including know how, trade secrets, customer lists, supplier lists, details of consultant and employment Contracts, pricing policies, operational methods, marketing plans or strategies, product development techniques or plans, business acquisition plans, technical processes, designs and design projects, specifications, processes, inventions, software, source codes, object codes, systems documentation and research projects and other business affairs of the Company with respect to the Restricted Business (collectively, "Confidential Information") and shall not disclose such Confidential Information to any other Person (other than such Restricted Person's professional advisors, agents and representatives who have a reasonable need to know and are informed of the confidential nature of the Confidential Information and are directed to comply with the confidentiality obligations of this Section 6.9(f)); provided, that this covenant shall not apply to any information (i) which is or becomes generally available to the public other than as a result of disclosure in violation of this Section 6.9(f), (ii) that is required to be disclosed in any Law, in which case the applicable Restricted Person shall provide Purchaser with reasonably prompt notice of such required disclosure (to the extent permitted to do so by applicable Law) so that Purchaser may seek to obtain a protective order or other reasonable assurance that such disclosure shall be treated confidentially (at Purchaser's sole cost and expense), (iii) that is lawfully acquired by any such Restricted Period, from and after the Closing from sources which are not prohibited from disclosing such information by a legal, contractual or fiduciary obligation, or (iv) that is independently developed by such Restricted Party following the Closing without reference to or the use of any Confidential Information. Notwithstanding anything to the contrary contained herein, nothing in this Section 6.9(f) shall prohibit any Restricted Person from using Confidential Information (x) as an

employee or consultant of Purchaser following the Closing, (y) as an equity owner of the Purchaser or its Affiliates following the Closing, or (z) to the extent necessary to enforce the Restricted Person's rights under, or other Person's obligations under, any Transaction Document. Purchaser acknowledges and agrees that Seller and its subsidiaries are and will remain actively engaged in the Unrestricted Businesses and in such capacity does business with customers, suppliers and vendors of the Company and Purchaser acknowledges and agrees that the conduct of the Unrestricted Businesses including any business conducted with such customers, suppliers and vendors shall not constitute a breach of this Section 6.9(f).

(g) The Parties acknowledge and agree that the amount of actual damages suffered by a non-breaching party(s) in the event of an actual or threatened breach of this Section 6.9 may be difficult or impossible to accurately calculate and there may not be an adequate remedy at Law available to the non-breaching party to fully compensate the non-breaching party(s) in the event of such an actual or threatened breach. Consequently, the Parties agree that in addition to any other remedy or relief to which it may be entitled, in the event of a breach or threatened breach of this Section 6.9, the non-breaching party and its successors and assigns shall be entitled to specific performance and/or injunctive or other equitable relief from a court of competent jurisdiction in order to enforce, or prevent any violations of, the provisions hereof (without posting a bond or other security), and neither the breaching party nor any of their Affiliates will oppose the granting of any such relief on the ground(s) that the non-breaching party has an adequate remedy at Law, has not proven actual damages, and/or should be required to post a bond or other security.

(h) If any provision contained in this Section 6.9, will for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability will not affect any other provisions of this Section 6.9, but this Section 6.9 will be construed as if such invalid, illegal or unenforceable provision had never been contained herein. It is the intention of the Parties that if any of the restrictions or covenants contained in this Section 6.9 is held to cover a geographic area or to be of a length of time that is not permitted by applicable Law, or in any way construed to be too broad or to any extent invalid, such provision will not be construed to be null, void and of no effect; instead, the Parties agree that a court of competent jurisdiction will construe, interpret, reform or judicially modify this Section 6.9 to provide for a covenant having the maximum enforceable geographic area, time period and other provisions (not greater than those contained herein) as will be valid and enforceable under such applicable Law.

(i) Each Restricted Person expressly acknowledges and agrees that (i) each of the restrictions contained in this Section 6.9 is reasonable in all respects (including with respect to subject matter, time period and geographical area) and such restrictions are necessary to protect Purchaser's interest in, and value of, Company (including the goodwill inherent therein), (ii) Restricted Persons are selling to Purchaser their interest in Company, including its goodwill, through this Agreement and (iii) Purchaser would not have entered into this Agreement or consummated the Transactions without the restrictions contained in this Section 6.9.

(j) Purchaser acknowledges and agrees that only the Company and its subsidiaries shall constitute Restricted Persons under this Section 6.9. In no event shall any shareholder or any other Affiliate of the Company constitute a Restricted Person hereunder. Purchaser specifically acknowledges that UPG Enterprises, LLC and its subsidiaries, an entity in which Seller's President and Chief Executive Officer is the Co-Founder and Manager, engages in and will continue to engage in the Restricted Business and the Unrestricted Businesses and no activities related thereto shall constitute a violation of any provision of this Section 6.9.

**Section 6.10 Representations and Warranties Insurance.** At or prior to the Closing, Purchaser shall pay or cause to be paid all R&W Insurance Costs. Purchaser shall cause the R&W Insurance Policy to remain in full force and effect after the Closing until the expiration thereof pursuant to its terms, including (x) complying with and maintaining the R&W Insurance Policy in full force and effect pursuant to its terms, (y) paying when due all of the R&W Insurance Costs, and (z) satisfying on a timely basis all conditions necessary for the issuance of or continuance of coverage under the R&W

Insurance Policy. Purchaser and its Affiliates shall not take actions that would cause such policy to be (1) amended or waived in a manner that would adversely affect the Seller or (2) terminated or cancelled.

**Section 6.11 Use of Name.** Promptly following the Closing, the Seller and Company shall cause the governing documents of the Company to be amended to change the name of such entity from “Specialty Pipe & Tube, Inc.” Following the Closing, the Company will immediately cease to use or do business, and cease to allow any Affiliate of the Seller to use or do business, under the names “Specialty Pipe & Tube” or any other name that, in the reasonable judgment of the Purchaser, is similar to any of the foregoing names; provided that Seller shall have rights to use such name to the extent required in connection with the services provided under the Transition Service Agreement. The Seller and Company shall not use the name “Specialty Pipe & Tube” for any purposes related to or similar to the Business or the Purchased Assets or in any other manner restricted by Section 6.9.

**Section 6.12 Nonassignable Assets.** If any Purchased Asset or Assumed Liability cannot, by its terms or applicable Law, be assigned, transferred or conveyed without the consent of a third party or a Governmental Entity or is cancelable by a third party in the event of an assignment (“Nonassignable Assets”) and such consent has not been obtained prior to Closing, this Agreement shall not constitute a sale, assignment, transfer, conveyance or delivery, or an attempted sale, assignment, transfer, conveyance or delivery thereof unless and until such consent shall have been obtained. Seller, at its expense, shall use its commercially reasonable efforts to cooperate with Purchaser following the Closing Date in endeavoring to obtain such consents promptly. To the extent permitted by applicable Law and the terms of the Nonassignable Assets, in the event consents to the assignment thereof cannot be obtained, such Nonassignable Assets shall be held, as of and from the Closing Date, by Seller in trust for Purchaser and the covenants and obligations thereunder shall be performed by Purchaser in Seller’s name, Purchaser shall bear all expenses related thereto, and all benefits and obligations existing thereunder shall be for Purchaser’s account. Seller shall take or cause to be taken at Purchaser’s expense such actions in its name or otherwise as Purchaser may reasonably request in writing to provide Purchaser with the benefits of the Nonassignable Assets and to effect collection of money or other consideration that becomes due and payable under the Nonassignable Assets. Seller shall promptly pay over to Purchaser all money or other consideration received by it in respect of all Nonassignable Assets. As of and from the Closing Date, Seller authorizes Purchaser, to the extent permitted by applicable Law and the terms of the Nonassignable Assets, at Purchaser’s expense, to perform all the obligations and receive all the benefits of Seller or its Affiliates under the Nonassignable Assets and appoint Purchaser their attorney-in-fact to act in its name on its behalf or in the name of the applicable Affiliate of Seller and on such Affiliate’s behalf with respect thereto, and Purchaser agrees to indemnify and hold Seller and its Affiliates, agents, successors and assigns harmless from and against any and all liabilities and Losses based upon, arising out of or relating to Purchaser’s performance of, or failure to perform, such obligations under the Nonassignable Assets.

**Section 6.13 Further Assurances.** Subject to the terms and conditions of this Agreement, at any time following the Closing, at a Party’s request and without further consideration, the other Parties shall execute and deliver to such requesting Party such other instruments of sale, transfer, conveyance, assignment and confirmation, provide such materials and information and take such other actions as such Party may reasonably request in order to consummate the Transactions.

## ARTICLE VII INDEMNIFICATION

**Section 7.1 Survival.** Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and remain operative and in full force and effect for a period of twelve (12) months after the Closing Date; provided, that, (a) the Fundamental Representations (other than the Tax Representations) shall survive for five (5) years, and (b) the Tax Representations shall survive for the full period of all applicable statutes of limitations plus sixty (60) days. The covenants and agreements set forth in this Agreement to be performed after the Closing shall survive the Closing in accordance with their terms, and in the absence of any specified time period, for the maximum duration permitted by Law (including Del. C. 8106(c)). In accordance with the

foregoing, no claim for indemnification in accordance with the terms of this Agreement (an “Indemnification Claim”) may be asserted against an Indemnifying Party unless written notice of such Indemnification Claim is provided to such Indemnifying Party describing in reasonable detail the facts and circumstances with respect to the subject matter of such Indemnification Claim on or prior to the date on which the representation, warranty, covenant or agreement on which such Indemnification Claim is based ceases to survive as set forth in this Section 7.1. Notwithstanding the foregoing, any Indemnification Claim asserted in good faith and in writing (stating the nature of the claim, the identity of the underlying claimants, if applicable, an estimated amount of the claim, if known, and the basis for the claim) on or before the applicable expiration period set forth in this Section 7.1 shall survive until resolved or judicially determined. The Parties acknowledge and agree that with respect to any Indemnification Claim that is permitted pursuant to the terms of this Agreement, the survival periods set forth and agreed to in this Section 7.1 shall govern when any such Indemnification Claim may be brought and shall replace and supersede any statute of limitations that may otherwise be applicable. Notwithstanding any provision of this Agreement to the contrary, the date or dates specified in the R&W Insurance Policy with respect to the time periods, including the time periods within which to make claims and/or regarding which any Purchaser Indemnitees may obtain recoveries under such R&W Insurance Policy, shall govern such claims and/or recoveries under the R&W Insurance Policy, and shall not extend or otherwise change the survival periods set forth in this Section 7.1 or be limited thereby. Nothing in this Agreement shall in any way restrict or otherwise limit the ability of Purchaser Indemnitees to make any claim or recover any Losses under the R&W Insurance Policy.

**Section 7.2 Indemnification by Seller.** Subject to the terms and conditions of this Article VII, from and after the Closing, Seller shall indemnify, defend, protect and hold harmless, and pay on behalf of or reimburse, the Purchaser Indemnitees for, from and against any and all Losses sustained or incurred by, or imposed upon, the Purchaser Indemnitees based on, arising out of, or with respect to or as a result of:

- (a) any inaccuracy in or breach of any representation or warranty (excluding any Company Fundamental Representations) made in Article III or Article IV;
- (b) any inaccuracy in or breach in any Company Fundamental Representations;
- (c) any breach or nonperformance of any covenant, agreement or obligation to be performed by Company, at or prior to Closing, or Seller under the terms of this Agreement;
- (d) any Excluded Liabilities to the extent not included in the calculation of the Post-Closing Adjustment;
- (e) any indemnified Taxes; or
- (f) any of the matters set forth on Schedule 7.2.

**Section 7.3 Indemnification by Purchaser.** Subject to the terms and conditions of this Article VII, from and after the Closing, Purchaser shall indemnify, defend, protect and hold harmless the Seller Indemnitees for, from and against any and all Losses sustained or incurred by the Seller Indemnitees to the extent arising out of:

- (a) any inaccuracy in or breach of any representation or warranty made by Purchaser in Article V (excluding any Purchaser Fundamental Representations);
- (b) any inaccuracy in or breach of any Purchaser Fundamental Representation made by Purchaser in Article V; or

(c) a breach or non-fulfillment of any covenant, agreement or obligation to be performed by Purchaser pursuant to the terms of this Agreement.

**Section 7.4 Limitations on Indemnification.** Notwithstanding any provision in this Agreement to the contrary, *except* in the case of fraud or intentional misconduct, the indemnification obligations of Seller and Purchaser set forth in Section 7.2 and Section 7.3 shall be subject to the following:

(a) The Seller's aggregate maximum Liability to the Purchaser Indemnitees under Section 7.2(a) shall not exceed the Escrow Amount (the "Cap") and the Seller shall have no further direct or indirect Liability and there shall be no further recovery by Purchaser Indemnitees with respect to any Indemnification Claim by the Purchaser Indemnitees under Section 7.2(a) once the Seller has made indemnification payments under Section 7.2(a) that in the aggregate are equal to the Cap; provided that the Cap shall not apply to claims for indemnification in respect of the indemnification obligations in Sections 7.2(b)-(f) (which shall be subject to the aggregate maximum limitation set forth below). Without limiting the generality of the foregoing, any rights of the Insurer under the R&W Insurance Policy shall not affect and do not affect, expand or increase any liability or obligation of Seller in connection with the Transactions.

(b) Except for fraud or intentional misconduct, the Seller shall not have any liability for indemnification pursuant to Section 7.2(a) until the aggregate amount of Losses incurred, suffered or sustained by any Purchaser Indemnitee pursuant to Section 7.2(a) exceeds the Deductible, after which the Seller shall be obligated to pay only such Losses under Section 7.2(a) in excess of the Deductible up to the Cap.

(c) In connection with any Indemnification Claim against Seller under Section 7.2(b)-(f), Purchaser shall be entitled to recover Losses directly from the Seller, subject in all respects to the other limitations set forth in this Section 7.4, including, but not limited to, the indemnification cap set forth in Section 7.4(d) and Purchaser's obligations and Seller's rights under Section 7.4(e) and Section 7.4(f); provided, however, Purchaser Indemnitees shall, with respect to Losses arising under breaches or inaccuracies of Fundamental Representations covered by the R&W Insurance Policy, use commercially reasonable efforts to recover under the R&W Insurance Policy any Losses relating to any Fundamental Representations concurrently with seeking relief from Seller subject to the terms of this Article VII; provided, further that Seller shall be liable for all Losses arising from Section 7.2(b)-(f) from the first dollar of such Losses.

(d) Subject to, and without limiting or otherwise modifying the additional limitations on indemnification set forth in this Agreement (including, without limitation, under this Section 7.4), the aggregate maximum liability of Seller pursuant to Section 7.2 shall not exceed, the Purchase Price. The maximum aggregate Liability of the Purchaser to the Seller for indemnification under Section 7.3 shall not exceed an amount equal to the Purchase Price.

(e) Payments by any Indemnifying Party to an Indemnified Party in respect of an indemnifiable Loss under this Article VII shall be: (i) reduced by any insurance proceeds actually received from a third-party insurer, including, without limitation, the Insurer (net of reasonable costs incurred by such Indemnified Party to enforce payment from such third-party insurer) by such Indemnified Party with respect to such Loss; and (ii) reduced by indemnification, reimbursement, credits, rebates, refunds or other payments actually received by such Indemnified Party from third parties with respect to such Loss (net of reasonable costs incurred by such Indemnified Party to obtain such indemnification, reimbursement, credits, rebates, refunds or other payments).

(f) An Indemnified Party who has a right to make a claim under any policy of insurance, including the R&W Insurance Policy, with respect to any Indemnification Claim hereunder shall use all commercially reasonable efforts (with the Indemnifying Party's participation) to pursue coverage and make such claim on a prompt and competent basis in the manner required by the insurance carrier. The

Indemnified Party shall cooperate fully with the insurance carrier and the Indemnifying Party in the prosecution of the claim or claims. In the event an Indemnified Party receives insurance proceeds (or such other reimbursements or amounts set forth in Section 7.4(e)), including, without limitation, any proceeds under the R&W Insurance Policy, with respect to Losses for which the Indemnified Party has made an Indemnification Claim, the Indemnification Claim shall be reduced by an amount equal to such insurance proceeds or other reimbursements or amounts received by the Indemnified Party in accordance with Section 7.4(e). If such insurance proceeds (or such other reimbursements or amounts set forth in and subject to the terms of Section 7.4(e)) are received by the Indemnified Party after the date on which the Indemnifying Party pays any Losses arising out of the applicable Indemnification Claim to the Indemnified Party, the Indemnified Party shall remit such proceeds to the Indemnifying Party, in the amount necessary to reimburse in full such Indemnifying Party, no later than thirty (30) days after the receipt of such insurance proceeds. Notwithstanding the foregoing, no Seller shall have any right of contribution, subrogation, indemnification, reimbursement or other claim against the Purchaser or the Company with respect to any indemnity obligation hereunder.

(g) Each Indemnified Party shall take, and cause their Affiliates to take, all reasonable steps to mitigate any Loss upon becoming aware of any event or circumstance that would be reasonably expected to, or does, give rise to such Loss.

(h) Notwithstanding anything to the contrary in this Agreement, it is intended that the provisions of this Article VII will not result in a duplicative payment of any amount required to be paid under this Agreement or reflected in the Final Closing Statement and this Article VII shall be construed accordingly. The Indemnified Party shall not be indemnified for the same Loss more than once under this Agreement, even if a claim for indemnification in respect of such Loss has been made as a result of a breach of more than one representation, warranty or covenant contained in this Agreement (provided, however, that this sentence shall not preclude recovery from the R&W Insurance Policy and/or the Seller to the extent that Losses are partially recoverable from one source and partially from another in accordance with Section 7.7).

(i) Notwithstanding anything in this Agreement to the contrary, if any representation and warranty contained in this Agreement or in any certificate delivered pursuant to this Agreement is qualified by materiality, material adverse effect or any other similar qualification, such qualification will be ignored and deemed not included in such representation and warranty for purposes of (i) determining whether there has been a breach of or inaccuracy in such representation or warranty and (ii) calculating the amount of Losses resulting from, arising out of, or relating to such breach or inaccuracy; provided, that, for purposes of clarity, the capitalized word “Material” will not be disregarded when used within the title of the defined terms “Material Contracts,” “Material Customer” and “Material Vendor.”

(j) Notwithstanding anything in this Agreement to the contrary and for the avoidance of doubt, none of the limitations on indemnification set forth in this Section 7.4 shall apply to any Indemnification Claims based on fraud or intentional misconduct.

(k) Notwithstanding anything to the contrary contained herein, no limitations (including any survival limitations and other limitations set forth in this Article VII), qualifications, or procedures in this Agreement shall be deemed to limit or modify the ability of the Purchaser to make claims under or recover under the R&W Insurance Policy; it being understood that any matter for which there is coverage available under the R&W Insurance Policy shall be subject to the terms, conditions and limitations, if any, set forth in the R&W Insurance Policy.

## **Section 7.5 Procedures for Third Party Claims.**

(a) If an Indemnified Party receives notice of any actual, asserted or threatened claim made or brought by any Person who is not a Party to this Agreement, or an Affiliate of a Party to this Agreement, or a Representative of the foregoing, against such Indemnified Party with respect to which the Indemnifying Party is or may be obligated to provide indemnification under this Agreement (a “Third”

Party Claim”), the Indemnified Party shall give the Indemnifying Party reasonably prompt written notice thereof (a “Claim Notice”); provided that the failure to give such Claim Notice shall not relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party has been materially prejudiced thereby of limitations for the claim. Such Claim Notice shall describe the Third Party Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount of the Loss that has been or may be sustained by the Indemnified Party.

(b) Subject to the rights of the Insurer under the R&W Insurance Policy to conduct the defense of Third Party Claims covered by the R&W Insurance Policy, the Indemnifying Party shall have the right to participate in, or by giving written notice to the Indemnified Party within fifteen (15) days of receipt of notice of the Third Party Claim and subject to the limitations below, to assume the defense of any Third Party Claim at the Indemnifying Party’s expense and by the Indemnifying Party’s own reputable counsel reasonably acceptable to the Indemnified Party, and the Indemnified Party shall cooperate in good faith in such defense. In the event that the Indemnifying Party assumes the defense of any Third Party Claim, subject to Section 7.5(d), it shall have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any Third Party Claim in the name and on behalf of the Indemnified Party. The Indemnified Party shall have the right to participate in the defense of any Third Party Claim with counsel selected by it, subject to the Indemnifying Party’s right to control the defense thereof. The fees and disbursements of such counsel shall be at the expense of the Indemnified Party (other than any fees and expenses of such separate counsel that are incurred prior to the date the Indemnifying Party effectively assumes control of such defense which, notwithstanding the foregoing, shall be borne by the Indemnifying Party, and except that the Indemnifying Party shall pay all of the fees and expenses of such separate counsel if the Indemnified Party has been advised by counsel that a reasonable likelihood exists of a conflict of interest between the Indemnifying Party and the Indemnified Party). The Indemnifying Party shall not be entitled to assume control of such defense (unless otherwise agreed to in writing by the Indemnified Party) and shall pay the fees and expenses of counsel retained by the Indemnified Party if: (i) the claim for indemnification relates to or arises in connection with any criminal or quasi-criminal proceeding, action, indictment, allegation or investigation; (ii) the claim seeks an injunction or equitable relief or any other non-monetary relief against the Indemnified Party; (iii) the Third Party Claim is brought, commenced or joined by or involves a dispute with any Governmental Entity, or any party to a current business relationship with the Purchaser, Company or their Affiliates, including any customer or supplier or other business relationship and such Third Party Claim may result in material harm to the Company’s business as conducted, (iv) the Indemnifying Party failed or is failing to vigorously prosecute or defend such claim; (v) the Indemnified Party has been advised by counsel that a reasonable likelihood exists of a conflict of interest between the Indemnifying Party and the Indemnified Party; or (vi) the Indemnified Party reasonably believes that the Loss relating to the claim could (A) exceed the maximum amount that such Indemnified Party could then be entitled to recover under the applicable provisions of Article VII or (B) be recoverable under the R&W Insurance Policy. If the Indemnifying Party elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Party in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party, subject to Section 7.5(d), shall control such defense and settlement thereof and have the right to take such action as it deems necessary to avoid, dispute, defend, appeal or make counterclaims pertaining to any Third Party Claim without waiving any right that the Indemnified Party may have against the Indemnifying Party for indemnification pursuant to this Section 7.5. Except as set forth herein, no Indemnifying Party shall, in connection with any one action or Legal Proceeding or separate but substantially similar or related actions or Legal Proceedings arising out of the same general allegation or circumstances, be responsible hereunder for the fees and expenses of more than one firm of counsel designated by the Indemnified Party.

(c) The Parties shall cooperate with each other in all reasonable respects in connection with the defense of any Third Party Claim, including making available records relating to such Third Party Claim and furnishing, without expense (other than reimbursement of actual out-of-pocket expenses) to the

defending party, management employees of the non-defending party as may be reasonably necessary for the preparation of the defense of such Third Party Claim.

(d) Notwithstanding any other provision of this Agreement to the contrary, if the Indemnifying Party shall control the defense of such claim, the Indemnifying Party shall not enter into settlement of any Third Party Claim without the prior written consent of the Indemnified Party (which consent shall not be unreasonably withheld, conditioned or delayed), except as provided in this Section 7.5(d). If a firm offer is made to settle a Third Party Claim without leading to any Liability or the creation of a financial or other obligations or restrictions (including injunctive or other equitable or non-monetary relief) on the part of the Indemnified Party, provides for the unconditional release of each Indemnified Party from all Liabilities and obligations in connection with such Third Party Claim, without prejudice and involves no admission of wrongdoing by the Indemnified Party, and the Indemnifying Party desires to accept and agree to such offer, the Indemnifying Party shall give written notice to that effect to the Indemnified Party. If the Indemnified Party has assumed the defense pursuant to Section 7.5(b), it shall not agree to any settlement without the written consent of the Indemnifying Party (which consent shall not be unreasonably withheld, conditioned or delayed); provided that the Indemnified Party may elect to settle, adjust or compromise such matter if it irrevocably agrees not to seek indemnification for such matter.

(e) For the avoidance of doubt, the Parties hereby acknowledge and agree that the provisions hereof dealing with Third Party Claims shall furthermore be subject to the terms and conditions of the R&W Insurance Policy and the rights of the Insurer thereunder to, among other things, consent to any settlement thereof.

**Section 7.6 Indemnification Procedures for Direct Claims.** Any claim by an Indemnified Party on account of a Loss which does not result from a Third Party Claim (a "Direct Claim") shall be asserted by the Indemnified Party giving the Indemnifying Party reasonably prompt written notice thereof. The failure of the Indemnified Party to give such prompt written notice shall not relieve the Indemnifying Party of its indemnification obligations, except and only to the extent that the Indemnifying Party has been materially prejudiced thereby of limitations for the claim. Such notice by the Indemnified Party shall describe the Direct Claim in reasonable detail, shall include copies of all material written evidence thereof and shall indicate the estimated amount of the Loss that has been or may be sustained by the Indemnified Party. The Indemnifying Party shall have thirty (30) days after its receipt of such notice to respond in writing to such Direct Claim. During such thirty (30) day period, the Indemnified Party shall allow the Indemnifying Party and its Representatives to investigate the matter or circumstance alleged to give rise to the Direct Claim, and whether and to what extent any amount is payable in respect of the Direct Claim and the Indemnified Party shall reasonably assist the Indemnifying Party's investigation by giving such information and assistance (including reasonable access to the Indemnified Party's premises and personnel during normal business hours and after advance notice and the right to examine and copy any accounts, documents or records) as the Indemnifying Party or any of its Representatives may reasonably request. If the Indemnifying Party does not so respond within such thirty (30) day period, the Indemnifying Party shall be deemed to have accepted such Direct Claim. If the Indemnifying Party rejects all or any part of a Direct Claim, the Parties shall attempt in good faith for thirty (30) days (or such longer period as agreed in writing by the Parties) to resolve such Direct Claim. If no such agreement can be reached through good faith negotiation within such thirty (30) day period, either Party may commence a Legal Proceeding or other remedies as may be available to them in accordance with the terms of this Agreement.

**Section 7.7 Payments.** Subject to the rights, obligations and limitations set forth in this Article VII, once a Loss is agreed to and/or accepted by the Indemnifying Party or finally adjudicated to be payable pursuant to this Article VII, as evidenced by a final non-appealable Order, the Indemnifying Party shall satisfy its obligations as follows:



(a) In the case of any amount payable to a Purchaser Indemnatee under Section 7.2(a), such amount shall be satisfied (i) first, from the Escrow Amount until the Escrow Amount has been depleted, and (ii) second, from the R&W Insurance Policy.

(b) In the case of any amount payable to a Purchaser Indemnatee under Section 7.2(b)-(f), such amount shall be satisfied from Seller directly, within ten (10) Business Days of such agreement, acceptance and/or final, non-appealable adjudication by wire transfer of immediately available funds to an account designated in writing by the applicable Purchaser Indemnatee.

(c) In the case of any amount payable to a Seller Indemnatee under Section 7.3, such amount shall be payable by Purchaser within ten (10) Business Days of such agreement, acceptance and/or final, non-appealable adjudication by wire transfer of immediately available funds to an account designated in writing by the applicable Seller Indemnatee.

(d) Notwithstanding anything to the contrary contained herein, for the avoidance of doubt, the Purchaser shall be solely responsible for the Deductible amount for any indemnifiable Losses payable to Purchaser Indemnitees pursuant to Section 7.2(a).

**Section 7.8 Release of Escrow.** The Escrow Agreement shall specify that the Purchaser and Seller shall cause the “Joint Instructions” (as defined in the Escrow Agreement) to be delivered to the Escrow Agent to distribute to Seller (to be distributed to Seller) on or within three (3) Business Days following the date that is twelve (12) months from the Closing Date (the “Indemnity Escrow Termination Date”) the remainder of the funds then held in the Indemnity Escrow Account (including any interest earned on the Escrow Amount), minus the actual, or, if not known, good faith estimate of, the aggregate amount of any Indemnification Claims that shall have been properly asserted by any Purchaser Indemnatee in accordance with this Agreement and remain pending on the Indemnity Escrow Termination Date. Any funds that remain in the Indemnity Escrow Account following the Indemnity Escrow Termination Date in respect of any pending Indemnification Claims shall be released in accordance with the terms of the Escrow Agreement.

**Section 7.9 Subrogation.** Purchaser covenants and agrees that any insurance policy(ies) (including the R&W Insurance Policy) that insure against a claim that may be covered by the indemnification obligations under Section 7.2 obtained or maintained by Purchaser and/or any of its Affiliates will expressly exclude any right of subrogation against Seller or any other Seller Indemnatee, except with respect to fraud or intentional misconduct.

**Section 7.10 Tax Treatment.** Any indemnity payments made pursuant to this Article VII shall be treated for Tax purposes as adjustments to the Purchase Price.

**Section 7.11 Exclusive Remedy.** Except for: (a) any recourse available under the R&W Insurance Policy; (b) disputes under Section 2.6 and Section 6.2, which shall be resolved in accordance with the mechanisms thereunder; (c) the rights of the Parties under Section 6.9 and Section 8.11; and (d) fraud or intentional misconduct, the Parties acknowledge and agree that, from and after the Closing, their sole and exclusive remedy with respect to any and all claims for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement, shall be pursuant to the indemnification provisions set forth in this Article VII. In furtherance of the foregoing, each Party hereby waives, to the fullest extent permitted under Law, any and all rights, claims and causes of action for any breach of any representation, warranty, covenant, agreement or obligation set forth herein or otherwise relating to the subject matter of this Agreement it may have against the other Parties hereto and their Affiliates and each of their respective Representatives arising under or based upon any Law, except pursuant to (w) fraud or intentional misconduct, (x) the dispute resolutions procedures set forth in Sections 2.6 and 6.2, (y) the rights under Section 6.9 and Section 8.10, and (z) the indemnification provisions set forth in this Article VII.

**Section 7.12 Special Rule for Fraud or Intentional Misconduct.** Notwithstanding anything in this Article VII to the contrary, in the event of any breach of a representation or warranty or covenant by any Party hereto that results from or constitutes fraud or intentional misconduct, by or on behalf of Seller or Company, on the one hand, or Purchaser, on the other hand, then (a) such representation or warranty or covenant by that Seller or Company will survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby and will continue in full force and effect until the expiration of the statute of limitations applicable thereto with respect to fraud or intentional misconduct claims, and (b) the limitations set forth in Section 7.4 shall not apply to any Loss that the Indemnified Party is determined to have suffered, sustained or became subject to, as a result of, arising out of, relating to or in connection with any such fraud or intentional misconduct; provided, however, that nothing in this Section 7.12 or otherwise in this Agreement shall be deemed to reduce or otherwise alter the pleading or proof requirements in respect of any such claim for fraud or intentional misconduct under applicable Law.

## ARTICLE VIII MISCELLANEOUS

**Section 8.1 Entire Agreement.** This Agreement (including the Disclosure Schedules and Exhibits hereto and all other Transaction Documents) constitutes the final agreement between the Parties and the complete and exclusive expression of the Parties' agreement on the matters contained herein. The Preamble and Recitals of this Agreement are acknowledged by each Party hereto to be true and correct and are incorporated into and made a substantive part of this Agreement by reference as though fully stated herein. All prior and contemporaneous negotiations, agreements, understandings, representations and warranties, both written and oral, between the Parties on the matters contained herein are expressly merged into and superseded by this Agreement.

**Section 8.2 Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) on the date of delivery to the addressee if sent by a nationally recognized overnight courier; (c) on the date sent by telecopy, electronic transmission, electronic mail or other similar means (provided the relevant computer record indicates a successful transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient; or (d) on the third (3<sup>rd</sup>) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses set forth on Schedule 8.2 of the Disclosure Schedules (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 8.2).

**Section 8.3 Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under any present or future Law: (a) such provision will be fully severable; (b) this Agreement will be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part hereof; (c) the remaining provisions of this Agreement will remain in full force and effect and will not be affected by the illegal, invalid or unenforceable provision or by its severance herefrom; and (d) in lieu of such illegal, invalid or unenforceable provision, there will be added automatically as a part of this Agreement a legal, valid and enforceable provision as similar in terms of such illegal, invalid or unenforceable provision as may be possible.

**Section 8.4 Third Party Beneficiaries.** This Agreement shall be binding upon and inure solely to the benefit of each Party and its successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

**Section 8.5 Successors and Assigns.** This Agreement and all of the covenants and agreements contained herein and rights, interests or obligations hereunder, by or on behalf of any of the Parties hereto, shall bind and inure to the benefit of the respective heirs, successors and assigns of the Parties hereto whether so expressed or not, except that neither this Agreement nor any of the covenants

and agreements herein or rights, interests or obligations hereunder may be assigned or delegated by Seller without the prior written consent of Purchaser. Purchaser may assign its rights and obligations hereunder, in whole or in part, to any of its Affiliates without the consent of any other Person, so long as Purchaser remains liable for the performance of such rights and obligations. In addition, Purchaser may assign its rights and obligations pursuant to this Agreement, in whole or in part, in connection with any disposition or transfer of all or any portion of the Business or the Purchased Assets in any form of transaction without the consent of any other Person, so long as Purchaser remains liable for the performance of such rights and obligations. Purchaser and, following the Closing, the Company may assign any or all of its rights pursuant to this Agreement to any of their respective lenders as collateral security without the consent of any other Person.

**Section 8.6 Amendments and Waivers.** This Agreement may not be amended, supplemented or modified except by an instrument in writing signed by each Party. Any term or condition of this Agreement may be waived at any time by the Party that is entitled to the benefit thereof, but no such waiver shall be effective, unless set forth in a written instrument duly executed by or on behalf of the Party waiving such term or condition. No waiver by any Party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or any other term or condition of this Agreement on any future occasion.

**Section 8.7 Governing Law.** This Agreement and the exhibits and schedules hereto shall be governed by and interpreted and enforced in accordance with the Laws of the State of Delaware, without giving effect to any choice of Law or conflict of Laws rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the Laws of any jurisdiction other than the State of Delaware.

**Section 8.8 Consent to Jurisdiction; Waiver of Jury Trial.**

(a) Subject to Section 2.9 (which shall govern any dispute arising thereunder), each Party irrevocably and unconditionally: (i) submits to the federal and state courts located in the State of Delaware in any Legal Proceeding arising out of or relating to this Agreement or any other Transaction Document and agrees that all claims in respect of any such Legal Proceeding may be heard and determined in such courts; (ii) consents that any such Legal Proceeding may and shall be brought in such courts and waives any objection that it may now or hereafter have to the venue or jurisdiction of any such Legal Proceeding in such court or that such court is an inconvenient forum for the Legal Proceeding and agrees not to assert, plead or claim the same; (iii) agrees that the final judgment of such court shall be conclusive and may be enforceable in other jurisdictions by suit or judgment or in any other manner provided by Law; and (iv) agrees that service of process in any such Legal Proceeding may be effected by mailing a copy of such process by registered or certified mail (or any substantially similar form of mail), postage prepaid, to such Party at its address as provided in Section 8.2.

(b) To the extent not prohibited by Law which cannot be waived, each Party hereby waives and covenants that it shall not assert (whether as plaintiff, defendant or otherwise) any right to trial by jury in any forum in respect of any Legal Proceeding arising out of or based upon this Agreement or the other Transaction Documents or the subject matter of such agreements or in any way connected with or related or incidental to the Transactions, in each case, whether now existing or hereafter arising. Any Party hereto may file an original counterpart or a copy of this Section 8.8 with any court as written evidence of the consent of each such Party to the waiver of its right to trial by jury. Each Party certifies and acknowledges that: (i) 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; (ii) each Party understands and has considered the implications of this waiver; (iii) each Party makes this waiver voluntarily; and (iv) each Party has been induced to enter into this Agreement by, among other things, the mutual waivers and certifications in this Section 8.8.

**Section 8.9 Specific Performance.** The Parties agree that immediate, extensive and irreparable damage would occur for which monetary damages would not be an adequate remedy in the

event that any of the provisions of this Agreement are not performed in accordance with their specific terms or are otherwise breached. Accordingly, the Parties agree that, if for any reason any Party shall have failed to perform its obligations under this Agreement or otherwise breached this Agreement, then the Party seeking to enforce this Agreement against such nonperforming Party shall be entitled to specific performance and the issuance of immediate injunctive relief and other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof, without the necessity or proving inadequacy of money damages as a remedy, and the Parties further agree to waive any requirement for the securing or posting of any bond in connection with the obtaining of any such injunctive or other equitable relief, this being in addition to and not in limitation of any other remedy to which they are entitled at Law or in equity.

**Section 8.10 Expenses.** Except as expressly set forth herein, all costs and expenses, including, without limitation, fees and disbursements of counsel, financial advisors and accountants, incurred in connection with this Agreement and the consummation of the Transactions shall be paid by the Party incurring such costs and expenses, whether or not the Closing shall have occurred.

**Section 8.11 Counterparts.** This Agreement and all other Transaction Documents may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute the same instrument. Exchange and delivery of this Agreement and all other Transaction Documents by exchange of electronic copies (with originals to follow) bearing the signature of a Party shall constitute a valid and binding execution and delivery by such Party. Such electronic copies shall constitute legally enforceable original documents.

**Section 8.12 Attorney-Client Privilege.** Purchaser agrees that, as to all communications occurring prior to the Closing among Sherman & Howard L.L.C. (the "Seller Law Firm"), on the one hand, and the Company and Seller, on the other hand, any and all attorney work product that in either case relate in any way to the negotiation, documentation and consummation of the transactions contemplated by this Agreement (collectively, the "Protected Information") the attorney-client privilege, the expectation of client confidence, all attorney work product protections and all similar protections belong to Seller and the Company and may be controlled by Seller and the Company and shall not pass to or be claimed by Purchaser. The Protected Information is the property of Seller and the Company and from and after the Closing, neither the Purchaser nor any Person purporting to act on behalf of or through the Purchaser, will seek to obtain such communications or work product, whether by seeking a waiver of the attorney-client privilege or attorney work product protection or through other means. The Protected Information may be used by Seller and the Company in connection with any dispute that relates in any way to the transactions contemplated hereby, including in any claim for indemnification brought by any Purchaser Indemnitee.

*[Remainder of page intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have executed this Asset Purchase Agreement as of the date first written above.

**COMPANY:**

SPECIALTY PIPE & TUBE, INC., a Delaware corporation

By: /s/ Christopher G. Hutter  
Name: Christopher G. Hutter  
Title: Chief Executive Officer

**SELLER:**

ASCENT INDUSTRIES CO., a Delaware corporation

By: /s/ Christopher G. Hutter  
Name: Christopher G. Hutter  
Title: Chief Executive Officer

**PURCHASER:**

SPECIALTY PIPE & TUBE OPERATIONS INC., a Delaware corporation

By: SP&T Holdings LLC, a Delaware limited liability company, its Manager

By: /s/ [\*\*\*]  
Name: [\*\*\*]  
Title: [\*\*\*]

[Signature Page to Asset Purchase Agreement]

**CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS AGREEMENT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [\*\*\*] INDICATES THAT INFORMATION HAS BEEN REDACTED.**

## TRANSITION SERVICES AGREEMENT

This TRANSITION SERVICES AGREEMENT (this “Agreement”) is dated as of December 22, 2023 (“Effective Date”), by and between Ascent Industries Co., a Delaware corporation (“Provider”) and Specialty Pipe & Tube Operations LLC, a Delaware limited liability company (“Purchaser”). Capitalized terms used herein shall have the meanings given thereto in the Asset Purchase Agreement by and among the Provider and Purchaser and Specialty Pipe & Tube, Inc. (the “Company”) dated as of December 22, 2023 (the “Purchase Agreement”).

### WITNESSETH:

Purchaser and Provider desire to set forth the terms and conditions whereby:

- A. Provider will provide certain Transition Services (as defined below) to Purchaser in connection with the purchase of the Purchased Assets and servicing the Business; and
- B. Purchaser will purchase such Transition Services from Provider.
- C. Simultaneously with the execution of this Agreement, Provider and Purchaser are entering into an Employee Leasing Services Agreement (“ELSA”).

In consideration of the premises and the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

### ARTICLE I SERVICES PROVIDED

1.1 Transition Services. Upon the terms and subject to the conditions set forth in this Agreement, Provider will provide all services (hereinafter referred to individually as a “Transition Service” and collectively as the “Transition Services”) Provider provided to Company for the 12-month period preceding the Effective Date, including those set forth in Schedule A hereto, to Purchaser (and such other services as mutually agreed upon in writing by Provider and Purchaser) during the time period specified for each such Transition Service in such Schedule (hereinafter referred to collectively as the “Time Periods” for all of the Transition Services and individually a “Time Period” for a Transition Service). Provider shall provide the Transition Services in a materially similar manner as Provider historically provided such services for Company. The parties shall cooperate in good faith to ensure the Transition Services are rendered in a timely and efficient manner to transition the Purchased Assets and Business operations to Purchaser.

1.2 Personnel. In providing the Transition Services, Provider may, as it deems necessary or appropriate, (i) use the personnel of Provider or its affiliates, and (ii) employ the services of third parties to the extent that, and subject to the condition that, such third party services are routinely utilized to provide similar services to other businesses of Provider or are reasonably necessary for the efficient performance of such Transition Services.

1.3 Representatives. Provider and Purchaser shall each nominate a representative to act as its primary contact person to coordinate the provision of all of the Transition Services (collectively, the "Primary Coordinators"). Each Primary Coordinator may designate one or more service coordinators for each specific Transition Service (the "Service Coordinators"). Each party may treat an act of a Primary Coordinator or Service Coordinator of another party as being authorized by such other party without inquiring behind such act or ascertaining whether such Primary Coordinator or Service Coordinator had authority to so act, provided, however, that no such Primary Coordinator or Service Coordinator has authority to amend this Agreement. Provider and Purchaser shall advise each other promptly (in any case no more than five (5) business days) in writing of any change in the Primary Coordinators and any Service Coordinator for a particular Transition Service, setting forth the name of the Primary Coordinator or Service Coordinator to be replaced and the name of the replacement, and certifying that the replacement Primary Coordinator or Service Coordinator is authorized to act for such party in all matters relating to this Agreement, in the case of a Primary Coordinator or, in the case of a Service Coordinator, with respect to the Transition Service for which such Service Coordinator has been designated. Provider and Purchaser each agree that all communications relating to the provision of the Transition Services shall be directed to the Service Coordinators for such Transition Service with copies to the Primary Coordinators. Provider's initial Primary Coordinator shall be Bill Steckel. Purchaser's initial Primary Coordinator shall be Jerry Dungan. For each Transition Service, Provider's and Purchaser's initial Service Coordinator is set forth on the Schedules.

#### 1.4 Level of Transition Services.

(a) In all events, Provider shall perform, and shall cause any affiliate of Provider that performs Transition Services to perform, the Transition Services without discriminating in any material or intentional respect against Purchaser with respect to providing such Transition Services or taking such actions in favor of any other business of Provider or any other Persons.

(b) Provider and Purchaser shall cooperate with one another and provide such further assistance as the other may reasonably request in connection with the provision of the Transition Services.

(c) In addition to being subject to the terms and conditions of this Agreement for the provision of the Transition Services, Provider and Purchaser each agree that the Transition Services provided by third parties shall be subject to the terms and conditions of any agreements between Provider and such third parties, which agreements shall be on substantially the same conditions as Provider would enter into with such third parties for its own account, and no such agreements shall be binding on Purchaser after the term of this Agreement or the termination of any individual Transition Service without Purchaser's express written consent.

#### 1.5 Modification of Procedures or Services.

(a) Subject to the procedure set forth in this Section 1.5 to the extent applicable, Provider may make changes from time to time in its standards and procedures or third parties contracts for performing the Transition Services, provided that such changes do not (i) result in an adverse impact to the Company/Purchaser, (ii) result degradation in the quality or timeliness of the services performed, or (iii) result in an increase in the consideration charged by the Provider to the Purchaser for the services performed.

(b) During the term of this Agreement, Purchaser shall, within 10 days after such plans are available, provide Provider with a plan identifying any changes in Purchaser's business that may affect the provision of the Transition Services by Provider; provided, however, that Provider shall not be required to alter the method in which it provides the Transition Services or increase the level of such Services in any material manner; provided, further, however, that the

failure of Purchaser to provide such notice shall not alter or diminish Provider's obligations to provide the Transition Services on the terms set forth herein except where the failure to provide notice has materially increased Provider's cost or burden to provide such Transition Service.

1.6 No Obligation to Continue to Use Services; Provider to Assist in Transitioning.

(a) Purchaser shall not be obligated to continue to use any of the Transition Services and may terminate any Transition Service by giving Provider ten (10) days prior notice thereof in accordance with the notice provisions herein.

(b) Notwithstanding the foregoing, Provider shall use all commercially reasonable efforts to assist Purchaser in Purchaser's efforts in undertaking to provide for itself any Transition Services, including without limitation giving Purchaser possession of the various documents, data and other records used or useful in the delivery of such Transition Services (to the extent that such provision would not violate the confidentiality terms of any proprietary documents) and taking such other steps as are reasonably necessary and without material cost to Provider to assist Purchaser to provide for itself such Transition Services on a self-sufficient basis.

1.7 Provider/Purchaser Access. To the extent reasonably required for personnel of Provider to perform the Transition Services, Purchaser shall provide personnel of Provider with reasonable access during normal business hours (to the extent practicable) to its equipment, office space, plants, telecommunications and computer equipment and systems, and any other areas and equipment. Purchaser will provide Provider access, including remote access, to all IT systems/software used by the Company, including outside of normal business hours. To enable the Purchaser to establish its own IT systems/software, Provider will provide access to (or the transfer of) data that exclusively used by the Company.

1.8 Purchaser Obligations. During the term of this Agreement, Purchaser shall (i) comply with any reasonable instructions provided by Provider that are necessary for Provider to adequately provide the Transition Services; (ii) comply with all applicable standards and procedures applicable to such Transition Service which are in the manner generally applied by Provider in its business; and (iii) promptly report any operational or system problem affecting, the provision of any Transition Services to Provider. Notwithstanding the foregoing, any failure by Purchaser to perform any of the foregoing shall not alter or diminish Provider's obligations to provide the Transition Services on the terms set forth herein except where the failure to so perform has materially increased Provider's cost or burden to provide such Transition Service, or where such failure prevents the provision of the Transition Service in substantially the same manner as previously provided.

1.9 Obligations to Each Party. All employees and representatives of Provider and its Affiliates shall be deemed to be employees or representatives of Provider and its Affiliates, and not employees or representatives of Purchaser or any of its respective Affiliates. All employees and representatives of Purchaser and its Affiliates shall be deemed to be employees or representatives of Purchaser and its Affiliates, and not employees or representatives of Provider or any of its Affiliates. Nothing in this Agreement shall make any party the partner, fiduciary, agent, or representative of any other party. Except as expressly contemplated herein, no party shall assume or create any obligations or responsibility, express or implied, on behalf of or in the name of any other party, or bind any other party in any manner whatsoever.



## ARTICLE II COMPENSATION

2.1 Consideration. As consideration for the Transition Services, Purchaser shall pay to Provider the amount specified for each such Transition Service in accordance with the provision as set forth in the first paragraph of Schedule A to this Agreement.

2.2 Invoices. After the end of each month, Provider, together with its affiliates or subsidiaries providing Transition Services, will submit a single itemized invoice with appropriate documentation for amounts included to Purchaser for all Transition Services provided to Purchaser during such month that are to be paid monthly. All invoices shall be sent to the attention of the Primary Coordinator at the address set forth in Section 7.1 hereof or to such other address as Purchaser shall have specified by notice in writing to Provider.

2.3 Payment of Invoices.

(a) Payment of all invoices in respect of a Transition Service shall be made by check or electronic funds transmission in U.S. Dollars, without any offset or deduction of any nature whatsoever (except that offset or deduction may be made in regard to other invoiced amounts due under this Agreement or to the extent of a dispute in good faith concerning amounts due under this Agreement), within ten (10) days of the invoice date unless otherwise specified in the Schedule relating to such Transition Service. All payments shall be made to the account designated by Provider to Purchaser.

(b) If any payment is not paid when due (except to the extent disputed in good faith), Provider shall have the right to immediately terminate the service for which payment has not been paid. Notwithstanding the above, Provider shall not cease providing any Transition Service or terminate this Agreement if such lack of payment is due to a good faith dispute, the details of which Purchaser has indicated to Provider in writing provided Purchaser is continuing to negotiate in good faith regarding such dispute.

2.4 Provider shall keep true, complete, and accurate books of account regarding costs and expenses, financial records, Tax records and other relevant information associated with the provision of the Transition Services. Provider shall provide copies of all such available information within five (5) days of request from Purchaser (or from the date such information becomes available), or such other mutually agreed to time period.

## ARTICLE III CONFIDENTIALITY

3.1 As used in this Agreement, the "*Confidential Information*" of a party shall mean all information concerning or related to the business, operations, financial condition or prospects of such party or any of its Affiliates that is disclosed to the other party (or to which the other party gains access) pursuant to the transactions contemplated under this Agreement or the Purchase Agreement, regardless of the form in which such information appears and whether or not such information has been reduced to a tangible form, and shall specifically include (i) all inventions, discoveries, trade secrets, customer information, processes, techniques, methods, formulae, ideas and know-how, if any, of such party and its Affiliates and (ii) all financial statements, audit reports, budgets and business plans or forecasts of such party and its Affiliates; provided, that the Confidential Information of a party shall not include (A) information which is or becomes generally known to the public through no act or omission of the other party in breach of its obligations under Sections 3.1 or 3.2, (B) information which has been or hereafter is lawfully obtained by the other party from a third party so long as, in the case of information obtained from a third party, to the knowledge of such receiving party, such

third party was or is not, directly or indirectly, subject to an obligation of confidentiality owed to the party to whom such Confidential Information belongs or any of its Affiliates at the time such Confidential Information was or is disclosed to the other party, (C) information that is independently developed by the receiving party, and (D) information the discloser has a legal right to disclose.

3.2 Except as otherwise permitted by Section 3.3 below or the Purchase Agreement, (i) Purchaser agrees that it will keep the Confidential Information of Provider strictly confidential, and will cause its Affiliates to keep the Confidential Information of Provider and its Affiliates strictly confidential, and will not, without the prior written consent of Provider, disclose any Confidential Information of Provider and (ii) Provider agrees that it will keep the Confidential Information of Purchaser strictly confidential, and will cause each of its Affiliates to keep the Confidential Information of Purchaser and its Affiliates strictly confidential, and will not, without the prior written consent of Purchaser, disclose any Confidential Information of Purchaser.

3.3 Notwithstanding Section 3.2 each of the parties shall be permitted to disclose Confidential Information (i) to its Affiliates and its and their respective officers, directors, employees and other agents, but only to the extent reasonably necessary in order for such party to perform its obligations and exercise its rights and remedies under this Agreement, and such party shall take all such action as shall be necessary in order to ensure that each of such Persons maintains the confidentiality of any Confidential Information that is so disclosed; (ii) to the extent, but only to the extent, required by applicable Law; provided, however, that prior to making any such disclosure, the party required to make such disclosure shall (to the extent permitted) notify the other party of the same so that such other party may consider seeking a protective order, and (iii) to the extent, but only to the extent, necessary in connection with any Legal Proceeding relating to a party's rights or obligations under this Agreement or any other Transaction Document or any other Legal Proceeding in connection herewith or therewith. In the event the protective order referenced in clause (ii) is not obtained or disclosure pursuant to clause (iii) is necessary, the disclosing party shall furnish only that portion of the Confidential Information which is legally required and shall exercise its commercially reasonable efforts to obtain confidential treatment of the Confidential Information. To the extent not prohibited by Law, the disclosing party will provide a copy of any Confidential Information which is being disclosed pursuant to the provisions of this Article III to the other party prior to disclosing such Confidential Information to a third party.

3.4 Upon the termination of this Agreement, at the request of either party, the other party shall, as soon as practicable, return, or, at its option, destroy and cause to be returned or destroyed all or any requested portion of the requesting party's Confidential Information.

#### ARTICLE IV TERM

4.1 Term. This Agreement shall become effective on the Closing Date and shall remain in force until the expiration of the longest Time Period specified in any Schedule hereto (the "Expiration Date"), unless all of the Transition Services are terminated by Purchaser in accordance with Section 1.6(a) above, or this Agreement is terminated under Section 2.3(b) prior to the Expiration Date. Notwithstanding the above, Provider and Purchaser agree to use commercially reasonable efforts in expediting the transition of each of the Transition Services from Provider to Purchaser.

4.2 Termination of Obligations. Purchaser specifically agrees and acknowledges that all obligations of Provider to provide each Transition Service shall immediately cease upon the expiration of the Time Period for such Transition Service, and Provider's obligations to provide all of the Transition Services hereunder shall immediately cease upon the termination of this Agreement. Purchaser shall bear sole responsibility for instituting permanent services, or obtaining replacement services, in respect of any Transition Service terminated in accordance with the provisions hereof, and Provider shall bear no liability for Purchaser's failure to implement or obtain such service or for any difficulties in transitioning from the Transition Service to such permanent or replacement service.

4.3 Survival of Certain Obligations. Without prejudice to the survival of the other agreements of the parties, the following obligations shall survive the termination of this Agreement: (a) the obligations of each party under Sections 1.5, 1.6 and 1.12 and Article III and (b) Provider's right to receive the compensation for the Transition Services provided by it hereunder provided in Section 2.1 above incurred prior to the effective date of termination.

## ARTICLE V LIABILITY AND DISPUTE RESOLUTION

### 5.1 Limitation of Liability.

The parties hereto acknowledge and agree that the Transition Services are provided by Provider: (i) at the request of Purchaser in order to accommodate it in servicing the Business following the Closing, and (ii) at the costs set forth on the applicable Schedule hereto and with no expectation of profit being made by Provider thereon. Accordingly, each party agrees that, absent gross negligence, willful misconduct, theft or fraud, the other party, its subsidiaries and affiliates and their directors, officers, employees, representatives, consultants and agents shall not be liable for any indirect, special, or incidental damages, including lost profits or savings, whether or not such damages are foreseeable, or for any third party claims relating to the Transition Services or each party's performance under this Agreement. Notwithstanding anything to the contrary contained herein, in the event Provider commits an error with respect to or incorrectly performs or fails to perform any Transition Service, at Purchaser's request, Provider shall promptly use reasonable efforts and in good faith attempt to correct such error, re-perform or perform such Transition Service at no additional cost to Purchaser; provided that, absent gross negligence, willful misconduct, theft or fraud, Provider shall have no obligation to recreate any lost or destroyed data to the extent the same cannot be cured by the re-performance of the Transition Service in question.

### 5.2 Indemnity. In addition to the rights and obligations set forth in Article 7 of the Purchase Agreement:

(a) Purchaser agrees to indemnify and hold Provider and its subsidiaries and Affiliates and persons serving as officers, directors, partners or employees thereof ("Provider Indemnified Parties") harmless from and against any damages, Liabilities, losses, Legal Proceedings, taxes, fines, penalties, costs and expenses (including reasonable attorneys' fees and court costs) (each, a "Damage" and, collectively, the "Damages") of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense or settlement of the foregoing) incurred by, imposed upon or rendered against one or more of the Provider Indemnified Parties, all to the extent that such Damages are in respect of, arise out of or are based upon (i) the gross negligence or willful misconduct of Purchaser or its Affiliates, (ii) Purchaser or its Affiliates' violation of Law, (iii) Purchaser or its Affiliates' breach of this Agreement. This obligation to indemnify will include reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities

incurred by Provider or its counsel from the first notice that any claim or demand is to be made or may be made.

(b) Provider agrees to indemnify and hold Purchaser and its subsidiaries and Affiliates and persons serving as officers, directors, partners or employees thereof ("Purchaser Indemnified Parties") harmless from and against any Damages of any kind or nature whatsoever (whether or not arising out of third-party claims and including all amounts paid in investigation, defense or settlement of the foregoing) incurred by, imposed upon or rendered against one or more of the Purchaser Indemnified Parties, all to the extent that such Losses are in respect of, arise out of or are based upon (i) the gross negligence or willful misconduct of Provider or its Affiliates in providing (or failing to provide) a Service, or (ii) any Provider's or any of its affiliate's violation of law. This obligation to indemnify will include reasonable attorneys' fees and investigation costs and all other reasonable costs, expenses and liabilities incurred by Purchaser or its counsel from the first notice that any claim or demand is to be made or may be made.

5.3 Force Majeure. Any failure or omission by a party in the performance of any obligation under this Agreement shall not be deemed a breach of this Agreement or create any liability, if the same arises from any cause or causes beyond the control of such party, including but not limited to, the following, which, for purposes of this Agreement shall be regarded as beyond the control of each of the parties hereto: acts of God, fire, storm, flood, earthquake, governmental regulation or direction, acts of the public enemy, war, rebellion, insurrection riot, invasion, strike or lockout; provided however that such party shall resume the performance whenever such causes are removed.

5.4 Disclaimer of Warranties. THIS IS A SERVICE AGREEMENT. EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, THE PROVIDER DOES NOT GUARANTEE OR WARRANT THE TRANSITION SERVICES TO BE PROVIDED HEREUNDER, AND EXPRESSLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTIES OR GUARANTEES OF ANY KIND, INCLUDING ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE.

5.5 Cooperation and Dispute Resolution. During the term of this Agreement, the parties agree to cooperate in good faith to realize their intent and agreement (as expressed herein) and to resolve any problems that may occur with respect to this Agreement in a commercially reasonable way. As part of that cooperation, each party agrees as follows:

(a) The Primary Coordinators shall be such party's coordinators (the "Coordinators") for the purpose of coordinating the Transition Services to be provided hereunder with the objective that the overall intent and agreement of the parties regarding the Transition Services required under this Agreement are achieved, including the prompt payment to Provider for the Transition Services provided hereunder. Each party may treat an act of a Coordinator of another party as being authorized by such other party without inquiring into such act or ascertaining whether such Coordinator had authority to so act; provided that no Coordinator has the authority to amend this Agreement, except in accordance with Section 7.9.

(b) The Coordinators will promptly negotiate in good faith to resolve all disputes, controversies or claims arising out of or relating to this Agreement or the performance hereunder (a "Dispute"). In the event that the Coordinators cannot resolve a Dispute within fourteen (14) days of the date the Coordinators initiate negotiations with respect to such Dispute, the parties shall refer such Dispute to Doug Tackett on behalf of Provider, and Lindsay Wynter, on behalf of Purchaser, for resolution. In the event that such Dispute cannot be resolved by the parties within

fifteen (15) days of being referred to Mr. Tackett and Mr. Wynter, the parties agree that they shall settle all such Disputes in the manner provided in Section 7.2.

(c) While any Dispute is being resolved in accordance with Section 5.5, each of Provider and Purchaser shall continue to perform all of its obligations under this Agreement, including those obligations subject to the Dispute.

## ARTICLE VI REPRESENTATIONS AND WARRANTIES

6.1 Purchaser Representations. Purchaser hereby represents and warrants to Provider that:

(a) Purchaser is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Purchaser has all requisite corporate power and authority necessary to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

(c) This Agreement has been duly executed and delivered by Purchaser and constitutes a valid and binding obligation of Purchaser, enforceable in accordance with its terms, except as limited by the application of bankruptcy, moratorium and other laws affecting creditors' rights generally and as limited by the availability of specific performance and the application of equitable principles.

(d) The execution and delivery by Purchaser of this Agreement, the performance by Recipient of its obligations hereunder and the consummation by Purchaser of the transactions contemplated hereby do not and will not (i) conflict with or violate the provisions of Purchaser's certificate of incorporation or bylaws, (ii) with such exceptions as, individually and in the aggregate, have not had and are not reasonably likely to have, a material adverse effect on the ability of Purchaser to perform its obligations hereunder, conflict with, constitute a default under, result in a violation or breach of, result in the acceleration of any rights under, give rise to any right to accelerate, terminate, modify or cancel, or require any notice, consent, authorization, approval or waiver under, any Contract which Recipient is subject, (iii) violate or breach the terms of, or cause any default under, any Law to which Recipient is subject, (iv) require any authorization, consent, approval, exemption or other action by or notice to any Governmental Entity, or (v) with the passage of time, the giving of notice or the taking of any action by another Person, have any of the effects described in clauses (i) through (iv) of this clause (d).

6.2 Provider Representations. Provider hereby represents and warrants to Purchaser that:

(a) Provider is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware.

(b) Provider has all requisite corporate power and authority necessary to enter into this Agreement, to perform its obligations hereunder and to consummate the transactions contemplated hereby.

(c) This Agreement has been duly executed and delivered by Provider and constitutes a valid and binding obligation of Provider, enforceable in accordance with its terms, except as limited by the application of bankruptcy, moratorium and other laws affecting creditors' rights

generally and as limited by the availability of specific performance and the application of equitable principles.

(d) The execution and delivery by Provider of this Agreement, the performance by Provider of its obligations hereunder and the consummation by Provider of the transactions contemplated hereby do not and will not (i) conflict with or violate the provisions of Provider's certificate of incorporation or bylaws, (ii) with such exceptions as, individually and in the aggregate, have not had and are not reasonably likely to have, a material adverse effect on the ability of Provider to perform its obligations hereunder, conflict with, constitute a default under, result in a violation or breach of, result in the acceleration of any rights under, give rise to any right to accelerate, terminate, modify or cancel, or require any notice, consent, authorization, approval or waiver under, any Provider which Provider is subject, (iii) violate or breach the terms of, or cause any default under, any Law to which Provider is subject, (iv) require any authorization, consent, approval, exemption or other action by or notice to any Governmental Entity, or (v) with the passage of time, the giving of notice or the taking of any action by another Person, have any of the effects described in clauses (i) through (iv) of this clause (d).

## ARTICLE VII MISCELLANEOUS

7.1 Notices and Requests. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been given or made if in writing and delivered personally or sent by registered or express mail (postage prepaid) or by electronic mail to the parties at the following addresses and facsimile numbers:

if to Purchaser:

[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
[\*\*\*]  
Email: [\*\*\*]

with copies (which shall not constitute notice) to:

Kutak Rock LLP  
2001 16<sup>th</sup> Street, Suite 1800  
Denver, CO 80202  
Attention: Tori Donovan  
Email: [victoria.donovan@kutakrock.com](mailto:victoria.donovan@kutakrock.com)

if to Provider to:

Ascent Industries, Co.  
1400 16<sup>th</sup> Street, Suite 270  
Oak Brook, Illinois 60523  
Attention: Doug Tackett  
Email: [dtackett@ascentco.com](mailto:dtackett@ascentco.com)

with copies (which shall not constitute notice) to:

Sherman & Howard LLC  
675 Fifteenth Street, Suite 2300  
Denver, CO 80202  
Attn: Jeff Kesselman  
Email: [jkesselman@shermanhoward.com](mailto:jkesselman@shermanhoward.com)

or to such other address as the party to receive the notice or request shall designate by notice to the other party. The effective date of any notice or request given in connection with this Agreement shall be deemed to have been given (a) if personally delivered, on the date of delivery (or, if delivered after the normal business hours of the intended recipient, on the next Business Day), (b) if delivered by express courier service of national standing (with charges prepaid), on the Business Day following the date of delivery to such courier service, (c) if deposited in the United States mail, first-class postage prepaid, on the fifth Business Day following the date of such deposit, or (d) if delivered by electronic mail, upon confirmation of successful transmission.

7.2 Governing Law; Venue. The validity, construction, and performance of this Agreement, and any action arising out of or relating to this Agreement shall be governed by the laws of the State of Delaware without regard to the laws of such state as to choice or conflict of laws. Each party (a) hereby irrevocably submits to the exclusive jurisdiction of the courts located in Delaware, for the purpose of any action arising out of or based upon this Agreement or the subject matter hereof and (b) hereby waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that the action is brought in an inconvenient forum or that the venue of the action is improper. Each party hereby consents to service of process by mail at the address to which notices are to be given. THE PARTIES TO THIS AGREEMENT EACH HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. THE PARTIES TO THIS AGREEMENT EACH HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

7.3 Attorneys' Fees. If any claim or action is commenced by any party concerning this Agreement, the prevailing party(ies) shall recover from the losing party reasonable attorneys' fees and costs and expenses, including those of appeal and not limited to taxable costs, incurred by the prevailing party(ies), in addition to all other remedies to which the prevailing party(ies) may be entitled. If a claim or action asserted by a third party against any party(ies) arises from an action or omission by another party, the party(ies) responsible for the action or omission shall be the losing party, and the other party(ies) shall be the prevailing party, for purposes of the foregoing sentence.

7.4 Interpretation. The language in all parts of this Agreement shall be in all cases construed simply according to its fair meaning and not strictly for or against any party. The captions of the Sections and subsections of this Agreement are for convenience only and shall not affect the construction or interpretation of any of the provisions of this Agreement.

7.5 Headings. The headings or titles in this Agreement are for the purposes of reference only and shall not in any way affect the interpretation or construction hereof.

7.6 Incorporation of Schedules. Schedules hereto are hereby incorporated herein and made a part of this Agreement.

7.7 No Waiver. The failure by Purchaser or Provider at any time to enforce any of the terms, provisions or conditions of this Agreement shall not constitute or be construed as a waiver of the same and any single or partial exercise by Purchaser or Provider of any right under this Agreement shall not preclude any further or other exercise of the same or the exercise of any other right.

7.8 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and cancels all prior and contemporaneous agreements, claims, representations, and understandings of the parties in connection with such subject matter.

7.9 Amendment. This Agreement shall not be modified or amended except by written agreement signed on behalf of Provider and Purchaser by their respective duly authorized representatives.

7.10 Assignment. This Agreement shall not be assignable, in whole or in part, directly or indirectly; provided, that neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned (including by operation of law) by either party without the prior written consent of the other party (except that either party may, without the prior written consent of the other, assign this Agreement to its Affiliates, and Recipient may collaterally assign this Agreement to its financing sources). Any attempt to assign any rights or obligations arising under this Agreement in contravention with this paragraph shall be null and void ab initio.

7.11 Successors and Assigns. Each of the terms, provisions, and obligations of this Agreement shall be binding upon, shall inure to the benefit of, and shall be enforceable by the parties and their respective legal representatives, successors and permitted assigns.

7.12 Specific Performance. The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed by Purchaser or Provider, as applicable, in accordance with their specific terms or were otherwise breached by Purchaser or Provider, as applicable. It is accordingly agreed that, in addition to any other remedy to which they may be entitled at law or in equity, the parties shall be entitled to an injunction or injunctions, without any necessity of showing actual damage or irreparable harm and without any requirement to post or provide any bond or other security in connection therewith, to prevent breaches of this Agreement by any of Purchaser or Provider, as applicable, and to enforce specifically the terms and provisions hereof against Purchaser or Provider, as applicable, in any court having jurisdiction, this being in addition to any other remedy to which the parties hereto are entitled at law or in equity. Each of the parties hereby waives any requirement for the posting or provision of any bond or other security in connection with any such enforcement and each of the parties agrees that it will not oppose the granting of an injunction, specific performance and/or other equitable relief on the basis that any other party has an adequate remedy at law or that any award of specific performance or other equitable remedy is not an appropriate remedy for any reason at law or in equity.

7.13 Cumulative Remedies. No remedy made available hereunder by any of the provisions of this Agreement 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, now, or hereafter existing at Law or in equity or by statute or otherwise.



7.14 No Third-Party Beneficiaries. Nothing in this Agreement will be construed as giving any person, other than the parties hereto and their respective successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.

7.15 Severability. Each provision of this Agreement is intended to be severable. Should any provision of this Agreement or the application thereof be judicially declared to be or become illegal, invalid, unenforceable or void, the remainder of this Agreement will continue in full force and effect and the application of such provision to other persons or circumstances will be interpreted so as reasonably to effect the intent of the parties.

7.16 Relationship of Parties. Nothing in this Agreement shall be deemed or construed by the parties or any third party as creating a partnership or the relationship of principal and agent or joint venture between the parties, it being understood and agreed that no provision contained herein, and no act of the parties, shall be deemed to create any relationship between the parties other than the relationship of buyer and provider of services nor be deemed to vest any rights, interests or claims in any third parties.

7.17 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute a single agreement.

(Signature Page Follows)

IN WITNESS WHEREOF, the parties have executed this Transition Services Agreement as of the date first above written.

**“PURCHASER”:**  
**SPECIALTY PIPE & TUBE OPERATIONS, LLC**  
a Delaware limited liability company

By: SP&T Holdings LLC, a Delaware limited liability company,  
its Manager

By: /s/ [\*\*\*]  
Name: [\*\*\*]  
Title: [\*\*\*]

**“PROVIDER”:**  
**ASCENT INDUSTRIES, CO**  
a Delaware corporation

By: /s/ Christopher G. Hutter  
Name: Christopher G. Hutter  
Title: President and CEO

**TRANSITION SERVICES AGREEMENT**  
**SCHEDULE A**  
**PROVIDER TRANSITION SERVICES**

**SCHEDULE A**

[\*\*]

CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS AGREEMENT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [\*\*\*] INDICATES THAT INFORMATION HAS BEEN REDACTED.

## EMPLOYEE LEASING SERVICES AGREEMENT

**THIS EMPLOYEE LEASING SERVICES AGREEMENT** (this “Agreement”) is made and entered into effective as of December 22, 2023 (the “Effective Date”), by and between Ascent Industries Co., a Delaware corporation (“Provider”) and Specialty Pipe & Tube Operations LLC, a Delaware limited liability company (“Purchaser”). Capitalized terms used herein shall have the meanings given thereto in the Asset Purchase Agreement by and among the Provider and Purchaser and Specialty Pipe & Tube, Inc. (the “Company”) dated as of December 22, 2023 (the “Purchase Agreement”).

### RECITALS

In connection with the transactions contemplated by the Purchase Agreement and related transition of the Purchase Assets and the Business, Purchaser desires to engage Provider, and Provider desires to be engaged, to provide certain services on behalf of Purchaser for a limited duration subject to the terms and conditions of this Agreement. Simultaneously with the execution of this Agreement, Provider and Purchaser are entering into a Transitions Services Agreement (“TSA”) governing the provision of other certain transition services in conjunction with this Agreement.

Now therefore, in consideration of the premises and the mutual covenants and agreements herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree as follows:

### AGREEMENT

#### 1. Employee Lease.

1.1 For so long as the Employees identified on Schedule 1 (collectively, the “Employees”) are employed by Provider, Provider shall lease the Employees to Purchaser from the Effective Date until such Employees’ employment is transitioned to Purchaser, expected by March 31, 2024 (the “Lease Period”). Provider shall ensure such Employees provide their services (the “Leased Employee Transition Services”) at and on behalf of Provider materially consistent with their respective services historically provided to Company prior to the Closing. Provider shall continue to employ the Employees during such Lease Period and be responsible for compliance with all federal, state and local laws regarding the Employee’s employment, shall conduct all other traditional management and human resources functions relating to the Employees, and each Employee’s compensation, benefits (including health, welfare, pension, retirement, disability, and insurance), workers’ compensation and unemployment compensation coverage, and local, state and federal payroll taxes until the conclusion of the Lease Period.

1.2 The Employees will be and shall remain at all times the employees of Provider while providing services for Purchaser pursuant to this Agreement. At no time while any Employee is employed by Provider hereunder shall Purchaser hold itself out to be the employer of such Employee and at no time while any Employee is employed by Provider hereunder shall Provider hold Purchaser out to be the employer of such Employee. As between Provider and the Employees, each Employee’s employment relationship shall be governed by the terms of any agreement between Provider and such Employee (or in the case of any bargaining unit employees, the collective bargaining representative of such Employees) and Provider’s employment policies, as applicable, until the conclusion of the Lease Period. Nothing expressed by or mentioned in this Agreement is intended or shall be construed to give any Employee or his or her respective heirs, assigns and beneficiaries, any legal or equitable right, remedy or claim under or in respect to this Agreement, the TSA, the Purchase Agreement, or otherwise. Provider shall provide the Leased Employee Transition Services in a materially similar manner as Provider historically provided such services for Company. The parties shall cooperate in good faith to ensure the Leased Employee Transition Services are rendered in a timely and efficient manner and in

compliance with applicable employment policies, Benefit Plans, collective bargaining agreements, and applicable Law.

1.3 Provider shall be solely responsible for any and all employee benefits to the Employees pursuant to Lessor's employee benefits and retirement plans, and Purchaser shall have no obligation to provide any such benefits to the Employees. Provider shall be responsible for all facets of payroll and benefits administration with respect to the Employees including, without limitation, withholding and payment of payroll taxes (including FICA and unemployment compensation), providing workers' compensation coverage, and providing any fringe and welfare benefit programs for the Employees. During the Term of this Agreement, the parties acknowledge and agree that Purchaser shall not be deemed an integrated enterprise, joint employer or co-employer of any of Provider's Employees providing services under this Agreement. If Purchaser determines or requires any Employee to be licensed, registered or certified under any federal, state, or municipal law or regulation, then Purchaser shall notify Provider of such requirement and Purchaser shall be solely responsible for the licensure, registration or certification. Purchaser shall also be solely responsible for verifying such licensure and/or providing such required supervision.

1.4 In connection with operating the Purchased Assets and the Business, the Purchaser agrees to comply with all federal, state, and local laws, including but not limited to, the Americans with Disabilities Act, as amended, Genetic Information and Non-Discrimination Act, Fair Labor Standards Act, Family Medical Leave Act, National Labor Relations Act, Age Discrimination in Employment Act, as amended, and Title VII of the Civil Rights Act of 1964, as amended, and the any federal, state or local anti-discrimination or wage related laws or regulations with respect to all Employees as if they were employees of Purchaser. Purchaser further agrees to notify Provider within forty-eight (48) hours of any claim alleging a violation of any laws relating to the employment of an Employee. Purchaser shall be responsible for implementing safety and training programs and for complying with all health and safety laws, rules, regulations and directives. Purchaser represents that its working environment, equipment and machinery, as well as all personal protection gear required by applicable law, currently meet all OSHA standards and that they will be maintained in compliance with such requirements during the term of this Agreement.

1.5 Purchaser agrees that all wages (including bonuses) paid to any Employee are to be paid by Provider and that no Employee will receive additional wages in any form directly from Purchaser until termination of this Agreement, or until such Employee is hired directly by Purchaser and this Agreement no longer applies with respect to such Employee. Purchaser agrees it will be solely responsible for damages of any nature arising out of its failure to report to Provider the payment to an Employee of any remuneration for services rendered for Purchaser prior to termination of this Agreement or prior to Employee being an employee of Purchaser directly. In no event will any independent contractor who is not employed by Provider be covered by Provider's workers' compensation policy.

## 2. Term and Termination.

2.1 *Term.* The term of this Agreement (the "Term") commences on the Effective Date and continues in effect through March 31, 2024 ("Scheduled End Date") unless sooner terminated (i) by Purchaser upon ten (10) days' advance written notice to Company, or such longer period if required by any employment policies or Law; (ii) by Provider immediately upon Default; or (iii) by either party at any time if the other party becomes insolvent or unable to pay debts as they mature, becomes the subject of bankruptcy proceedings not terminated within thirty (30) days of any filing, makes a general assignment for the benefit of creditors, or makes or permits the appointment of a receiver for all or substantially all of its property; or (iv) by either party if the other party materially fails or refuses to perform its obligations hereunder (each a "Termination"). Failure to pay any Payroll Amounts (as defined below) in full by the Due Date (as defined below) shall constitute a Default; provided that third party errors or administrative errors outside the Purchaser's control that are cured within one day shall not enable Provider to immediately terminate this Agreement. Upon any Termination, Provider shall have the right to immediately terminate some or all Employees and cease providing the Leased Employee Transition Services. At the end of the Term, Purchaser shall be responsible for all Employee Fees incurred and

unpaid through the date of Termination and any other documented Employee Fees incurred by Provider that extend past the date of Termination pursuant to Section 3.2 below.

2.2 *Renewal.* In the event Purchaser continues to need the Leased Employee Transition Services after the Scheduled End Date, upon agreement of Purchaser and Provider the Term can be extended for an additional 30 days (the "Renewal Period"); however, an additional surcharge of [20%] shall be applied to each Payroll Amount after the conclusion of the first Renewal Period.

2.3 *Transfer of Employees upon Termination.*

i. Upon the Termination date of this Agreement (the "Termination Date"), Purchaser may elect, in its sole discretion, to make offers of employment as of the Termination Date or thereafter to some or all of the Employees (the "Prospective Employees"). Provider shall not take any action to impede, hinder or interfere with Purchaser's efforts to hire the Prospective Employees. Prospective Employees who accept Purchaser's offer of employment and become employees of Purchaser on or after the Termination Date are referred to as "New Employees." Provider and Purchaser shall work in good faith to communicate the offers of employment by Purchaser to the Prospective Employees and Provider will not make any statements or take any actions with respect to Prospective Employees that would (i) bind or effect Purchaser's ability to determine and set the wages, benefits or terms and condition of employment as to Prospective Employees or New Employees, or (ii) incur liabilities for Purchaser related to severance type payments for Prospective Employees prior to becoming New Employees. The parties acknowledge that the Prospective Employees or New Employees will not forfeit any accrued sick leave or vacation/paid time off (if and as applicable) with Provider and Purchaser shall assume such accrued sick, vacation, paid time off leave (if applicable) and credit the same to New Employees. Provider (or its Affiliates) shall refrain from soliciting for employment any of the New Employees for a period of one (1) year after the Termination Date, except for those New Employees whose employment is terminated by Purchaser and whose termination is not induced by any actions of Provider. Purchaser shall not be required to assume any contracts or agreements between Provider and the Employees, and Provider shall be responsible for termination of all such contracts and agreements. Provider shall be responsible for any and all termination payments or distributions, rights or other benefits applicable under any vacation, other leave, bonus, pension, profit sharing, retirement, stock purchase, or similar plan providing for employee benefits to employees of Provider; subject to Section 2.3(ii). All New Employees except those who may be covered by a collective bargaining agreement adopted by Purchaser or those to whom the Purchaser has an obligation to recognize a union, shall be "at will" employees of Purchaser, regardless of any contracts or agreements any such employees may have with Provider. Upon receipt of notice from Purchaser listing those individuals who have become New Employees of Purchaser, the personnel records of such individuals shall be transferred to Purchaser in accordance with any and all applicable Laws.

ii. In the event either Provider or Purchaser believes that additional Employees are necessary to provide the Employee Transition Services, Provider and Purchaser shall mutually agree upon the conditions for hiring such new employee and they shall become an Employee under this Agreement. In the event either Provider or Purchaser believes that any Employee should be terminated during the Term, Provider and Purchaser shall mutually agree upon the terms of such termination. If the termination is proposed by Purchaser, Purchaser shall be responsible for reimbursing Provider for all costs related to such termination, including severance, if any and COBRA.

3. **Fees.**

3.1 *Leased Employee Transition Services.* In consideration of Company's lease of the Employees, Purchaser shall pay to Provider an amount equal to 100% of Company's total direct costs including, but not limited to, salary and hourly base pay, holiday and vacation pay, overtime pay, commissions, benefits (including health, welfare, pension, retirement, disability, and insurance), workers' compensation and unemployment compensation coverage, state and federal unemployment insurance, and local, state and federal payroll taxes for the Employees while such Employees are employed by Provider pursuant to this Agreement during the Term (the "Employee Fees"). With respect to workers compensation insurance, health insurance or any other coverage for the Employees covered by Provider's

self-insured program, the Employee Fees shall include any amounts incurred by Provider for claims relating to incidents or losses occurring during the Term. For any Employees covered by third-party insurance, the Employee Fees will include the amount of premiums and deductibles paid during the Term. If Provider or a Leased Employee is authorized in writing by Purchaser to travel, to procure items or materials or to otherwise incur an expense on behalf of Purchaser in performance of services, Purchaser shall reimburse Provider directly for all such approved expenses actually incurred by such Employee and in compliance with applicable expense reimbursement policies as part of the Employee Fee. Notwithstanding the foregoing, in no event shall the Employee Fee include any such expenses, fees, costs or other compensation that are (i) reimbursed to Provider pursuant to TSA, (ii) items of Indebtedness under the Purchase Agreement, including but not limited to any bonus payments accrued for Employees up to the Closing Date, pursuant to any retention or transaction bonus agreement by and between an Employee and Provider or Company (as defined in the Purchase Agreement), or any bonus compensation based on Provider's or Company's past practice prior to the Effective Date, or (iii) or any other contractual arrangement between Provider and Purchaser.

### 3.2 *Payment Schedule.*

i. *Payroll Invoices.* Promptly following the conclusion of each payroll period, Provider shall provide to Purchaser the amount of Employee Fees incurred during such payroll period ("Payroll Amount"). Purchaser shall pay such Payroll Amount within five (5) days thereafter ("Due Date").

ii. *Additional Costs and True Up.* If during the Term, any Payroll Amount previously submitted to Purchaser is inaccurate, Provider shall notify Purchaser of such inaccuracy on the next Payroll Amount delivered to Purchaser clearly identifying the correction and reasoning. If such error or correction resulted in the prior Payroll Amount previously reported being more than what was paid to Employees, Provider shall apply the excess previously paid by Purchaser to the Payroll Amount notifying Purchaser of the error or correction. If such error or correction resulted in the prior Payroll Amount previously reported being less than what was paid to Employees, Provider shall include the additional amount due to the then current Payroll Amount notifying Purchaser of the error or correction. Certain expenses such as state unemployment wages are determined on a quarterly basis and federal unemployment payments are determined on an annual basis and an accurate amount may not be available to include within the Payroll Amounts. Provider shall estimate such amounts and include them within the Payroll Amounts and, within 120 days of the Termination Date, Provider will provide a true up calculation to Purchaser showing the actual amount of Employee Fees and whether any adjustment is needed in the amount of Employee Fees charged to Purchaser during the Term of this Agreement. Payment by Purchaser to Provider in respect of such invoice shall be made by wire transfer or any other mutually acceptable method.

3.3 *Provider Documentation.* Provider shall use all commercially reasonable efforts to assist Purchaser in Purchaser's efforts in undertaking to provide for itself the Leased Employee Transition Services, including without limitation giving Purchaser possession of the various documents, data and other records used or useful in the delivery of such Leased Employee Transition Services (subject to the confidentiality obligations in the Purchase Agreement). Provider shall keep true, complete and accurate books of account regarding costs and expenses, financial records, Tax records and other relevant information associated with the provision of the Leased Employee Transition Services. Provider shall provide copies of all such information (to the extent the requested information is available) within ten (10) days of request from Purchaser, or such other mutually agreed to time period. All documentation requests remain subject Provider's internal controls and Sarbanes-Oxley compliance obligations.

## 4. **General Provisions.**

4.1 *Confidentiality.* The confidentiality provisions set forth in Article III of the TSA shall apply to any information Confidential Information exchanged pursuant to this Agreement.

### 4.2 *Warranties.*

i. Provider represents, warrants and covenants that Provider has complied and will comply in all material respects with all judicial or administrative orders, decrees or judgments, agreements, collective bargaining agreements, and applicable federal, state and local laws, rules, regulations and ordinances applicable to the Employees, their employment by Provider, and their performance of services for Purchaser (to the extent that Provider has control over a matter or supervises the Employees with respect to a matter), including without limitation, those relating to payment of wages and overtime, reporting of hours, provision of paid time off or vacation, meal and other breaks, classification of employees and independent contractors, equitable and appropriate provision of leave, accommodations or benefits payment of social security, payment of benefit premiums, deferrals and contributions and taxes, employment and unemployment insurance, workers' compensation, those relating to labor and employment relations, and employment discrimination, workplace safety; occupational health and safety (including any guidance published by any applicable governmental authority related to the COVID-19 pandemic); and those relating to immigration and visa sponsorship and employment authorization verification.

ii. Purchaser represents, warrants and covenants that Purchaser will comply in all material respects with all applicable federal, state and local laws, rules, regulations and ordinances applicable to Purchaser's relationship with the Employees hereunder (to the extent that Purchaser supervises the Employees with respect to a matter or reports to Provider regarding the hours worked by, and matters relating to the performance of, the Employees), including without limitation, those relating to labor and employment relations, employment discrimination and employee health and safety.

#### 4.3 *Indemnification.*

i. Purchaser hereby agrees to indemnify, defend, and hold harmless Provider (including their affiliates, the respective, members, directors, officers, agents and employees of Provider and its affiliates, each other Person, if any, controlling Provider or any of its affiliates, and the successors, assigns, heirs and personal representatives of any of the foregoing (each with Provider, an "Provider Indemnitee"), to the fullest extent, from and against any and all direct losses, claims, damages or liabilities and reasonable expenses (including, without limitation, all reasonable fees and expenses of outside counsel, investigators, expert witnesses, accountants and other professionals, reasonable travel and other out-of-pocket expenses) ("Losses") incurred by Provider relating to (i) Purchaser's breach or non-performance of any obligations or responsibilities under this Agreement, (ii) any actions or inactions of any of the Employees or any officers, directors, managers or agents of Purchaser, including without limitation, negligence, errors or omissions, tortious conduct, intentional misconduct, violation of any statute, law, or regulation, criminal or dishonest activity, while conducting the Business after the Effective Date, (iii) any employment-related claims relating to any Employees, solely to the extent such claims arise directly from Purchaser's actions taken pursuant to authority provided under this Agreement or instructions to Provider, and excluding claims relating to any employment practices of Provider, or (iv) any other liability or expense to any third party incurred by Provider in regard to performing pursuant to this Agreement, to the extent Provider provides at least 5 business days' advanced notice of such liability or expense (except to the extent advanced notice is impossible) and receives approval from Purchaser; provided, however, in no event shall any Provider Indemnitee be entitled to be indemnified for any Losses arising out of, attributable to, or resulting from Provider's gross negligence, intentional misconduct or breach of this Agreement.

ii. Provider hereby agrees to indemnify, defend, and hold harmless Purchaser (including its affiliates, the respective, members, directors, officers, agents and employees of Purchaser and its affiliates, each other Person, if any, controlling Purchaser or any of its affiliates, and the successors, assigns, heirs and personal representatives of any of the foregoing (each with Purchaser, a "Purchaser Indemnitee"), to the fullest extent, from and against any and all Losses incurred by Purchaser relating to (i) Provider's breach or non-performance of any obligations or responsibilities under this Agreement, or (ii) Provider's, or its agents', officers', or directors' gross negligence or willful misconduct; provided, however, in no event shall any Purchaser Indemnitee be entitled to be indemnified for any Losses arising out of, attributable to, or resulting from Purchaser's gross negligence, intentional misconduct or breach of this Agreement.



4.4 *Settlement.* Each party as indemnitee (“Indemnitee”) will give the other party as indemnitor (“Indemnitor”) prompt written notice of any Loss. If Indemnitor does not notify Indemnitee within a reasonable period after Indemnitor’s receipt of notice of any claim for Loss that Indemnitor is assuming the defense of Indemnitee, then until such defense is assumed by Indemnitor, Indemnitee shall have the right to defend, contest, settle or compromise such Loss in the exercise of its reasonable judgment and all costs and expenses of such defense, contest, settlement or compromise (including reasonable outside attorneys’ fees and expenses) will be reimbursed to Indemnitee by Indemnitor. Upon assumption of the defense of any such Loss, Indemnitor will, at its own cost and expense, select legal counsel, and conduct and control the defense, compromise or settlement of any third-party claim, action or suit against such Indemnitee, and in any such case the Indemnitee, if applicable, shall reasonably cooperate in connection therewith and shall furnish such records, information and testimony in its possession and attend such conferences, discovery proceedings, hearings, trials and appeals as may be reasonably requested by such Indemnitor in connection therewith. Notwithstanding the foregoing, Indemnitee may, at its election and sole expense, be represented in such action by separate counsel and Indemnitee may, at its election and sole expense, assume the defense of any such action, if Indemnitee hereby waives Indemnitor’s indemnity hereunder. Unless Indemnitee waives the indemnity hereunder, in no event shall Indemnitee, as part of the settlement of any claim or proceeding covered by this indemnity or otherwise, stipulate to, admit or acknowledge any liability or wrongdoing (whether in contract, tort or otherwise) of any issue which may be covered by this indemnity without the consent of the Indemnitor (such consent not to be unreasonably withheld or delayed). Indemnitor shall obtain the Indemnitee’s prior written consent (such consent not to be unreasonably withheld or delayed) in connection with any settlement of, or consent to the entry of any judgment arising from, such Loss unless (x) the Indemnitee shall (i) pay or cause to be paid all amounts arising out of such settlement or judgment concurrently with the effectiveness of such settlement, (ii) not encumber any of the assets of any Indemnitee or agree to any restriction or condition that would apply to or materially adversely affect any Indemnitee or the conduct of any Indemnitee business and (iii) obtain, as a condition of any settlement or other resolution, a complete release of any Indemnitee potentially affected by such Loss and (y) such settlement or consent shall not include an admission of wrongdoing on the part of any Indemnitee.

IT IS UNDERSTOOD AND AGREED THAT PROVIDER DOES NOT REPRESENT, WARRANT OR GUARANTEE IN ANY WAY THAT THE PERFORMANCE OF THE SERVICES OF THE EMPLOYEES WILL BE UNINTERRUPTED OR ERROR FREE. PROVIDER AND PURCHASER HEREBY AGREE THAT THIS AGREEMENT INVOLVES THE PROVISION OF SERVICES, AND THAT THIS AGREEMENT IS A SERVICE AGREEMENT FOR PURPOSES OF THE UNIFORM COMMERCIAL CODE AND THEREFORE THAT THE PROVISIONS OF THE UNIFORM COMMERCIAL CODE SHALL NOT APPLY TO THIS AGREEMENT.

4.5 NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT TO THE CONTRARY, IN NO EVENT WILL EITHER PARTY OR ITS RESPECTIVE AFFILIATES BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, COLLATERAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS SUFFERED BY THE OTHER PARTY OR ITS AFFILIATES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, IN CONNECTION WITH ANY DAMAGES ARISING HEREUNDER; PROVIDED, HOWEVER, THAT TO THE EXTENT EITHER PARTY OR ITS RESPECTIVE AFFILIATES IS REQUIRED TO PAY (A) ANY AMOUNT ARISING OUT OF THE INDEMNITY SET FORTH IN SECTION 4.3 AND (B) ANY SPECIAL, INCIDENTAL, INDIRECT, COLLATERAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OR LOST PROFITS TO A THIRD PARTY WHO IS NOT AN AFFILIATE OF EITHER PARTY, IN EACH CASE IN CONNECTION WITH A THIRD-PARTY CLAIM, SUCH DAMAGES WILL CONSTITUTE DIRECT DAMAGES OF THE INDEMNIFIED PARTY AND WILL NOT BE SUBJECT TO THE LIMITATION SET FORTH IN THIS SECTION 4.5.

4.6 *Liability and Employment Practices Liability Insurance.* Provider shall maintain and keep in full force and effect such liability (including employment practices liability) insurance coverage as it shall deem reasonably appropriate with respect to liabilities arising out of the acts and omissions of the Employees or the Provider, its employees, managers, officers, and agents.

4.7 *Miscellaneous*. This Agreement supersedes all other previous contracts or understandings and constitutes the entire agreement of whatsoever kind or nature existing between or among the parties respecting the within subject matter, and no party shall be entitled to benefits other than those specified herein (it being understood, however, that the Purchase Agreement and the other transaction documents referenced therein sets forth certain additional understandings between Company, Purchaser and Provider regarding their relationship after the Effective Date of this Agreement). As between or among the parties, no oral statements or prior written material not specifically incorporated herein shall be of any force and effect. The parties specifically acknowledge that in entering into and executing this Agreement, the parties rely solely upon the representations and agreements contained in this Agreement. All prior representations or agreements, whether written or verbal, not expressly incorporated herein are superseded, and no changes in or additions to this Agreement shall be recognized unless and until made in writing and signed by all parties hereto. This Agreement may be executed in two or more counterparts, each and all of which shall be deemed an original and all of which together shall constitute but one and the same instrument.

4.8 *Force Majeure*. Any failure or omission by a party in the performance of any obligation under this Agreement shall not be deemed a breach of this Agreement or create any liability, if the same arises from any cause or causes beyond the control of such party, including but not limited to, the following, which, for purposes of this Agreement shall be regarded as beyond the control of each of the parties hereto: acts of God, fire, storm, flood, earthquake, governmental regulation or direction, acts of the public enemy, war, rebellion, insurrection riot, invasion, strike or lockout; provided however that such party shall resume the performance whenever such causes are removed.

4.9 *Notices and Requests*. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been given or made if in writing and delivered personally or sent by registered or express mail (postage prepaid) or by electronic mail to the parties at the following addresses and facsimile numbers:

if to Purchaser:

\*\*\*  
\*\*\*  
\*\*\*

Email: [\*\*\*]

with copies (which shall not constitute notice) to:

Kutak Rock LLP  
2001 16th Street, Suite 1800  
Denver, CO 80202  
Attention: Tori Donovan  
Email: victoria.donovan@kutakrock.com

if to Provider to:

Ascent Industries, Co.  
1400 16th Street, Suite 270  
Oak Brook, Illinois 60523  
Attention: Doug Tackett  
Email: dtackett@ascentco.com

or to such other address as the party to receive the notice or request shall designate by notice to the other party. The effective date of any notice or request given in connection with this Agreement shall be deemed to have been given (a) if personally delivered, on the date of delivery (or, if delivered after the normal business hours of the intended recipient, on the next Business Day), (b) if delivered by express courier service of national standing (with charges prepaid), on the Business Day following the date of delivery to such courier service, (c) if deposited in the United States mail, first-class postage prepaid, on

the fifth Business Day following the date of such deposit, or (d) if delivered by electronic mail, upon confirmation of successful transmission.

4.10 *Governing Law; Venue.* The validity, construction, and performance of this Agreement, and any action arising out of or relating to this Agreement shall be governed by the laws of the State of Delaware without regard to the laws of such state as to choice or conflict of laws. Each party (a) hereby irrevocably submits to the exclusive jurisdiction of the courts located in Delaware, for the purpose of any action arising out of or based upon this Agreement or the subject matter hereof and (b) hereby waives and agrees not to assert, by way of motion, as a defense, or otherwise, in any such action, any claim that it is not subject personally to the jurisdiction of the above-named courts, that the action is brought in an inconvenient forum or that the venue of the action is improper. Each party hereby consents to service of process by mail at the address to which notices are to be given. THE PARTIES TO THIS AGREEMENT EACH HEREBY WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO TRIAL OF ANY CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION (I) ARISING UNDER THIS AGREEMENT OR (II) IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE TRANSACTIONS RELATED HERETO, IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY, OR OTHERWISE. THE PARTIES TO THIS AGREEMENT EACH HEREBY AGREE AND CONSENT THAT ANY SUCH CLAIM, DEMAND, ACTION, OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES TO THIS AGREEMENT MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

4.11 *Attorneys' Fees.* If any claim or action is commenced by any party concerning this Agreement, the prevailing party(ies) shall recover from the losing party reasonable attorneys' fees and costs and expenses, including those of appeal and not limited to taxable costs, incurred by the prevailing party(ies), in addition to all other remedies to which the prevailing party(ies) may be entitled. If a claim or action asserted by a third party against any party(ies) arises from an action or omission by another party, the party(ies) responsible for the action or omission shall be the losing party, and the other party(ies) shall be the prevailing party, for purposes of the foregoing sentence.

4.12 *Entire Agreement.* This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes and cancels all prior and contemporaneous agreements, claims, representations and understandings of the parties in connection with such subject matter.

4.13 *Amendment.* This Agreement shall not be modified or amended except by written agreement signed on behalf of Provider and Purchaser by their respective duly authorized representatives.

4.14 *Assignment.* This Agreement shall not be assignable, in whole or in part, directly or indirectly; provided, that neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned (including by operation of law) by either party without the prior written consent of the other party (except that either party may, without the prior written consent of the other, assign this Agreement to its Affiliates, and Recipient may collaterally assign this Agreement to its financing sources). Any attempt to assign any rights or obligations arising under this Agreement in contravention with this paragraph shall be null and void ab initio.

4.15 *Relationship of Parties.* Nothing in this Agreement shall be deemed or construed by the parties or any third party as creating a partnership or the relationship of principal and agent or joint venturer between the parties, it being understood and agreed that no provision contained herein, and no act of the parties, shall be deemed to create any relationship between the parties other than the relationship of buyer and provider of services nor be deemed to vest any rights, interests or claims in any third parties.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties have executed this Transition Services Agreement as of the date first above written.

**“PURCHASER”:**  
**SPECIALTY PIPE & TUBE OPERATIONS, LLC**, a Delaware  
limited liability company

By: /s/ [\*\*\*]  
Name: [\*\*\*]  
Title: [\*\*\*]

**“PROVIDER”:**  
**ASCENT INDUSTRIES, CO.**,  
a Delaware corporation

By: /s/ Christopher G. Hutter  
Name: Christopher G. Hutter  
Title: President and CEO

SCHEDULE 1  
LEASED EMPLOYEES

\*\*\*

**CERTAIN IDENTIFIED INFORMATION HAS BEEN EXCLUDED FROM THIS AGREEMENT BECAUSE IT IS NOT MATERIAL AND WOULD LIKELY CAUSE COMPETITIVE HARM TO THE REGISTRANT IF PUBLICLY DISCLOSED. [\*\*\*] INDICATES THAT INFORMATION HAS BEEN REDACTED.**

# **LIMITED CONSENT, SECOND AMENDMENT TO CREDIT AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS**

This **LIMITED CONSENT, SECOND AMENDMENT TO CREDIT AGREEMENT AND OMNIBUS AMENDMENT TO LOAN DOCUMENTS**, dated as of December 22, 2023 (this “Amendment”), is entered into by and among **ASCENT INDUSTRIES CO.** (f/k/a Synalloy Corporation), a Delaware corporation (“Synalloy”), **CRI TOLLING, LLC**, a South Carolina limited liability company (“CRI”), **SYNALLOY FABRICATION, LLC**, a South Carolina limited liability company (“Synalloy Fabrication”), **MANUFACTURERS SOAP & CHEMICAL COMPANY**, a Tennessee corporation (“Manufacturers Soap”), **MANUFACTURERS CHEMICALS, LLC**, a Tennessee limited liability company (“Manufacturers Chemicals”), **SYNALLOY METALS, INC.**, a Tennessee corporation (“Synalloy Metals”), **BRISTOL METALS, LLC**, a Tennessee limited liability company (“Bristol Metals”), **PALMER OF TEXAS TANKS, LLC**, a Texas limited liability company (“Palmer of Texas”), **AMERICAN STAINLESS TUBING, LLC**, a North Carolina limited liability company (“American Stainless Tubing”), **DANCHEM TECHNOLOGIES, INC.**, a Delaware corporation (“DanChem”) and together with Synalloy, CRI, Synalloy Fabrication, Manufacturers Soap, Manufacturers Chemicals, Synalloy Metals, Bristol Metals, Palmer of Texas and American Stainless Tubing, each a “Borrower” and collectively, the “Borrowers”), **BMO BANK N.A.** (f/k/a BMO HARRIS BANK N.A.), as Administrative Agent, and the Lenders party hereto.

## **RECITALS:**

WHEREAS, reference is hereby made to that certain Credit Agreement, dated as of January 15, 2021 (as amended, restated, supplemented or otherwise modified prior to the date hereof, the “Existing Credit Agreement”, and as further amended by this Amendment, the “Credit Agreement”; capitalized terms used herein (including the preamble and recitals hereto) and not otherwise defined herein shall have the meanings ascribed thereto in the Credit Agreement, as amended herein), by and among the Borrowers, the other Loan Parties party thereto from time to time, the Lenders party thereto from time to time and BMO Harris Bank N.A., as Administrative Agent, Swing Line Lender and a Letter of Credit Issuer;

WHEREAS, Synalloy has notified the Administrative Agent that it intends to enter into that certain Asset Purchase Agreement dated as of the date hereof (the “Purchase Agreement”) with Specialty Pipe & Tube, Inc. (“Specialty Pipe”) and Specialty Pipe & Tube Operations, LLC (“Purchaser”), pursuant to which Synalloy will sell, and Purchaser will acquire, the assets set forth on Exhibit A hereto (the “Specialty Disposition Assets”);

WHEREAS, in connection with the transactions contemplated by the Purchase Agreement, the Loan Parties have requested that the Administrative Agent and the Lenders (i) consent to the entry by Synalloy into the Purchase Agreement and the consummation of the transactions thereunder, (ii) release the lien of the Administrative Agent on the Specialty Disposition Assets and (iii) release all obligations of Specialty Pipe as a “Loan Party” under the Loan Documents, including as a “Grantor” under the Security Agreement (such transactions, collectively, the “Specialty Disposition”); and

WHEREAS, the Loan Parties have requested that the Administrative Agent and the Lenders make certain other amendments to the Credit Agreement, and the Administrative Agent and the Lenders have agreed to do so, but solely on the terms and conditions set forth herein.

**NOW, THEREFORE**, in consideration of the premises and the agreements, provisions and covenants herein contained, the parties hereto hereby agree as follows:

**1. Limited Consent.** Subject to the terms and conditions set forth herein, including satisfaction of each condition set forth in Section 4 below and notwithstanding the provisions of Section 8.05 of the Credit Agreement, the Administrative Agent and the Lenders hereby consent to the Specialty Disposition; provided that after giving effect to the Specialty Disposition, there shall be no Overadvance under the Credit Agreement; provided further that for the avoidance of doubt, nothing in Section 8.03 or Section 8.05 of the Credit Agreement shall be deemed to prohibit the disposition of any of Synalloy's rights in trade secrets, know-how and related goodwill to the extent the same constitute Specialty Disposition Assets.

**2. Amendments.** Subject to the terms and conditions set forth herein, including satisfaction of each condition set forth in Section 4 below, and in reliance on the representations, warranties, covenants and agreements of the Loan Parties set forth herein, as of the date hereof:

(a) the Existing Credit Agreement (including Schedules 2.01, 8.01, 8.02 and 8.03 thereto but excluding all other Schedules and Exhibits thereto) is hereby amended by (i) deleting the stricken text (indicated textually in the same manner as the following example: ~~stricken-text~~) and (ii) adding the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the pages of the Credit Agreement attached as Exhibit B hereto; and

(b) Specialty Pipe is hereby released as a "Borrower", a "Loan Party" and a "Grantor" under the Loan Documents, and each reference in the Credit Agreement and each other Loan Document to "Borrowers", "Loan Parties" and "Grantors" shall be deemed not to include Specialty Pipe.

**3. Representations and Warranties.** To induce the Administrative Agent and the Lenders to enter into this Amendment, each Loan Party represents and warrants that:

(a) as of the date hereof, the representations and warranties of the Loan Parties contained in Article VI of the Credit Agreement or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct in all material respects, 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 as of such earlier date;

(b) as of the date hereof, no Default has occurred and is continuing under the Existing Credit Agreement or any other Loan Document or would result from the execution and delivery of this Amendment;

(c) the execution and delivery of this Amendment and the performance by each Loan Party of this Amendment and the Credit Agreement have been duly authorized by all necessary corporate or other organizational action, and do not and will not (i) contravene the terms of the Organization Documents of any such Person; (ii) conflict with or result in any breach or contravention of, or the creation of any Lien under (A) any Contractual Obligation to which such Person is a party (other than the creation of Liens in favor of the Administrative Agent pursuant to any Loan Document and the creation of the Term Loan Liens) or (B) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (iii) violate any Law applicable to such Person;

(d) no approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (i) the execution and delivery of this Amendment or the performance by, or enforcement against, any Loan Party of this Amendment of the Credit Agreement, or (ii) the exercise by the Administrative Agent or any Lender of its rights under the Amendment or the Credit Agreement or the remedies in respect of the Collateral pursuant to the Loan Documents;

(e) this Amendment has been duly executed and delivered by each Loan Party that is party thereto; and



(f) this Amendment and the Credit Agreement constitute legal, valid and binding obligations of such Loan Party, enforceable against each Loan Party in accordance with its terms, except (a) as rights to indemnification hereunder may be limited by applicable Law and (b) as the enforcement hereof may be limited by any applicable Debtor Relief Laws or by general equitable principles.

**4. Conditions to Effectiveness.** The effectiveness of this Amendment is subject to the following conditions:

- (a) Delivery of Documents. On or before the date hereof, the Administrative Agent shall have received sufficient copies of
- (i) this Amendment, including the amended Schedules to the Credit Agreement set forth in Section 2(a) of this Amendment;
- (ii) a closing certificate signed by an Authorized Officer of Borrower Agent dated as of the date hereof, stating that (A) all representations and warranties set forth in this Amendment and the other Loan Documents are true and correct on and as of such date (other than representations and warranties relating to a specific earlier date and in such case such representations and warranties are true and correct in all material respects as of such earlier date) and (B) on such date no Default or Event of Default has occurred or is continuing immediately after giving effect to the execution and delivery of this Amendment and the consummation of the transactions contemplated hereby;
- (iii) a certificate signed by the chief financial officer or, chief accounting officer of the Borrower Agent certifying that, after giving effect to the entering into of the Amendment and the consummation of all of the transactions contemplated thereby, (A) each Borrower is Solvent and (B) the Loan Parties, taken as a whole, are Solvent;
- (iv) a certificate of the Secretary or Assistant Secretary or similar officer of each Loan Party dated as of the date hereof and certifying: (A) a copy of the certificate or articles of incorporation, certificate of formation or other equivalent constituent and governing documents, including all amendments thereto, of such Loan Party, (i) in the case of a corporation, certified as of a recent date by the Secretary of State (or other similar official) of the jurisdiction of its organization, or (ii) otherwise certified by the Secretary, Assistant Secretary or similar officer of such Loan Party or other person duly authorized by the constituent documents of such Loan Party; (B) a certificate as to the good standing (to the extent such concept or a similar concept exists under the laws of such jurisdiction) of such Loan Party as of a recent date from such Secretary of State (or other similar official); (C) that attached thereto is a true and complete copy of the by-laws (or limited liability company agreement or other equivalent constituent and governing documents) of such Loan Party as in effect as of the date hereof and at all times since a date prior to the date of the resolutions described in clause (D) below; (D) that attached thereto is a true and complete copy of resolutions duly adopted by the Board of Directors (or equivalent governing body) of such Loan Party authorizing the execution, delivery and performance of this Amendment and the other Loan Documents dated as of the date hereof to which such Loan Party is a party, and that such resolutions have not been modified, rescinded or amended and are in full force and effect as of the date hereof; and (E) as to the incumbency and specimen signature of each officer or director executing this Amendment and the other Loan Documents or any other document delivered in connection herewith on behalf of such Loan Party;
- (v) the Second Amendment Fee Letter;
- (vi) a Borrowing Base Certificate dated as of the Second Amendment Effective Date after giving pro forma effect to the Specialty Disposition;

(vii) a complete list of the Specialty Disposition Assets in which Synalloy may have an interest;

(viii) the Purchase Agreement; and

(ix) any other documents or agreements reasonably requested by the Administrative Agent in connection herewith, in each case, duly executed and delivered by each applicable Loan Party and each other Person party thereto.

(b) Accuracy of Representations and Warranties. All of the representations and warranties of the Loan Parties contained in Article VI of the Credit Agreement or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct in all material respects, 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 as of such earlier date.

(c) Expenses. The Loan Parties shall have paid, to the extent invoiced on or before the date hereof, to the Administrative Agent (or its advisors) all reasonable and documented costs and expenses of the Administrative Agent in connection with preparation, execution and delivery of this Amendment and all other related documents together with any other amounts, if any, in any case required to be paid under Section 11.04 of the Credit Agreement and unpaid on the date hereof.

#### **5. Ratification; Reference to and Effect Upon the Existing Credit Agreement.**

(a) Each Loan Party party hereto hereby consents to this Amendment and each of the transactions referenced herein, and hereby reaffirms its obligations under the Credit Agreement and each other Loan Document to which it is a party, as applicable.

(b) Nothing herein contained shall be construed as a substitution or novation of the Obligations outstanding under the Existing Credit Agreement or instruments securing the same. Except as specifically amended above, the Existing Credit Agreement and the other Loan Documents shall remain in full force and effect and are hereby ratified and confirmed.

(c) The execution, delivery and effectiveness of this Amendment shall not operate as a waiver of any right, power or remedy of the Administrative Agent or any Lender under the Existing Credit Agreement or any other Loan Document, nor constitute a waiver of any provision of the Existing Credit Agreement or any other Loan Document. Upon the effectiveness of this Amendment, each reference in the Credit Agreement to “this Agreement”, “hereunder”, “hereof”, “herein” or words of similar import shall mean and be a reference to the Credit Agreement.

#### **6. Release; Indemnification.**

(a) In further consideration of the execution of this Amendment by the Administrative Agent and the Lenders, each Loan Party, individually and on behalf of its successors (including any trustees acting on behalf of such Loan Party and any debtor in possession with respect to such Loan Party), assigns, Subsidiaries and Affiliates (collectively, the “Releasors”), hereby forever releases each Agent and Lender and their respective successors, assigns, parents, Subsidiaries, Affiliates, officers, employees, directors, agents and attorneys (collectively, the “Releasees”) from any and all debts, claims, demands, liabilities, responsibilities, disputes, causes, damages, actions and causes of actions (whether at law or in equity) and obligations of every nature whatsoever, whether liquidated or unliquidated, whether known or unknown, whether matured or unmatured, whether fixed or contingent that such Releasor has, had or may have against the Releasees, or any of them, which arise from or relate to any actions which the Releasees, or any of them, have or may have taken or omitted to take in connection with the Credit Agreement or the other Loan Documents prior to the date hereof, including with respect to the Obligations, any Collateral, the Credit Agreement, any other Loan Document and any third party liable in whole or in part for the Obligations. This provision shall survive and continue in full force and effect whether or not each Loan Party shall satisfy all other provisions of this Amendment or

the other Loan Documents, including payment in full of all Obligations. Each Releasor understands, acknowledges and agrees that the foregoing release set forth above may be pleaded as a full and complete defense and may be used as a basis for an injunction against any action, suit or other proceeding which may be instituted, prosecuted or attempted in breach of the provisions of such release.

(b) Each Loan Party hereby acknowledges and agrees that such Loan Party's obligations under this Amendment shall include an obligation to indemnify and hold the Releasees harmless with respect to any indemnified liabilities in any manner relating to or arising out of the negotiation, preparation, execution, delivery, performance, administration and enforcement of this Amendment to the extent required by Section 11.04(b) of the Credit Agreement.

**7. Relationship of Parties.** The relationship of the Administrative Agent and the Lenders, on the one hand, and the Loan Parties, on the other hand, has been and shall continue to be, at all times, that of creditor and debtor and not as joint venturers or partners. Nothing contained in this Amendment, any instrument, document or agreement delivered in connection herewith, the Credit Agreement or any of the other Loan Documents shall be deemed or construed to create a fiduciary relationship between or among the parties hereto or thereto.

**8. GOVERNING LAW.** THIS AMENDMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK.

**9. Headings.** Section headings herein are included herein for convenience of reference only and shall not constitute a part hereof for any other purpose or be given any substantive effect.

**10. Counterparts; Electronic Execution.** This Amendment may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single agreement. Receipt of an executed signature page to this Amendment by facsimile or other electronic transmission shall constitute effective delivery thereof. The words "execution," "signed," "signature," and words of like import in this Amendment shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

[Remainder of Page Intentionally Blank]

**IN WITNESS WHEREOF**, the parties hereto have caused this Amendment to be duly executed and delivered by their respective officers thereunto duly authorized as of the date first written above.

**BORROWERS:**

**ASCENT INDUSTRIES CO. (f/k/a Synalloy Corporation)**

By: /s/ Christopher G. Hutter  
Name: Christopher G. Hutter  
Title: Chief Executive Officer and President

**CRI TOLLING, LLC**

ASCENT INDUSTRIES CO. (f/k/a Synalloy Corporation), as the sole member and manager of CRI Tolling, LLC

By: /s/ Christopher G. Hutter  
Name: Christopher G. Hutter  
Title: Chief Executive Officer and President

**SYNALLOY FABRICATION, LLC**

ASCENT INDUSTRIES CO. (f/k/a Synalloy Corporation), as the sole member and manager of Synalloy Fabrication, LLC

By: /s/ Christopher G. Hutter  
Name: Christopher G. Hutter  
Title: Chief Executive Officer and President

**MANUFACTURERS SOAP & CHEMICAL COMPANY**

By: /s/ Christopher G. Hutter  
Name: Christopher G. Hutter  
Title: Chief Executive Officer and President

**MANUFACTURERS CHEMICALS, LLC**

MANUFACTURERS SOAP & CHEMICAL COMPANY, as the sole member and manager of Manufacturers Chemicals, LLC

By: /s/ Christopher G. Hutter  
Name: Christopher G. Hutter  
Title: Chief Executive Officer and President

**SYNALLOY METALS, INC.**

By: /s/ Christopher G. Hutter  
Name: Christopher G. Hutter  
Title: Chief Executive Officer and President

**BRISTOL METALS, LLC**

SYNALLOY METALS, INC., as the sole member and manager of Bristol Metals, LLC

By: /s/ Christopher G. Hutter

Name: Christopher G. Hutter

Title: Chief Executive Officer and President

**PALMER OF TEXAS TANKS, LLC**

By: /s/ Christopher G. Hutter

Name: Christopher G. Hutter

Title: Chief Executive Officer and President

**AMERICAN STAINLESS TUBING, LLC**

ASCENT INDUSTRIES CO. (f/k/a Synalloy Corporation), as the sole member and manager of American Stainless Tubing, LLC

By: /s/ Christopher G. Hutter

Name: Christopher G. Hutter

Title: Chief Executive Officer and President

**DANCHEM TECHNOLOGIES, INC.**

By: /s/ Christopher G. Hutter

Name: Christopher G. Hutter

Title: Chief Executive Officer and President

**ADMINISTRATIVE AGENT:**

**BMO BANK N.A.**, as Administrative Agent

By: /s/ Ryan Gray  
Name: Ryan Gray  
Title: Vice President

**LENDER:**

**BMO BANK N.A.**, as the Lender, Letter of Credit Issuer and Swing Line Lender

By: /s/ Ryan Gray  
Name: Ryan Gray  
Title: Vice President

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4895-2264-5655v.3

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CREDIT AGREEMENT

Dated as of January 15, 2021

among

ASCENT INDUSTRIES CO. (f/k/a Synalloy Corporation),  
CRI TOLLING, LLC,  
SYNALLOY FABRICATION, LLC,  
MANUFACTURERS SOAP & CHEMICAL COMPANY,  
MANUFACTURERS CHEMICALS, LLC,  
SYNALLOY METALS, INC.,  
BRISTOL METALS, LLC,  
PALMER OF TEXAS TANKS, LLC,  
AMERICAN STAINLESS TUBING, LLC,  
DANCHEM TECHNOLOGIES, INC.,  
each as a Borrower,

CERTAIN FINANCIAL INSTITUTIONS,  
as Lenders,

and

BMO BANK N.A.,  
as Administrative Agent and Swing Line Lender

BMO CAPITAL MARKETS,  
as Arranger and Book Runner

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  - E Assignment and Assumption Agreement
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  - G Committed Loan Notice
  - H Swing Line Loan Notice
-

## AGREEMENT

This **CREDIT AGREEMENT** (this "Agreement") is entered into as of January 15, 2021 by and among ASCENT INDUSTRIES CO. (f/k/a Synalloy Corporation), a Delaware corporation ("Synalloy"), CRI TOLLING, LLC, a South Carolina limited liability company ("CRI"), SYNALLOY FABRICATION, LLC, a South Carolina limited liability company ("Synalloy Fabrication"), MANUFACTURERS SOAP & CHEMICAL COMPANY, a Tennessee corporation ("Manufacturers Soap"), MANUFACTURERS CHEMICALS, LLC, a Tennessee limited liability company ("Manufacturers Chemicals"), SYNALLOY METALS, INC., a Tennessee corporation ("Synalloy Metals"), BRISTOL METALS, LLC, a Tennessee limited liability company ("Bristol Metals"), PALMER OF TEXAS TANKS, LLC, a Texas limited liability company ("Palmer of Texas"), AMERICAN STAINLESS TUBING, LLC, a North Carolina limited liability company ("American Stainless Tubing"), DANCHEM TECHNOLOGIES, INC., a Delaware corporation ("DanChem"), and together with Synalloy, CRI, Synalloy Fabrication, Manufacturers Soap, Manufacturers Chemicals, Synalloy Metals, Bristol Metals, Palmer of Texas, American Stainless Tubing and each other party that executes a joinder to the Credit Agreement as a borrower, whether pursuant to Section 7.12 or otherwise, each a "Borrower" and collectively, the "Borrowers", the Guarantors party hereto, **EACH LENDER FROM TIME TO TIME PARTY HERETO** (collectively, the "Lenders" and individually, a "Lender"), and **BMO BANK N.A.** (f/k/a BMO HARRIS BANK N.A.), as Administrative Agent, Swing Line Lender and a Letter of Credit Issuer.

### Preliminary Statements

A. The Borrowers have requested that the Administrative Agent, the Lenders, the Swing Line Lender and the Letter of Credit Issuer provide certain credit facilities to the Borrowers to finance their mutual and collective business enterprise.

B. The Administrative Agent, the Lenders, the Swing Line Lender and the Letter of Credit Issuer are willing to do so, but solely on the terms and conditions set forth in this Agreement.

C. In consideration of the mutual covenants and agreements herein contained, the parties hereto covenant and agree as follows:

## ARTICLE I DEFINITIONS AND ACCOUNTING TERMS

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

"Account" means "accounts" as defined in the UCC.

"Account Debtor" means any Person who is or may become obligated under or on account of any Account, Contractual Obligation, Chattel Paper or General Intangible.

"ACH" means automated clearing house transfers.

"Acquisition" means the acquisition of (a) a controlling Equity Interest or other ownership interest in another Person, whether by purchase of such Equity Interest or other ownership interest or upon exercise of an option or warrant for, or conversion of securities into, such equity or other ownership interest, or (b) assets of another Person which constitute all or substantially all of the assets of such Person or of a line or lines of business conducted by such Person, whether in one or a series of related transactions.

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“Additional Commitment Lender” has the meaning specified in Section 2.18(b).

“Adjusted Term SOFR” means with respect to any tenor, the per annum rate equal to the sum of (i) Term SOFR *plus* (ii) in the case of Term SOFR (x) for a tenor of one-month, 0.10% (10 basis points), (y) for a tenor of three-months, 0.10% (10 basis points), and (z) for a tenor of six-months, 0.10% (10 basis points); provided, that if Adjusted Term SOFR determined as provided above shall ever be less than the Floor, then Adjusted Term SOFR shall be deemed the Floor.

“Adjustment Date” has the meaning specified in the definition of “Applicable Margin.”

“Administrative Agent” means BMO Bank N.A. (f/k/a BMO Harris Bank N.A.), in its capacity as administrative agent under any of the Loan Documents, or any successor administrative agent.

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

“Administrative Questionnaire” means an Administrative Questionnaire in a form supplied 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. For the purposes of Section 8.08 only, a Person shall be deemed to be Controlled by another Person if such other Person possesses, directly or indirectly, power to vote 10% or more of the securities having ordinary voting power for the election of directors, managing general partners or the equivalent.

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

“Agent Indemnitee Liabilities” has the meaning specified in Section 11.04(c).

“Aggregate Revolving Credit Commitments” means, as at any date of determination thereof, the sum of all Revolving Credit Commitments of all Lenders at such date. As of the Second Amendment Effective Date, the Aggregate Revolving Credit Commitments of all Lenders is \$80,000,000.

“Agreement” means this Credit Agreement.

“Allocable Amount” has the meaning specified in Section 2.15(c)(ii).

“ALTA Survey” means a survey satisfactory to the Administrative Agent prepared in accordance with the standards adopted by the American Land Title Association and the American Congress on Surveying and Mapping in 1997, known as the “Minimum Standard Detail Requirements of Land Title Surveys” and sufficient form to satisfy the requirements any applicable title insurance company to provide extended coverage over survey defects and shall also show the location of all easements, utilities, and covenants of record, dimensions of all improvements, encroachments from any adjoining property, and certify as to the location of any flood plain area affecting the subject Real Property.

“American Stainless Tubing” has the meaning specified in the introductory paragraph hereto.

“Anti-Corruption Laws” means all Laws of any jurisdiction applicable to a Loan Party or any of their Subsidiaries from time to time targeting or relating to bribery or corruption, including the FCPA and the UK Bribery Act 2010.

“Anti-Money Laundering Laws” means all Laws applicable to a Loan Party or its Subsidiaries related to terrorism financing or money laundering, including Executive Order No. 13224, the Currency and Foreign Transactions Reporting Act of 1970 (otherwise known as the Bank Secrecy Act), the PATRIOT Act, and the Money Laundering Control Act of 1986.

“Applicable Margin” means (i) if the Consolidated Fixed Charge Coverage Ratio is less than 1.00 to 1.00 for the applicable Measurement Period, (a) with respect to any SOFR Loan, 2.00% and (b) with respect to any Base Rate Loan, 1.00%, or (ii) if the Consolidated Fixed Charge Coverage Ratio is equal to or greater than 1.00 to 1.00 for the applicable Measurement Period, with respect to any Type of Loan, the percentages per annum set forth below, as based upon the Average Availability for the immediately preceding Fiscal Quarter:

Level	Average Availability	SOFR Revolving Credit Loans	Base Rate Revolving Credit Loans
I	≥ 20%	1.75%	0.75%
II	< 20%	2.00%	1.00%

From the Closing Date until the first day of each Fiscal Quarter for which the Borrowing Base Certificate and any other materials required to be delivered pursuant to Sections 7.02(a) and (b) (including any required financial information in support thereof) have been received by Administrative Agent, commencing with July 1, 2021 (the “Adjustment Date”), margins shall be determined as if Level I were applicable. Thereafter, any increase or decrease in the Applicable Margin resulting from a change in Average Availability shall become effective as of each Adjustment Date based upon Average Availability for the immediately preceding Fiscal Quarter. If either (a) an Event of Default has occurred and is continuing or (b) any Borrowing Base Certificate and any other materials required to be delivered pursuant to Section 7.02(a) (including any required financial information in support thereof) have not been received by Administrative Agent by the date required pursuant to Section 7.02(a), then the Applicable Margin shall be determined as if the Average Availability for the immediately preceding Fiscal Quarter is at Level II until (x) in the case of clause (a), the cure or waiver of such Event or Default or (y) in the case of clause (b), such time as such Borrowing Base Certificate and supporting information are received.

Notwithstanding anything to the contrary contained herein, the Applicable Margin for a Revolving Credit Loan utilizing any of the Equipment Formula Amount shall be increased by 0.15%.

“Applicable Percentage” means, (a) in respect of the Revolving Credit Facility, with respect to any Revolving Credit Lender at any time, the percentage (carried out to the ninth decimal place) of the Revolving Credit Facility, represented by the amount of the Revolving Credit Commitment of such Revolving Credit Lender at such time; provided that if the Aggregate Revolving Credit Commitments have been terminated at such time, then the Applicable Percentage of each Revolving Credit Lender shall be the Applicable Percentage of such Revolving Credit Lender immediately prior to such termination and after giving effect to any subsequent assignments, and (b) in respect of the Term Loan Facility, with respect to any Term Lender at any time, the percentage (carried out to the ninth decimal place) of the Term Loan Facility represented by such Term Lender’s Commitment at such time, and the Outstanding



Amount of such Term Lender's Term Loans at such time. The initial Applicable Percentage of each Lender with respect to each Facility is set forth opposite the name of such Lender on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable.

"Applicable Revolving Credit Percentage" means with respect to any Revolving Credit Lender at any time, such Revolving Credit Lender's Applicable Percentage in respect of the Revolving Credit Facility at such time.

"Appropriate Lender" means, at any time, (a) with respect to any Facility, a Lender that has a Commitment with respect to such Facility or holds a Loan under such Facility at such time, (b) with respect to the Letter of Credit Sublimit, (i) the Letter of Credit Issuer and (ii) if any Letters of Credit have been issued, the Revolving Credit Lenders and (c) with respect to the Swing Line Sublimit, (i) the Swing Line Lender and (ii) if any Swing Line Loans are outstanding, the Revolving Credit Lenders.

"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.

"Arranger" means BMO Capital.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an Eligible Assignee (with the consent of any party whose consent is required by Section 11.06(b)), and accepted by the Administrative Agent, in substantially the form of Exhibit E or any other form approved by the Administrative Agent.

"Assumed Indebtedness" means Indebtedness of a Person which is (a) in existence at the time such Person becomes a Subsidiary, or (b) assumed in connection with an Investment in or Acquisition of such Person, and which, in each case, (i) has not been incurred or created in connection with, or in anticipation or contemplation of, such Person becoming a Subsidiary, (ii) only such Person (or its Subsidiaries so acquired) are obligors with respect to such Indebtedness, (iii) such Indebtedness is not a revolving loan facility, and (iv) such Indebtedness is not secured by any Liens on working capital assets.

"ASTI Earn-out Obligations" means the earn-out amounts owed to American Stainless Tubing, Inc. (now HLM Legacy Group, Inc.) pursuant to the ASTI Purchase Agreement, in a maximum amount not to exceed \$5,000,000.

"ASTI Purchase Agreement" means the Asset Purchase Agreement by and between ASTI Acquisition, LLC (now American Stainless Tubing, LLC) and American Stainless Tubing, Inc. (now HLM Legacy Group, Inc.) dated November 30, 2018.

"Attributable Indebtedness" means, on any date, (a) in respect of any Capital Lease of any Person, the capitalized amount thereof that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP, and (b) in respect of any Synthetic Lease Obligation, the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a Capital Lease.

"Audited Financial Statements" means the audited Consolidated balance sheet of the Consolidated Group for the most recent Fiscal Year ended, and the related Consolidated statements of income or operations, retained earnings and cash flows for such Fiscal Year of the Consolidated Group, including the notes thereto.

“Auditor” has the meaning specified in Section 7.01(a).

“Auto-Extension Letter of Credit” has the meaning specified in Section 2.03(b)(iii).

“Availability” means (a) the Maximum Borrowing Amount minus (b) Total Revolving Credit Outstandings.

In calculating Availability at any time and for any purpose under this Agreement, the Borrower Agent, on behalf of the Borrowers, shall certify to the Administrative Agent that all accounts payable and Taxes are being paid on a timely basis and consistent with past practices (absent which the Administrative Agent may establish a Reserve therefor).

“Availability Period” means (a) in respect of the Revolving Credit Facility, the period from the Closing Date to the Revolving Credit Termination Date, and (b) in respect of the Term Loan Facility, the period from the Closing Date to the Second Amendment Effective Date.

“Availability Reserves” means, without duplication of any other Reserves or items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Administrative Agent from time to time determines in its discretion as being appropriate, including, without limitation, reserves (a) to reflect the impediments to the Administrative Agent’s ability to realize upon the Collateral, (b) to reflect sums that any Loan Party may be required to pay under this Agreement or any other Loan Document (including taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, (c) to reflect amounts for which claims may be reasonably expected to be asserted against the Collateral, the Administrative Agent or the Lenders, or (d) to reflect criteria, events, conditions, contingencies or risks which adversely affect any component of the Borrowing Base or the assets, business, financial performance, or financial condition of any Loan Party. Without limiting the generality of the foregoing, Availability Reserves may include (but are not limited to) reserves based on: (i) Rent and Charges Reserves; (ii) customs duties, and other costs to release Inventory which is being imported into the United States; (iii) outstanding Taxes (and Permitted Tax Distributions) and other governmental charges, including, without limitation, ad valorem, real estate, personal property, sales, and other Taxes which might have priority over the interests of the Administrative Agent in the Collateral; (iv) salaries, wages and benefits due to employees of any Loan Party (including amounts for employee wage claims for earned wages, vacation pay, health care reimbursements and other amounts due under Wisconsin wage lien law, Wis. Stat. 109.01, *et seq.*, or any similar state or local law); (v) any liabilities that are or may become secured by Liens on the Collateral (including Permitted Liens) which might have priority over the Liens or interests of the Administrative Agent in the Collateral; (vi) Credit Product Reserves; (vii) reserves with respect to the salability of Eligible Inventory or which reflect such other factors as affect the market value of the Eligible Inventory, including obsolescence, seasonality, Shrink, vendor chargebacks, imbalance, change in Inventory character, composition or mix, markdowns and out of date and/or expired Inventory; and (viii) the Dilution Reserve.

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

“Average Availability” means for any period, the average daily amount of Availability during such period.

“Bail-In Action” means the exercise of any Write-Down and Conversion Powers by the applicable EEA Resolution Authority in respect of any liability of an EEA Financial Institution.

“Bail-In Legislation” means, with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule.

“Bankruptcy Code” means Title 11 of the United States Code, as amended.

“Base Rate” means, for any day, a fluctuating rate per annum equal to the highest of (a) the rate of interest announced by BMO from time to time as its prime rate for such day (with any change in such rate announced by BMO taking effect at the opening of business on the day specified in the public announcement of such change); (b) the Federal Funds Rate for such day, plus 0.50%; and (c) the sum of (i) Adjusted Term SOFR for a one-month tenor in effect on such day plus (ii) 1.00%. Any change in the Base Rate due to a change in the prime rate, the Federal Funds Rate or Term SOFR, as applicable, shall be effective from and including the effective date of the change in such rate. If the Base Rate is being used as an alternative rate of interest pursuant to Section 3.03, then the Base Rate shall be the greater of clauses (a) and (b) above and shall be determined without reference to clause (c) above, provided that if Base Rate as determined above shall ever be less than the Floor *plus* 1.00%, then Base Rate shall be deemed to be the Floor *plus* 1.00%.

“Base Rate Loan” means a Base Rate Revolving Credit Loan or a Base Rate Term Loan.

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

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

“Benchmark” means, initially, the Term SOFR Reference Rate; provided that if a Benchmark Transition Event has occurred with respect to the Term SOFR Reference Rate or the then-current Benchmark, then “Benchmark” means the applicable Benchmark Replacement to the extent that such Benchmark Replacement has replaced such prior benchmark rate pursuant to Section 3.08.

“Benchmark Replacement” means the first alternative set forth in the order below that can be determined by the Administrative Agent for the applicable Benchmark Replacement Date,

- (a) (i) the sum of Daily Simple SOFR plus (ii) 0.10% (10 basis points);
- (b) the sum of: (i) the alternate benchmark rate that has been selected by the Administrative Agent and the Borrower Agent giving due consideration to (A) any selection or recommendation of a replacement benchmark rate or the mechanism for determining such a rate by the Relevant Governmental Body and (B) any evolving or then-prevailing market convention for determining a benchmark rate as a replacement to the then-current Benchmark for Dollar-denominated syndicated credit facilities and (ii) the related Benchmark Replacement Adjustment.

If the Benchmark Replacement as determined pursuant to clause (a) or (b) above would be less than the Floor, the Benchmark Replacement will be deemed to be the Floor.

“Benchmark Replacement Adjustment” means, with respect to any replacement of the then-current Benchmark with an Unadjusted Benchmark Replacement, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrower Agent giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body and (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of such Benchmark with the applicable Unadjusted Benchmark Replacement for Dollar-denominated syndicated credit facilities.

“Benchmark Replacement Date” means the earliest to occur of the following events with respect to the then-current Benchmark:

(a) in the case of clause (a) or (b) of the definition of “Benchmark Transition Event”, the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of such Benchmark (or the published component used in the calculation thereof) permanently or indefinitely ceases to provide all Available Tenors of such Benchmark (or such component thereof); or

(b) in the case of clause (c) of the definition of “Benchmark Transition Event”, the first date on which such Benchmark (or the published component used in the calculation thereof) has been determined and announced by or on behalf of the administrator of such Benchmark (or such component thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) to be no longer representative; provided, that such non-representativeness or non-compliance will be determined by reference to the most recent statement or publication referenced in such clause (c) and even if any Available Tenor of such Benchmark (or such component thereof) continues to be provided on such date.

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

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

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

(b) a public statement or publication of information by the regulatory supervisor for the administrator of such Benchmark (or the published component used in the calculation thereof), the Federal Reserve Board, the Federal Reserve Bank of New York, an insolvency official with jurisdiction over the administrator for such Benchmark (or such component), a resolution authority with jurisdiction over the administrator for such Benchmark (or such component) or a court or an entity with similar insolvency or resolution authority over the administrator for such Benchmark (or such component), which states that the administrator of such Benchmark (or such component) has ceased or will cease to provide all Available Tenors of such Benchmark (or such component thereof) permanently or indefinitely, provided that, at the

time of such statement or publication, there is no successor administrator that will continue to provide any Available Tenor of such Benchmark (or such component thereof); or

(c) a public statement or publication of information by or on behalf of the administrator of such Benchmark (or the published component used in the calculation thereof) or the regulatory supervisor for the administrator of such Benchmark (or such component thereof) announcing that all Available Tenors of such Benchmark (or such component thereof) are no longer, or as of a specified future date will no longer be, representative.

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

“Benchmark Unavailability Period” means the period (if any) (a) beginning at the time that a Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced the then-current Benchmark in accordance with Section 3.08 and (b) ending at the time that a Benchmark Replacement has replaced the then-current Benchmark in accordance with Section 3.08.

“Beneficial Ownership Certification” means a certification regarding beneficial ownership required by the Beneficial Ownership Regulation, which certification shall be substantially similar in form and substance to the form of Certification Regarding Beneficial Owners of Legal Entity Customers published jointly, in May 2018, by the Loan Syndications and Trading Association and Securities Industry and Financial Markets Association.

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

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

“BHC Act Affiliate” has the meaning specified in Section 11.21(b).

“BMO” means BMO Bank N.A. (f/k/a BMO Harris Bank N.A.).

“BMO Capital” means BMO Capital Markets.

“Board of Directors” means, with respect to any Person, (a) in the case of any corporation, the board of directors of such Person or any committee thereof duly authorized to act on behalf of such board, (b) in the case of any limited liability company, the board of managers or board of directors or sole member or manager of such Person or any Person or any committee thereof duly authorized to act on behalf of such board, (c) in the case of any partnership, the Board of Directors of a general partner of such Person and (d) in any other case, the functional equivalent of the foregoing.

“Borrower” and “Borrowers” have the meaning specified in the introductory paragraph hereto.

“Borrower Agent” has the meaning specified in Section 2.15(g).

“Borrower Materials” has the meaning specified in Section 7.02.

“Borrowing” means any of (a) a Revolving Credit Borrowing, (b) a Term Borrowing or (c) a Swing Line Borrowing, as the context may require.

“Borrowing Base” means, at any time of calculation, an amount equal to:

- (a) the Value of Eligible Accounts, less all cash received but not yet applied in respect of such Eligible Accounts, multiplied by 90%; plus
- (b) the lesser of (i) the NOLV of Eligible Inventory multiplied by 90%, and (ii) the Cost of Eligible Inventory multiplied by 85%; plus
- (c) the lesser of (i) the NOLV of Eligible In-Transit Inventory, multiplied by 90%, and (ii) the Cost of Eligible In-Transit Inventory, multiplied by 85%; plus
- (d) the least of (i) the NOLV of Eligible Aged Inventory multiplied by 90%, (ii) the Cost of Eligible Aged Inventory multiplied by 85%, and (iii) \$2,000,000; plus
- (e) the lesser of (i) the Equipment Formula Amount and (ii) the Equipment Sublimit; minus
- (f) the amount of all Availability Reserves.

The term “Borrowing Base” and the calculation thereof shall not include any assets or property acquired in an Acquisition or otherwise outside the Ordinary Course of Business unless (x) if so required by the Administrative Agent, the Administrative Agent has conducted Field Exams and appraisals reasonably required by it (with results satisfactory to the Administrative Agent in its discretion) and (y) the Person owning such assets or property shall have become a Borrower in accordance with and pursuant to Section 7.12. As of the Second Amendment Effective Date, none of the Equipment, Accounts, Inventory, personal property or real property of Specialty Pipe or otherwise disposed of pursuant to the Specialty Disposition shall be included in the calculation of the Borrowing Base.

“Borrowing Base Assets” means all assets of the Borrowers of the type included in the Borrowing Base, regardless of eligibility thereof.

“Borrowing Base Certificate” means a certificate, in the form of Exhibit D hereto and otherwise satisfactory to Administrative Agent in its discretion, by which Borrowers certify calculation of the Borrowing Base.

“Business Day” means any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state where the Administrative Agent’s Office is located.

“Capital Leases” means all leases that have been or should be, in accordance with GAAP, recorded as capitalized leases.

“Cash Collateralize” means to pledge and deposit with or deliver to the Administrative Agent, (a) for the benefit of one or more of the Letter of Credit Issuer or the Revolving Credit Lenders, as collateral for Letter of Credit Obligations or obligations of the Revolving Credit Lenders to fund participations in respect of Letter of Credit Obligations, cash or deposit account balances or, if the Administrative Agent and the Letter of Credit Issuer shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and the Letter of Credit Issuer or (b) for the benefit of the Administrative Agent, as collateral for Protective Advances or Swing Line Loans that have

not been refunded by the Revolving Credit Lenders, cash or deposit account balances or, if the Administrative Agent shall agree in its discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent or (c) for the benefit of the Secured Parties during the continuance of an Event of Default or in connection with the Payment in Full, as collateral for any Obligations that are due or may become due, cash or deposit account balances or, if the Administrative Agent shall agree in its discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" means any of the following types of property, to the extent owned by any Borrower free and clear of all Liens (other than Liens of the Administrative Agent created under the Security Instruments):

(a) cash, denominated in Dollars;

(b) readily marketable direct obligations of the government of the United States or any agency or instrumentality thereof, or obligations the timely payment of principal and interest on which are fully and unconditionally guaranteed by the government of the United States or any state or municipality thereof, in each case so long as such obligation has an investment grade rating by S&P and Moody's;

(c) commercial paper rated at least P-1 (or the then equivalent grade) by Moody's and A-1 (or the then equivalent grade) by S&P, or carrying an equivalent rating by a nationally recognized rating agency if at any time neither Moody's nor S&P shall be rating such obligations;

(d) insured certificates of deposit or bankers' acceptances of, or time deposits with any Lender or with any commercial bank that (i) is a member of the Federal Reserve System, (ii) issues (or the parent of which issues) commercial paper rated as described in the first portion of clause (c) above, (iii) is organized under the laws of the United States or of any state thereof and (iv) has combined capital and surplus of at least \$500,000,000;

(e) readily marketable general obligations of any corporation organized under the laws of any state of the United States of America, payable in the United States of America, expressed to mature not later than twelve months following the date of issuance thereof and rated A or better by S&P or A3 or better by Moody's; and

(f) readily marketable shares of investment companies or money market funds that, in each case, invest solely in the foregoing Investments described in clauses (a) through (e) above.

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

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

"Change in Law" means the occurrence, after the date of this Agreement, of any of the following: (a) the adoption or taking effect of any law, rule, regulation or treaty, (b) any change in any law, rule, regulation or treaty or in the administration, interpretation, implementation or application thereof by any Governmental Authority or (c) the making or issuance of any request, rule, guideline or directive (whether or not having the force of law) by any Governmental Authority; provided that notwithstanding anything herein to the contrary, (x) the Dodd-Frank

Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (y) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a “Change in Law”, regardless of the date enacted, adopted or issued.

“Change of Control” means an event or series of events by which:

(a) [Reserved];

(b) any “person” or “group” (as such terms are used in Sections 13(d) and 14(d) of the Exchange Act, but excluding any employee benefit plan of Synalloy or its Subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the “beneficial owner” (as defined in Rules 13d-4 and 13d-6 under the Exchange Act, except that a person or group shall be deemed to have “beneficial ownership” of all securities that such person or group has the right to acquire (such right, an “option right”), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of 50.1% or more of the Equity Interests of Synalloy on a fully-diluted basis (and taking into account all such Equity Interests that such person or group has the right to acquire pursuant to any option right); or

(c) [Reserved]; or

(d) any Borrower shall fail to own and control, beneficially and of record (directly or indirectly), 100% of the issued and outstanding Equity Interests of each of its Subsidiaries, except where such failure is the result of a transaction permitted under the Loan Documents; or

(e) any “change of control” or similar event under the Organization Documents of any Borrower.

“Closing Date” means the first date all the conditions precedent in Section 5.01 are satisfied or waived in accordance with Section 11.01 (or, in the case of Section 5.01(b), waived by the Person entitled to receive the applicable payment).

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

“Collateral” means, collectively, all of the real and personal property of the Loan Parties or any other Person in which the Administrative Agent or any Secured Party is granted a Lien under any Security Instrument as security for all or any portion of the Obligations or any other obligation arising under any Loan Document (other than, for avoidance of doubt, the Excluded Collateral).

“Commitment” means a Term Loan Commitment or a Revolving Credit Commitment, as the context may require.

“Commitment Increase” has the meaning specified in Section 2.18(a).

“Committed Loan Notice” means a notice, which may be in the form of Exhibit G, of (a) a Borrowing, (b) a conversion of Loans from one Type to the other, or (c) a continuation of SOFR Loans, in each case, described in Section 2.02.

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



“Compliance Certificate” means a certificate substantially in the form of Exhibit B, which shall contain calculations of the financial covenants set forth in Section 8.12 and representations regarding the compliance therewith by the Loan Parties and their Subsidiaries.

“Concentration Account” has the meaning specified in Section 4.04(b).

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

“Conforming Credit Product Obligations” means Credit Product Obligations (a) established pursuant to a Credit Product Notice delivered at a time no Event of Default shall be continuing and (b) up to a maximum amount (or, in the case of Credit Product Obligations arising under Swap Contracts, the Swap Termination Value thereunder) specified in such Credit Product Notice (whether delivered to establish or increase the amount thereof) to the extent that no Overadvance would exist if a Credit Product Reserve were established therefore on the date of such Credit Product Notice.

“Consolidated” means the consolidation, in accordance with GAAP, of the financial condition or operating results of such Person and its Subsidiaries.

“Consolidated Capital Expenditures” means, with respect to the Consolidated Group (other than Palmer of Texas), determined on a Consolidated basis, for the applicable Measurement Period, the sum of (without duplication) all expenditures (whether paid in cash or accrued as liabilities) by the Consolidated Group during such period for items that would be classified as “property, plant or equipment” or comparable items on the Consolidated balance sheet of the Consolidated Group, including without limitation all transactional costs incurred in connection with such expenditures provided the same have been capitalized; provided that Consolidated Capital Expenditures shall exclude any capital expenditures (a) financed with Indebtedness permitted hereunder other than Loans, (b) made with (i) Net Cash Proceeds from any Disposition described in Section 8.05(b) or (ii) proceeds of insurance arising from any casualty or other insured damage or from condemnation or similar awards with respect to any property or asset, in each case, to the extent such proceeds are reinvested within 180 days of receipt thereof, and (c) constituting any portion of the purchase price of a Permitted Acquisition which is accounted for as a capital expenditure.

“Consolidated Cash Balance” means, at any time, (a) the aggregate amount of cash and Cash Equivalents held or controlled by the Borrowers and their Subsidiaries minus (b) the sum of (i) Cash Collateral that is Cash Collateralizing Obligations in accordance with this Agreement plus (ii) any outstanding checks and similar payment items issued by Borrowers and their

Subsidiaries in the ordinary course of business and pending electronic funds transfers of Borrowers and their Subsidiaries.

“Consolidated EBITDA” means, with respect to the Consolidated Group (other than Palmer of Texas), determined on a Consolidated basis, for the applicable Measurement Period and subject to Pro Forma Adjustments, Consolidated Net Income thereof for such period; plus, to the extent deducted in determining such Consolidated Net Income, the sum, without duplication, of, (a) Consolidated Interest Charges (net of interest income) thereof for such period, plus (b) the aggregate amount of federal, state, local and foreign income taxes (including, without limitation, Permitted Tax Distributions) thereof for such period, net of income tax credits, plus (c) depreciation and amortization thereof for such period, plus (d) other non-cash expenses, including, but not limited to, stock compensation, gain/loss on sale leaseback, and any non-cash impairments such as goodwill, or losses realized for such period, plus (e) the actual amount of reasonable and documented out-of-pocket fees, costs, and expenses paid during that period in connection with the negotiation, execution, and delivery of this Agreement and the other Loan Documents and the consummation of the Transactions, in an aggregate amount not to exceed \$500,000, but solely to the extent such fees, costs and expenses are paid on or prior to 180 days following the Closing Date, plus (f) non-recurring expenses consisting of proxy contest and whistleblower costs, costs and expenses paid in connection with the acquisition of American Stainless Tubing, and employee retention costs, plus (g) costs, expenses or charges for such period made or incurred in connection with severance payments, minus (h) non-cash income, gains or profit realized during such period.

“Consolidated Fixed Charge Coverage Ratio” means the ratio, determined on a Consolidated basis for the Consolidated Group for the applicable Measurement Period, of the sum, without duplication, of (a) (i) Consolidated EBITDA thereof during such period minus (ii) the aggregate amount of unfinanced Consolidated Capital Expenditures thereof during such period, to (b) Consolidated Fixed Charges thereof during such period.

“Consolidated Fixed Charges” means, for the applicable Measurement Period, for the Consolidated Group (other than, except as set forth in clause (d) below, Palmer of Texas) on a Consolidated basis, the sum of, without duplication, (a) Consolidated Interest Charges paid or required to be paid thereby in cash during such period, plus (b) all principal repayments of Consolidated Funded Indebtedness (including, without limitation, Fixed Asset Amortization) made or required to be paid thereby during such period (other than repayments of Revolving Credit Loans hereunder that are not accompanied by a concurrent and permanent reduction of the Revolving Credit Commitments hereunder), plus (c) the aggregate amount of federal, state, local and foreign income taxes paid in cash, in each case, of or by the Consolidated Group during such period, plus (d) all Palmer Ongoing Wind-Down Expenses, and (e) all Restricted Payments made in cash during such period.

“Consolidated Funded Indebtedness” means, as of any date of determination, for the Consolidated Group on a Consolidated basis, the sum of (a) the outstanding principal amount of all obligations, whether current or long-term, for borrowed money (including Obligations hereunder) and all obligations evidenced by bonds, debentures, notes, loan agreements or other similar instruments, (b) all purchase money Indebtedness, (c) all direct obligations arising under standby and commercial letters of credit (excluding the undrawn amount thereof), bankers’ acceptances, bank guaranties (excluding the amounts available thereunder as to which demand for payment has not yet been made), surety bonds (excluding the amounts available thereunder as to which demand for payment has not yet been made) and similar instruments, (d) all obligations in respect of the deferred purchase price of property or services (other than trade accounts payable in the Ordinary Course of Business) and any accrued and unpaid obligations with respect to any earn-out or similar payments under any Acquisition documents, (e) Attributable Indebtedness in respect of Capital Leases and Synthetic Lease Obligations, (f) without

duplication, all Guarantees with respect to outstanding Indebtedness of the types specified in clauses (a) through (e) above of Persons other than any Loan Party or Subsidiary thereof, and (g) all Indebtedness of the types referred to in clauses (a) through (f) above of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which any Loan Party or Subsidiary thereof is a general partner or joint venturer, to the extent such Indebtedness is recourse to such Loan Party or such Subsidiary thereof.

“Consolidated Group” means the Loan Parties and their Subsidiaries, including, without limitation, any Foreign Subsidiaries.

“Consolidated Interest Charges” means, with respect to the Consolidated Group (other than Palmer of Texas) for any period ending on the date of computation thereof, the gross interest expense thereof, including without limitation (a) the current amortized portion of all fees (including fees payable in respect of any Swap Contract in the nature of an interest rate hedge and all fees payable in respect of any Letter of Credit and including commitment fees, participation fees, and collateral management fees) payable in connection with the incurrence of Indebtedness to the extent included in gross interest expense and (b) the portion of any payments made in connection with Capital Leases allocable to interest expense, all determined on a Consolidated basis; provided however, that Consolidated Interest Charges shall include the amount of payments in respect of Synthetic Lease Obligations that are in the nature of interest.

“Consolidated Net Income” means, determined on a Consolidated basis for the Consolidated Group (other than Palmer of Texas) for the applicable Measurement Period, the net income (or loss) after taxation of the Consolidated Group for that period excluding (a) net losses or gains realized thereby in connection with (i) any sale, lease, conveyance or other disposition of any asset (other than in the Ordinary Course of Business), or (ii) repayment, repurchase or redemption of Indebtedness, and (b) other extraordinary or nonrecurring gain or income (or expense or charge) thereof, including, any out-of-pocket fees, costs, and expenses incurred in connection with the Transactions or any Permitted Acquisition; provided that there shall be excluded from Consolidated Net Income, without duplication, the net income or loss of (A) any Person that is not a Loan Party or Subsidiary thereof or that is accounted for by the equity method of accounting to the extent of the amount of dividends or distributions are not actually paid to a Loan Party in cash, (B) any Person in which any other Person (other than a Loan Party) has an ownership interest, except to the extent of the amount of dividends or other distributions actually paid in cash to the Loan Parties by such Person during such period, and (C) any Person the ability of which to make Restricted Payments is restricted by any agreement or Organization Document, except to the extent of the amount of dividends or other distributions actually paid in cash to the Loan Parties by such Person during such period.

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

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

“Control Agreement” means, with respect to any Deposit Account, Securities Account or Commodity Account, an agreement, in form and substance satisfactory to the Administrative Agent in its discretion, among the Administrative Agent, the financial institution or other Person at which such account is maintained and the Loan Party maintaining such account, effective to grant “control” (as defined under the applicable UCC) over such account to the Administrative Agent.

“Controlled Account Bank” means each bank with whom Deposit Accounts are maintained in which any funds of any of the Loan Parties are concentrated and with whom a Control Agreement has been, or is required to be, executed in accordance with the terms hereof.

“Controlled Deposit Account” means each Deposit Account (including all funds on deposit therein) that is the subject of an effective Control Agreement and that is maintained by any Loan Party with a financial institution approved by the Administrative Agent.

“Controlled Entity” means, with respect to any Person, (a) its Subsidiaries and Affiliates, (b) its officers, directors, employees and agents, and (c) the officers, directors, employees and agents of such Subsidiaries and Affiliates.

“Copyright Security Agreement” means any copyright security agreement pursuant to which any Loan Party assigns to the Administrative Agent, for the benefit of the Secured Parties, such Person’s interest in its copyrights as security for the Obligations.

“Core Business” means any material line of business conducted by the Consolidated Group as of the Closing Date and any business directly related thereto.

“Cost” means (a) with respect to Inventory, the lower of (i) cost (as reflected in the general ledger of such Person) and (ii) market value, in each case, determined in accordance with GAAP calculated on a first-in, first-out basis and in accordance with the Loan Parties’ accounting practices as in effect on the Closing Date and (b) with respect to Equipment, Real Property and other property, the lower of (i) cost (as reflected in the general ledger of such Person) and (ii) market value, in each case, determined in accordance with GAAP.

“Covered Entity” has the meaning specified in Section 11.21(b).

“Credit Exposure” means, as to any Lender at any time, the aggregate amount of such Lender’s Revolving Credit Exposure and Term Credit Exposure at such time.

“Credit Extension” means each of the following: (a) a Borrowing and (b) a Letter of Credit Extension.

“Credit Judgment” means, with reference to the Administrative Agent, a determination made in the exercise of its reasonable (from the perspective of a secured asset-based lender) credit judgment and in accordance with its regular business practices and policies in effect from time to time that are generally applicable to asset based credit facilities.

“Credit Product Arrangements” means, collectively, (a) Swap Contracts between a Loan Party and any Lender or Affiliate of a Lender, and (b) Treasury Management and Other Services.

“Credit Product Notice” means the written notice from a Credit Product Provider and the Borrower Agent to the Administrative Agent relating to Credit Product Arrangements in the form of Exhibit F hereto, or such other form as may be reasonably acceptable to the Administrative Agent.

“Credit Product Obligations” means Indebtedness and other obligations of any Loan Party (a) arising under Credit Product Arrangements, (b) owing to any Credit Product Provider and (c) only if owing to a Credit Product Provider other than BMO or its Affiliates, as to which a Credit Product Notice has been delivered to the Administrative Agent in which the Borrower Agent has expressly requested that such obligations be treated as Credit Product Obligations for purposes hereof; provided, however, Credit Product Obligations shall not include Excluded Swap Obligations.

“Credit Product Provider” means (a) BMO or any of its Affiliates, and (b) any other Lender or an Affiliate of a Lender that is a provider under a Credit Product Arrangement, so long as such provider and the Borrower Agent deliver a Credit Product Notice to the Administrative Agent by the later of the Closing Date or, if not outstanding on the Closing Date, ten (10) Business Days following the entering into of the applicable Credit Product Arrangement, (i) describing the Credit Product Arrangement and setting forth the maximum amount of Credit Product Obligations thereunder to be secured by the Collateral (and, if all or any portion of such Credit Product Obligations arise under Swap Contracts, the Swap Termination Value of such Credit Product Obligations) and the methodology to be used in calculating such amount and (ii) agreeing to be bound by Section 10.12.

“Credit Product Reserve” means (a) reserves which shall be established by the Administrative Agent in an amount equal to not less than the last reported Swap Termination Value (as given in accordance with the definition of Credit Product Obligation) of the then outstanding Priority Swap Obligations for the account of the Loan Parties or their Affiliates, and (b) reserves established by the Administrative Agent from time to time in its discretion to reflect the reasonably anticipated liabilities in respect of the then outstanding Credit Product Obligations.

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

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

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

“Default Rate” means an interest rate equal to (a) the Base Rate plus (b) the Applicable Margin with respect to Base Rate Loans plus (c) 2% per annum; provided, however, that (i) with respect to a SOFR Loan, until the end of the Interest Period during which the Default Rate is first applicable, the Default Rate shall be an interest rate equal to the interest rate (including any Applicable Margin) otherwise applicable to such SOFR Loan plus 2% per annum, and thereafter as set forth in the portion of this sentence preceding this proviso, and (ii) with respect to Letter of Credit Fees, the Default Rate shall equal the Letter of Credit Fee, then in effect plus 2% per annum, in each case to the fullest extent permitted by applicable Laws.

“Default Right” has the meaning specified in Section 11.21(b).

“Defaulting Lender” means, subject to Section 2.17(b), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Borrower Agent in writing that such failure is the result of such Lender’s determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or

(ii) pay to the Administrative Agent, the Letter of Credit Issuer, the Swing Line Lender or any other Lender any other amount required to be paid by it hereunder (including, in the case of any Revolving Credit Lender, in respect of its participations in Letters of Credit or Swing Line Loans) within two Business Days of the date when due, (b) has notified any Borrower, the Administrative Agent, the Letter of Credit Issuer or the Swing Line Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrower Agent, to confirm in writing to the Administrative Agent and the Borrower Agent that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrower Agent), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity or (iii) become the subject of a Bail-In Action; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.17(b)) upon delivery of written notice of such determination by the Administrative Agent to the Borrower Agent, the Letter of Credit Issuer, the Swing Line Lender and each other Lender.

"Deposit Account" means "deposit account" as defined in the UCC.

"Designated Jurisdiction" means, at any time, any country, region or territory which is itself the target of Sanctions broadly restricting or prohibiting dealings with such country, region or territory.

"Dilution Percent" means the percent, for the most recently ended period of twelve consecutive months, equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts for such period, divided by (b) gross sales for such period.

"Dilution Reserve" means, at any date of determination, a reserve established by the Administrative Agent in its discretion up to the product of (a) the percentage amount by which the Dilution Percent exceeds two percent (2%) multiplied by (b) the amount of Eligible Accounts of the Borrowers.

"Disposition" or "Dispose" means the sale, transfer, license, lease or other disposition (including any sale and leaseback transaction and any casualty or condemnation) of any property (including any Equity Interest), or part thereof, by any Person, including any sale, assignment, transfer or other disposal, with or without recourse, of any notes or accounts receivable or any rights and claims associated therewith.

“Disqualified Equity Interest” 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) 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, on or prior to the date that is 180 days after the Maturity Date, (b) is convertible into or exchangeable for debt securities (unless only occurring at the sole option of the issuer thereof), (c) (i) contains any repurchase obligation that may come into effect prior to, (ii) requires cash dividend payments (other than taxes) prior to, or (iii) provides the holders thereof with any rights to receive any cash upon the occurrence of a change of control or sale of assets prior to, in each case, the date that is 180 days after the Maturity Date; provided, however, that (i) with respect to any Equity Interests issued to any employee or to any plan for the benefit of employees of any Loan Party or its Subsidiaries or by any such plan to such employees, such Equity Interest shall not constitute Disqualified Equity Interests solely because it may be required to be repurchased by any Loan Party or its Subsidiaries in order to satisfy applicable statutory or regulatory obligations or as a result of such employee’s termination, resignation, death or disability and (ii) any class of Equity Interest of such Person that by its terms authorizes such Person to satisfy its obligations thereunder by delivery of an Equity Interest that is not a Disqualified Equity Interest, such Equity Interests shall not be deemed to be Disqualified Equity Interests and (iii) only the portion of such Equity Interests which so matures or is so mandatorily redeemable, is so convertible or exchangeable or is so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Equity Interests.

“Division” means the creation of one or more new limited liability companies by means of any statutory division of a limited liability company pursuant to any applicable limited liability company act or similar statute of any jurisdiction. “Divide” shall have the corresponding meaning.

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

“Domestic Subsidiary” means any Subsidiary that is organized under the laws of any political subdivision of the United States (but excluding any territory or possession thereof).

“Dominion Trigger Period” means any period (a) commencing on the day that (i) an Event of Default occurs and is continuing or (ii) Availability is less than the greater of (x) 10% of the Aggregate Revolving Credit Commitments at such time and (y) \$7,500,000, and (b) continuing until the date that (i) in the case of clause (a)(i), no Event of Default exists, and (ii) in the case of clause (a)(ii), during the previous thirty (30) consecutive days, Availability has been greater than the greater of (x) 10% of the Aggregate Revolving Credit Commitments at such time and (y) \$7,500,000.

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

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

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

“Eligible Accounts” means all Accounts due to a Borrower (other than Palmer of Texas) that are determined by the Administrative Agent, in its reasonable discretion, to be Eligible Accounts. Except as otherwise agreed by the Administrative Agent, none of the following shall be deemed to be Eligible Accounts:

- (a) Accounts that are not fully earned by performance (or otherwise represent a progress billing or pre-billing) or not evidenced by an invoice which has been delivered to the applicable Account Debtor;
- (b) Accounts that have been outstanding for more than ninety (90) days from the invoice date or more than sixty (60) days past the original due date, whichever comes first;
- (c) Accounts due from any Account Debtor, fifty percent (50%) of whose Accounts are otherwise ineligible under the terms clause (b) above;
- (d) Accounts (i) with respect to which any representation or warranty set forth in any Loan Document with respect thereto is not true and correct in all material respects, (ii) that are not subject to a perfected first priority Lien in favor of the Administrative Agent, (iii) with respect to which a Borrower does not have good, valid and marketable title thereto, free and clear of any Lien (other than Permitted Liens described in clause (a) of Section 8.02) or (iv) with respect to which the applicable Account Debtor has not been instructed to (or does not in fact) remit payment to a deposit account of a Borrower subject to a Control Agreement;
- (e) Accounts which are disputed or with respect to which a claim, counterclaim, offset or chargeback has been asserted, but only to the extent of such dispute, counterclaim, rebate, bonus credit, offset or chargeback;
- (f) Accounts which (i) do not arise out of a sale of goods or rendition of services in the ordinary course of business, (ii) do not arise upon credit terms usual to the business of the Borrowers or (iii) are not payable in Dollars;
- (g) Accounts (i) upon which a Borrower’s right to receive payment is not absolute or is contingent upon the fulfillment of any condition whatsoever, including cash on delivery and cash in advance transactions or (ii) as to which a Borrower is not able to bring suit or otherwise enforce its remedies against the related Account Debtor through judicial process;
- (h) Accounts which are owed by (i) any other Borrower, (ii) any Affiliate which is not a Borrower or (iii) Specialty Pipe;
- (i) Accounts for which all material consents, approvals or authorizations of, or registrations or declarations with any Governmental Authority required to be obtained, effected or given in connection with the performance of such Account by the Account Debtor or in connection with the enforcement of such Account by the Administrative Agent have not been duly obtained, effected or given or are not in full force and effect;
- (j) Accounts due from an Account Debtor which is the subject of any bankruptcy, insolvency or similar proceeding under any Debtor Relief Laws, has had a trustee or receiver appointed for all or a substantial part of its property, has made an assignment for the benefit of creditors or has suspended its business;
- (k) Accounts due from any Governmental Authority, except to the extent that the subject Account Debtor is the federal government of the United States of America and has complied with the Federal Assignment of Claims Act of 1940 and any similar state legislation;



(l) Accounts (i) owing from any Account Debtor that is also a supplier to or creditor of a Borrower unless such Person has waived any right of setoff in a manner reasonably acceptable to the Administrative Agent but only to the extent of the aggregate amount of such Borrower's liability to such Account Debtor, (ii) to the extent representing any manufacturer's or supplier's allowances, credits, discounts, rebates, rebate accruals, bonus credits, incentive plans or similar arrangements entitling such Borrower to discounts on future purchase, rebates or rebate accruals, or bonus credits therefrom, (iii) with respect to which any Loan Party or Subsidiary thereof has received a loan or advance payment, to the extent of such loan or payment, or (iv) to the extent relating to payment of interest, fees or late charges;

(m) Accounts arising out of sales on a bill-and-hold, guaranteed sale, sale-or-return, sale on approval or consignment basis, arising from a sale for consumer, personal, family or household purposes, or subject to any right of return, setoff or charge back;

(n) Accounts arising out of sales to any Account Debtor organized or having its principal office or substantially all assets outside the United States or Canada unless either (i) such Accounts are fully backed by an irrevocable letter of credit on terms, and issued by a financial institution, acceptable to the Administrative Agent and such irrevocable letter of credit is in the possession of the Administrative Agent, or (ii) such Accounts are supported by credit insurance acceptable to the Administrative Agent, naming the Administrative Agent as an additional insured and loss payee (calculated net of the amount of any premiums, deductibles, co-insurance, fees or similar costs of and amounts relating to such credit insurance payable by any Borrower);

(o) Accounts that are evidenced by a judgment, Instrument or Chattel Paper;

(p) Accounts due from an Account Debtor and its Affiliates, the aggregate of which Accounts due from such Account Debtor and its Affiliates represents more than 20% of all then outstanding Accounts owed to the Borrowers, but only to the extent of such excess;

(q) Accounts that remain open after the applicable Account Debtor has made a partial payment in respect of the applicable invoice (whether or not the applicable Account Debtor has provided an explanation for such partial payment);

(r) Accounts where the applicable Account Debtor tendered a check or other item of payment in full or partial satisfaction and such check or other item of payment has been returned by the financial institution on which it is drawn; or

(s) Accounts for which payment has been received by the applicable Borrower but such payment has not been applied to the applicable Account.

"Eligible Aged Inventory" means, as of any determination thereof and without duplication of any Eligible Inventory, Inventory of a Borrower (other than Palmer of Texas) that both (a) meets all of the criteria of the definition of Eligible Inventory other than clause (i) thereof, and (b) is greater than two years old and subject to the appraisal that occurred prior to the Closing Date.

"Eligible Assignee" means (a) a Lender or any of its Affiliates; (b) an Approved Fund; and (c) any other Person (other than a natural person) approved by (i) the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender (each such approval not to be unreasonably withheld or delayed), and (ii) unless an Event of Default has occurred and is continuing, the Borrower Agent (such approval not to be unreasonably withheld or delayed); provided that, notwithstanding the foregoing, "Eligible Assignee" shall not include a Loan Party or any of the Loan Parties' Affiliates.

“Eligible Equipment” means Equipment owned by a Borrower (other than Palmer of Texas) that is determined by the Administrative Agent, in its discretion, to be Eligible Equipment. Except as otherwise determined by the Administrative Agent in its discretion, the following items of Equipment shall not be included in Eligible Equipment:

- (a) Equipment as to which a Borrower does not have good, valid, and marketable title;
- (b) Equipment as to which a Borrower does not have actual and exclusive possession thereof (either directly or, in the Ordinary Course of Business, through a bailee, processor, or agent of such Borrower);
- (c) Equipment located on Real Property not owned by a Borrower or owned by a Borrower but subject to a third party mortgage or similar encumbrance, unless subject to a Lien Waiver;
- (d) Equipment that is materially damaged, defective or otherwise unfit for use in its intended purpose; or
- (e) Equipment that is not subject to a valid and perfected first-priority Lien of the Administrative Agent, subject to no other Liens (unless subject to a Lien Waiver), or otherwise does not comply with each of the representations and warranties and covenants applicable to Equipment made by the Borrowers in this Agreement and each applicable Security Document.

“Eligible In-Transit Inventory” means, as of any date of determination thereof and without duplication of any Eligible Inventory, Inventory of a Borrower (other than Palmer of Texas) that is Eligible Inventory, so long as:

- (a) such Inventory has been shipped from a vendor within the continental United States or Canada for receipt by a Borrower within sixty (60) days of the date of determination, but which has not yet been delivered to a Borrower;
- (b) the purchase order for such Inventory is in the name of a Borrower and title has passed to such Borrower;
- (c) (i) such Inventory is subject to an imported goods agreement, customs broker agreement or similar agreement in form and substance reasonably satisfactory to the Administrative Agent pursuant to which, among other things, the customs broker, logistics provider or other applicable third party having control over the Inventory agrees to act as agent and bailee for the benefit of the Administrative Agent and act solely upon the instructions of the Administrative Agent upon notice by the Administrative Agent, and (ii) the vendor has delivered a compliance letter reasonably satisfactory to the Administrative Agent with respect to such Inventory;
- (d) such Inventory is evidenced by a negotiable document of title, all originals of which have been delivered to the Administrative Agent or the applicable customs broker as agent for the Administrative Agent that reflects a Borrower as consignee or, if requested by the Administrative Agent after the occurrence of an Event of Default, names the Administrative Agent as consignee;
- (e) no vendor has asserted any right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against such Inventory, and no Borrower is in default of any obligations with respect to such Inventory;

- (f) such Inventory is shipped by a common carrier that is not affiliated with the vendor;
- (g) such Inventory is insured to the reasonable satisfaction of the Administrative Agent; and
- (h) such Inventory otherwise would constitute Eligible Inventory under the definition thereof, other than under clauses (f) or (h) thereof.

“Eligible Inventory” means, as of any date of determination thereof and without duplication of any Eligible In-Transit Inventory, Inventory of a Borrower (other than Palmer of Texas) that is determined by the Administrative Agent, in its reasonable discretion, to be Eligible Inventory. Notwithstanding the foregoing, except as otherwise agreed by the Administrative Agent in its discretion, the following items of Inventory shall not be included in Eligible Inventory:

- (a) Inventory that is not solely owned by a Borrower or a Borrower does not have good and valid title thereto;
- (b) Inventory that (i) does not consist of finished goods, work in process, saleable rework, seconds, or raw materials or (ii) is not readily saleable in the Ordinary Course of Business;
- (c) Inventory that does not comply with each of the covenants, representations and warranties respecting Inventory made by the Borrowers in the Loan Documents;
- (d) Inventory that is leased by or is on consignment to a Borrower;
- (e) Inventory that is not located in the United States of America or Canada (excluding territories or possessions of the United States or Canada);
- (f) Inventory that is not at a location that is owned by a Borrower, provided, however, that such Inventory that is located on leased premises or in the possession of a warehouseman, bailee, processor, repairman, mechanic or similar other Person in the ordinary course of business shall not be excluded from Eligible Inventory under this clause (f) so long as the lessor or such Person possessing such Inventory has delivered a Lien Waiver to the Administrative Agent or, in the event a Lien Waiver has not been delivered, if elected by the Administrative Agent, an appropriate Rent and Charges Reserve has been established;
- (g) Inventory held at any location (owned or a third-party location) with an aggregate Cost of Inventory at such location of less than \$50,000 notwithstanding receipt of a Lien Waiver or implementation of a Rent and Charges Reserve as provided under clause (f) above;
- (h) Inventory that is in transit, except between locations of Borrowers (or between locations of Borrowers and processors or vendors in the Ordinary Course of Business);
- (i) Inventory that is comprised of goods which (i) are damaged, defective, or otherwise unmerchantable, (ii) spoiled or are otherwise past the stated expiration sell by or use by date applicable thereto, (iii) have been returned or are to be returned to the vendor, (iv) are subject to recall or similar notice, or (v) are discontinued products, obsolete or slow moving;
- (j) Inventory consisting of spare parts;

(k) Inventory consisting of promotional, marketing, samples, packaging and shipping materials or supplies used or consumed in the Borrowers' business and other similar non-merchandise categories;

(l) Inventory that is not in compliance with all standards imposed by any Governmental Authority having regulatory authority over such Inventory, its use or sale;

(m) Inventory that is subject to any warehouse receipt, bill of lading or negotiable Document that has not been issued to or in the name of the Administrative Agent;

(n) Inventory consisting of or containing Hazardous Materials;

(o) Inventory that is not subject to a perfected first priority Lien in favor of the Administrative Agent (subject only to Permitted Liens set forth in clauses (c), (d) or (m) of Section 8.02 hereof);

(p) Inventory that is not insured in compliance with the provisions of this Agreement and the other Loan Documents;

(q) Inventory not on a perpetual schedule;

(r) Inventory that consists of bill and hold goods or goods that have been sold but not yet delivered; and

(s) Inventory that is subject to any License or other arrangement that restricts such Borrowers' or the Administrative Agent's right to dispose of such Inventory, unless (i) Administrative Agent has received an appropriate Lien Waiver; and (ii) such Borrowers have not received notice of a dispute in respect of any such License or other arrangement.

"Environmental Laws" means any and all federal, state, local, and foreign statutes, laws, regulations, ordinances, rules, judgments, orders, decrees, permits, concessions, grants, franchises, licenses, agreements or governmental restrictions relating to pollution and the protection of the environment or the release of any materials into the environment, including those related to hazardous substances or wastes, air emissions and discharges to waste or public systems.

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

"Equipment Formula Amount" means, at any time of calculation, an amount equal to the NOLV of Eligible Equipment, multiplied by 90%.

"Equipment Sublimit" means (a) \$17,500,000, which amount shall be reduced, on the first day of each Fiscal Quarter, beginning on July 1, 2021, by an amount equal to the Fixed Asset Amortization, minus (b) the value of Equipment disposed of by Borrowers following the Closing Date, but only to the extent such value exceeds, when aggregated with the value of all other Equipment disposed of by Borrowers following the Closing Date, \$2,500,000.

“Equity Interests” means, with respect to any Person, all of the shares of capital stock of or partnership or membership interest in (or other ownership or profit interests in) such Person, all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of or partnership or membership interest in (or other ownership or profit interests in) such Person, all of the securities convertible into or exchangeable for shares of capital stock of or partnership or membership interest in (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, interests or units (or such other interests), and all of the other ownership or profit interests in such Person, whether voting or nonvoting, and whether or not such shares, units, warrants, options, rights or other interests are outstanding on any date of determination.

“ERISA” means the Employee Retirement Income Security Act of 1974.

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

“ERISA Event” means (a) a Reportable Event with respect to a Pension Plan; (b) the withdrawal of any Loan Party or any ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which such entity was a “substantial employer” as defined in Section 4001(a)(3) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) a complete or partial withdrawal by any Loan Party or any ERISA Affiliate from a Multiemployer Plan or notification that a Multiemployer Plan is in reorganization; (d) the filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 or 4041A of ERISA; (e) the institution by the PBGC of proceedings to terminate a Pension Plan; (f) any event or condition which constitutes grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Pension Plan; (g) the determination that any Pension Plan is considered an at-risk plan or a plan in endangered or critical status within the meaning of Sections 430, 431 and 432 of the Code or Sections 303, 304 and 305 of ERISA; or (h) the imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Loan Party or any ERISA Affiliate.

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

“Event of Default” has the meaning specified in Section 9.01.

“Exchange Act” means the Securities Exchange Act of 1934 and the regulations promulgated thereunder.

“Excluded Collateral” has the meaning set forth in the Security Agreement.

“Excluded Deposit Account” means, collectively, all (a) Trust Accounts, (b) zero balance disbursement accounts, and (c) any other Deposit Accounts maintained in the Ordinary Course of Business, in all cases containing cash amounts that do not exceed at any time \$25,000 for any such account and \$100,000 in the aggregate for all such accounts under this clause (c).

“Excluded Swap Obligation” means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Loan Party of, or the grant by such Loan Party of a Lien to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official

interpretation of any thereof) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the Guarantee of such Loan Party or the grant of such Lien becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or Lien is or becomes illegal.

"Excluded Taxes" means any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by net income (however denominated), franchise Taxes, and branch profits Taxes, in each case, (i) imposed as a result of such Recipient being organized under the laws of, or having its principal office or, in the case of any Lender, its Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) in the case of a Lender, U.S. federal withholding Taxes imposed on amounts payable to or for the account of such Lender with respect to an applicable interest in a Loan or Commitment pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan or Commitment (other than pursuant to an assignment request by the Borrower Agent under Section 11.13) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to Section 3.01(a)(ii) or Section 3.01(c), amounts with respect to such Taxes were payable either to such Lender's assignor immediately before such Lender became a party hereto or to such Lender immediately before it changed its Lending Office, (c) Taxes attributable to such Recipient's failure to comply with Section 3.01(e) and (d) any U.S. federal withholding Taxes imposed pursuant to FATCA.

"Existing Credit Agreement" means that certain Third Amended and Restated Loan Agreement dated as of October 30, 2017 among the Borrowers and Branch Banking and Trust, as amended through the Closing Date.

"Extraordinary Expenses" means all reasonable, out-of-pocket costs, expenses, liabilities or advances that Administrative Agent may incur or make during a Default or Event of Default, or during the pendency of an proceeding of any Loan Party or Subsidiary thereof under any Debtor Relief Laws, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Administrative Agent, any Lender, any Loan Party or Subsidiary thereof, any representative of creditors of a Loan Party or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Administrative Agent's Liens with respect to any Collateral), Loan Documents, Letters of Credit or Obligations, including any lender liability or other claims; (c) the exercise, protection or enforcement of any rights or remedies of Administrative Agent in, or the monitoring of, any proceeding applicable to any Loan Party or Subsidiary thereof under any Debtor Relief Laws; (d) settlement or satisfaction of any taxes, charges or Liens with respect to any Collateral; (e) any enforcement action; (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations; and (g) Protective Advances. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and standby fees, legal fees, appraisal fees, brokers' fees and commissions, auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Loan Party or Subsidiary thereof or independent contractors in liquidating any Collateral, and travel expenses.

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

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

“Facilities” means the Term Loan Facility and the Revolving Credit Facility, and “Facility” means either of them.

“Facility Termination Date” means the date as of which Payment in Full has occurred.

“Fair Market Value” means, with respect to any asset or any group of assets, as of any date of determination, the value of the consideration obtainable in a sale of such assets at such date of determination assuming a sale by a willing seller to a willing purchaser dealing at arm’s length and arranged in an orderly manner over a reasonable period of time giving regard to the nature and characteristics of such asset.

“FCPA” means the U.S. Foreign Corrupt Practices Act.

“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 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 BMO on such day on such transactions as determined by the Administrative Agent.

“Fee Letter” means, collectively, (i) the letter agreement, dated as of Closing Date, among the Borrowers, the Administrative Agent and BMO Capital and (ii) the Second Amendment Fee Letter, dated as of the Second Amendment Effective Date, among the Borrowers and the Administrative Agent.

“Field Exam” means any visit and inspection of the properties, assets and records of any Loan Party or Subsidiary thereof, which shall include access to such properties, assets and records sufficient to permit the Administrative Agent or its representatives to examine, audit and make extracts from any books and records of any Loan Party or Subsidiary thereof, make examinations and audits of any other financial matters and Collateral of any Loan Party or Subsidiary thereof as Administrative Agent deems appropriate in its Credit Judgment, and discussions with its officers, employees, agents, advisors and independent accountants regarding such Loan Party’s or Subsidiary’s business, financial condition, assets, prospects and results of operations.

“Financial Covenant Trigger Period” means any period (a) commencing on the day that (i) an Event of Default occurs and is continuing, or (ii) Availability is less than the greater of (x) 10% of the Aggregate Revolving Credit Commitments at such time and (y) \$7,500,000, and (b) continuing until the date that (i) in the case of clause (a)(i), no Event of Default exists, and (ii) in the case of clause (a)(ii), during the previous thirty (30) consecutive days, Availability has been equal to or greater than the greater of (x) 10% of the Aggregate Revolving Credit Commitments at such time and (y) \$7,500,000.

“FIRREA” means The Financial Institutions Reform, Recovery, and Enforcement Act of 1989.

“First Amendment” means that certain First Amendment to Credit Agreement dated as of the First Amendment Effective Date, by and among the Borrowers, the Administrative Agent and the Lenders party thereto.

“First Amendment Effective Date” means March 23, 2023.

“Fiscal Quarter” means each period of three months, commencing on the first day of a Fiscal Year.

“Fiscal Year” means the fiscal year of the Consolidated Group for accounting and tax purposes, ending on December 31 of each calendar year.

“Fixed Asset Amortization” means, for each Fiscal Quarter, \$437,500.

“Flood Documentation” means, with respect to any Mortgaged Property, (a) a life-of-loan flood hazard determination acceptable to the Administrative Agent in its discretion, (b) if such Real Property is located in a flood plain, an acknowledged notice to Borrowers and flood insurance in an amount, with endorsements and by an insurer acceptable to the Administrative Agent in its discretion, and (c) all Real Property items as required by FIRREA, in form and substance acceptable to the Administrative Agent in its discretion.

“Floor” means the rate per annum of interest equal to zero percent (0.00%).

“FLSA” means the Fair Labor Standards Act of 1938.

“Foreign Benefit Law” means any law or regulation, other than United States law, governing or applicable to any employee benefit plan, program, scheme or arrangement that is not subject to United States law.

“Foreign Government Scheme or Arrangement” has the meaning specified in Section 6.12(e).

“Foreign Lender” means (a) if the applicable Borrower is a U.S. Person, a Lender that is not a U.S. Person, and (b) if the applicable Borrower is not a U.S. Person, a Lender that is resident or organized under the laws of a jurisdiction other than that in which such Borrower is resident for tax purposes.

“Foreign Plan” has the meaning specified in Section 6.12(e).

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

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

“Fronting Exposure” means, at any time there is a Defaulting Lender that is a Revolving Credit Lender, (a) with respect to the Letter of Credit Issuer, such Defaulting Lender’s Applicable Percentage of the outstanding Letter of Credit Obligations other than Letter of Credit Obligations as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Credit Lenders or Cash Collateralized in accordance with the terms hereof, (b) with respect to the Swing Line Lender, such Defaulting Lender’s Applicable Percentage of Swing Line Loans other than Swing Line Loans as to which such Defaulting Lender’s participation obligation has been reallocated to other Revolving Credit Lenders and (c) with respect to the Administrative Agent, such Defaulting Lender’s Applicable Percentage of



Protective Advances other than Protective Advances as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Credit Lenders.

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

“GAAP” means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

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

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

“Guarantor” means each Person who executes or becomes a party to this Agreement as a guarantor pursuant to Article XII or otherwise executes and delivers a guaranty agreement acceptable to the Administrative Agent guaranteeing any of the Obligations.

“Guarantor Payment” has the meaning specified in Section 2.15(c).

“Hazardous Materials” means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law; provided, this definition of Hazardous Materials shall not include any raw materials or finished products used or produced by Borrowers in the Ordinary Course of Business.

“Honor Date” has the meaning specified in Section 2.03(c)(i).

“Increase Effective Date” has the meaning specified in Section 2.18(d).

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

- (a) all obligations of such Person for borrowed money and all obligations of such Person evidenced by bonds, debentures, notes, loan agreements or other similar instruments or upon which interest is customarily paid;
- (b) all direct or contingent obligations of such Person arising under or in respect of letters of credit (including standby and commercial), bankers’ acceptances, bank guaranties, surety bonds and other financial products and services (including treasury management and commercial credit card, merchant card and purchase or procurement card services);
- (c) net obligations of such Person under any Swap Contract;
- (d) all obligations of such Person to pay the deferred purchase price of property or services (other than trade accounts payable in the Ordinary Course of Business) and any accrued and unpaid obligations with respect to any earn-out or similar payments under any Acquisition documents, including for avoidance of doubt the ASTI Earn-out Obligations, the MUSA-Galvanized Earn-out Obligations and the MUSA-Stainless Earn-out Obligations;
- (e) indebtedness secured by a Lien on property owned or being purchased by such Person (including indebtedness arising under conditional sales or other title retention agreements), whether or not such indebtedness shall have been assumed by such Person or is limited in recourse;
- (f) obligations under Capital Leases and Synthetic Lease Obligations of such Person;
- (g) all obligations of such Person with respect to the redemption, repayment or other repurchase or payment in respect of any Disqualified Equity Interest; and
- (h) all Guarantees of such Person in respect of any of the foregoing.

For all purposes hereof, the Indebtedness of any Person shall include the Indebtedness of any partnership or joint venture (other than a joint venture that is itself a corporation or limited liability company) in which such Person is a general partner or a joint venturer, to the extent such Indebtedness is recourse to such Person. The amount of any net obligation under any Swap Contract on any date shall be deemed to be the Swap Termination Value thereof as of such date. The amount of any Capital Lease or Synthetic Lease Obligation as of any date shall be deemed to be the amount of Attributable Indebtedness in respect thereof as of such date.

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

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

“Information” has the meaning specified in Section 11.07.

“Insolvency Event” means, with respect to any Person:

- (a) the commencement of: (i) a voluntary case by such Person under the Bankruptcy Code or (ii) the seeking of relief by such Person under other Debtor Relief Laws;

(b) the commencement of an involuntary case or proceeding against such Person under the Bankruptcy Code or other Debtor Relief Laws and the petition or other filing is not controverted or dismissed within sixty (60) days after commencement of the case or proceeding;

(c) a custodian (as defined in the Bankruptcy Code or equal term under any other Debtor Relief Law, including a receiver, interim receiver, receiver manager, trustee or monitor) is appointed for, or takes charge of, all or substantially all of the property of such Person;

(d) such Person commences (including by way of applying for or consenting to the appointment of, or the taking charge by, a rehabilitator, receiver, interim receiver, custodian, trustee, monitor, conservator or liquidator (or any equal term under any other Debtor Relief Laws) (collectively, a “conservator”) of such Person or all or any substantial portion of its property) any other proceeding under any reorganization, arrangement, adjustment of debt, relief of debtors, dissolution, insolvency, liquidation, rehabilitation, conservatorship or similar law of any jurisdiction whether now or hereafter in effect relating to such Person;

(e) such Person is adjudicated by a court of competent jurisdiction to be insolvent or bankrupt;

(f) any order of relief or other order approving any such case or proceeding referred to in clauses (a) or (b) above is entered;

(g) such Person suffers any appointment of any conservator or the like for it or any substantial part of its property that continues undischarged or unstayed for a period of sixty (60) days; or

(h) such Person makes a compromise, arrangement or assignment for the benefit of creditors or generally does not pay its debts as such debts become due.

“Intellectual Property” means all past, present and future: trade secrets, know-how and other proprietary information; trademarks, uniform resource locations (URLs), internet domain names, service marks, sound marks, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world; copyrights (including copyrights for computer programs) and copyright registrations or applications for registrations which have heretofore been or may hereafter be issued throughout the world and all tangible property embodying the copyrights, unpatented inventions (whether or not patentable); patent applications and patents; industrial design applications and registered industrial designs; license agreements related to any of the foregoing and income therefrom; books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing; the right to sue for all past, present and future infringements of any of the foregoing; all other intellectual property; and all common law and other rights throughout the world in and to all of the foregoing.

“Interest Payment Date” means, (a) as to any SOFR Loan, (i) the last day of each Interest Period applicable to such SOFR Loan; provided that if any Interest Period for a SOFR Loan is greater than three months, the respective dates that fall every three months after the beginning of such Interest Period shall also be Interest Payment Dates; (ii) any date that such Loan is prepaid or converted, in whole or in part, and (iii) the Maturity Date; and (b) as to any Base Rate Loan (including a Swing Line Loan), (i) the first day of each month with respect to interest accrued through the last day of the immediately preceding month, (ii) any date that such Loan is prepaid

or converted, in whole or in part, and (iii) the Maturity Date; provided, further, that interest accruing at the Default Rate shall be payable from time to time upon demand of the Administrative Agent.

“Interest Period” means, as to each SOFR Loan, the period commencing on the date such SOFR Loan is disbursed or converted to or continued as a SOFR Loan and ending, in each case, on the date one, three or six months thereafter, as selected by the Borrower Agent in its Committed Loan Notice; provided that:

(a) any Interest Period that would otherwise end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day;

(b) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of the calendar month at the end of such Interest Period;

(c) no Interest Period shall extend beyond the Maturity Date; and

(d) no tenor that has been removed from this definition pursuant to Section 3.08 below shall be available for specification in a Committed Loan Notice.

“Investment” means, as to any Person, any direct or indirect acquisition or investment by such Person, whether by means of (a) an Acquisition with respect to another Person or (b) a loan, advance or capital contribution to, Guarantee or assumption of debt of, or purchase or other acquisition of any other debt or equity participation or interest in, another Person, including any partnership or joint venture interest in such other Person and any arrangement pursuant to which the investor Guarantees Indebtedness of such other Person. For purposes of compliance with Section 8.03, the amount of any Investment shall be the amount actually invested, without adjustment for subsequent increases or decreases in the value of such Investment, less all returns of principal or equity thereon (and without adjustment by reason of the financial condition of such other Person) and shall, if made by the transfer or exchange of property other than cash, be deemed to have been made in an original principal or capital amount equal to the Fair Market Value of such property at the time of such transfer or exchange.

“IP Rights” rights of any Person to use any Intellectual Property.

“ISP” means, with respect to any Letter of Credit, the “International Standby Practices 1998” published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

“Issuer Documents” means with respect to any Letter of Credit, the Letter of Credit Application, and any other document, agreement and instrument entered into by the Letter of Credit Issuer and any Borrower (or any Subsidiary) or in favor the Letter of Credit Issuer and relating to any such Letter of Credit.

“Laws” means, collectively, all international, foreign, federal, state and local statutes, treaties, rules, regulations, ordinances, codes and administrative or judicial precedents or authorities, including the interpretation or administration thereof by any Governmental Authority charged with the enforcement, interpretation or administration thereof, and all applicable administrative orders, directed duties, requests, licenses, authorizations and permits of, and

agreements with, any Governmental Authority, in each case whether or not having the force of law.

“Lender” and “Lenders” have the meaning specified in the introductory paragraph hereto and, as the context requires, includes the Letter of Credit Issuer and the Swing Line Lender.

“Lending Office” means, as to any Lender, the office or offices of such Lender described as such in such Lender’s Administrative Questionnaire, or such other office or offices as a Lender may from time to time notify the Borrower Agent and the Administrative Agent.

“Letter of Credit” means (a) any standby or documentary letter of credit issued by a Letter of Credit Issuer or (b) any indemnity, guarantee, exposure transmittal memorandum or similar form of credit support, in any case, issued by the Administrative Agent or a Letter of Credit Issuer pursuant to this Agreement for the benefit of a Borrower.

“Letter of Credit Advance” means each Revolving Credit Lender’s funding of its participation in any Letter of Credit Borrowing in accordance with its Applicable Revolving Credit Percentage. All Letter of Credit Advances shall be denominated in Dollars.

“Letter of Credit Application” means an application and agreement for the issuance or amendment of a Letter of Credit in the form from time to time in use by the Letter of Credit Issuer.

“Letter of Credit Borrowing” means an extension of credit resulting from a drawing under any Letter of Credit which has not been reimbursed on the date when made or refinanced as a Revolving Credit Borrowing.

“Letter of Credit Expiration Date” means the day that is thirty (30) days prior to the Maturity Date (or, if such day is not a Business Day, the preceding Business Day).

“Letter of Credit Extension” means, with respect to any Letter of Credit, the issuance thereof or extension of the expiry date thereof, or the renewal or increase of the amount thereof.

“Letter of Credit Fees” means, collectively or individually as the context may indicate, the fees with respect to Letters of Credit described in Section 2.09(b).

“Letter of Credit Issuer” means BMO and/or any Affiliate thereof, in its capacity as an issuer of Letters of Credit hereunder, or any successor issuer of Letters of Credit hereunder. At any time there is more than one Letter of Credit Issuer, all singular references to the Letter of Credit Issuer shall mean any Letter of Credit Issuer, either Letter of Credit Issuer, each Letter of Credit Issuer, the Letter of Credit Issuer that has issued the applicable Letter of Credit, or both Letter of Credit Issuers, as the context may require.

“Letter of Credit Obligations” means, as at any date of determination, (a) the aggregate undrawn amount of all outstanding Letters of Credit, plus (b) the aggregate of all Unreimbursed Amounts, including all Letter of Credit Borrowings, plus (c) the aggregate amount of all accrued and unpaid Letter of Credit Fees. For purposes of computing the amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. 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 Rule 3.14 of the ISP, such Letter of Credit shall be deemed to be “outstanding” in the amount so remaining available to be drawn.

“Letter of Credit Sublimit” means an amount equal to the lesser of (a) \$2,500,000 and (b) the Aggregate Revolving Credit Commitments. The Letter of Credit Sublimit is part of, and not in addition to, the Aggregate Revolving Credit Commitments.

“License” means any license or agreement under which a Loan Party is granted IP Rights in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of assets or property or any other conduct of its business.

“Licensor” means any Person from whom a Loan Party obtains IP Rights.

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

“Lien Waiver” means an agreement, in form and substance reasonably satisfactory to the Administrative Agent, by which (a) for any material Collateral located on leased premises or owned premises subject to a mortgage, the lessor or mortgagee, as applicable, agrees to, among other things, waive or subordinate any Lien it may have on the Collateral and permit the Administrative Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for the Administrative Agent, and agrees to deliver the Collateral to the Administrative Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges the Administrative Agent’s Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Administrative Agent upon request; and (d) for any Collateral subject to a Licensor’s IP Rights, the Licensor grants to the Administrative Agent the right, vis-à-vis such Licensor, to enforce the Administrative Agent’s Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

“Line Reserve” means such reserves and adjustments thereto as the Administrative Agent from time to time determines in its Credit Judgment as being appropriate, including (a) the Rent and Charges Reserve; (b) the Credit Product Reserve; (c) Wage Claim Reserves, (d) the aggregate amount of liabilities at any time secured by Liens upon Collateral that are senior to the Administrative Agent’s Liens; (e) sums that any Loan Party may be required to pay under any Section of this Agreement or any other Loan Document (including taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay; and (f) amounts for which claims may be reasonably expected to be asserted against the Collateral, the Administrative Agent or the Lenders.

“Loan” means an extension of credit under Article II in the form of a Revolving Credit Loan, a Term Loan, a Protective Advance or a Swing Line Loan.

“Loan Account” has the meaning assigned to such term in Section 2.11(a).

“Loan Documents” means this Agreement, each Note, each Security Instrument, each Committed Loan Notice, Swing Line Loan Notice, each Issuer Document, each Borrowing Base Certificate, each Compliance Certificate, each Subordination Agreement (including, without limitation, the Master Intercompany Note), the Fee Letter, any agreement creating or perfecting rights in Cash Collateral securing any Obligation hereunder and all other instruments and

documents heretofore or hereafter executed or delivered to or in favor of any Lender or the Administrative Agent in connection with the Loans made and transactions contemplated by this Agreement, but excluding, for the avoidance of doubt, Credit Product Arrangements.

“Loan Obligations” means all Obligations other than amounts (including fees) owing by any Loan Party pursuant to any Credit Product Arrangements.

“Loan Parties” means, collectively: (a) the Borrowers; (b) the Guarantors; and (c) each other Person that (i) executes a joinder to this Agreement as a Borrower, Guarantor, and/or Loan Party; (ii) is liable for payment of any of the Obligations; and (iii) has granted a Lien in favor of Administrative Agent on its assets to secure any of the Obligations.

“Master Intercompany Note” means any Master Intercompany Note by and among the Loan Parties and their Subsidiaries entered into by the Loan Parties and their Subsidiaries, in form and substance acceptable to the Administrative Agent, in its discretion.

“Material Adverse Effect” means (a) a material adverse change in, or a material adverse effect on, the operations, business, assets, properties, liabilities (actual or contingent), or condition (financial or otherwise) of either (i) the Borrowers, taken as a whole or (ii) the Loan Parties and their Subsidiaries, taken as a whole; (b) a material impairment of the ability of any Loan Party to perform its obligations under any Loan Document to which it is a party; or (c) a material adverse effect upon the legality, validity, binding effect or enforceability against any Loan Party of any Loan Document to which it is a party or on the ability of the Administrative Agent to collect any Obligation or realize upon any material portion of the Collateral.

“Material Contract” means any agreement or arrangement to which a Loan Party or Subsidiary thereof is party (other than the Loan Documents) (a) that is deemed to be a material contract under any securities laws applicable to such Loan Party, including the Securities Act of 1933; (b) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (c) that (i) relates to any Subordinated Debt or Indebtedness in an aggregate amount of \$2,500,000 or more or (ii) involves aggregate consideration in excess of \$2,500,000 per year.

“Material License” has the meaning assigned to such term in Section 7.15.

“Material Third-Party Agreement” has the meaning assigned to such term in Section 7.17(a).

“Maturity Date” means January 15, 2025.

“Maximum Borrowing Amount” means the lesser of (A) (i) the Aggregate Revolving Credit Commitments minus (ii) the Line Reserves, if any, and (B) the Borrowing Base.

“Measurement Period” means, at any date of determination, the most recently completed four (4) consecutive Fiscal Quarter period of the Consolidated Group for which financial statements have or should have been delivered in accordance with Section 7.01(a) or 7.01(b).

“Minimum Collateral Amount” means, at any time, (a) with respect to Cash Collateral consisting of cash or Deposit Account balances provided to reduce or eliminate Fronting Exposure during the existence of a Defaulting Lender, an amount equal to 105% of the Fronting Exposure of the Letter of Credit Issuer with respect to Letters of Credit issued and outstanding at such time plus 105% of the Fronting Exposure of the Administrative Agent with respect to Protective Advances outstanding at such time, (b) with respect to Cash Collateral consisting of cash or Deposit Account balances provided in accordance with the provisions of

Section 2.16(a)(i) or 2.16(a)(ii), an amount equal to 105% of the Outstanding Amount of all Letter of Credit Obligations, and (c) otherwise, an amount determined by the Administrative Agent and the Letter of Credit Issuer in their sole discretion.

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

“Mortgage Related Documents” means, with respect to any Mortgaged Property, (a) all Flood Documentation with respect thereto, and (b) the following other documents with respect thereto, all in form and substance satisfactory to the Administrative Agent in its discretion: (i) an ALTA mortgagee title policy (or binder therefor) covering the Administrative Agent’s interest under the Mortgage, in a form and with endorsements and amount and by an insurer acceptable to the Administrative Agent, which must be fully paid on such effective date, (ii) such assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases as the Administrative Agent may require with respect to other Persons having an interest in the Real Property, (iii) an ALTA Survey by a licensed surveyor acceptable to the Administrative Agent, (iv) a current appraisal of the Real Property, prepared by an appraiser acceptable to the Administrative Agent and otherwise in form and substance acceptable to the Administrative Agent, (v) an environmental assessment, prepared by environmental engineers acceptable to the Administrative Agent, and accompanied by such reports, certificates, studies or data as the Administrative Agent may reasonably require, all in form and substance acceptable to the Administrative Agent, (vi) an environmental indemnity agreement and such other documents, instruments or agreements as the Administrative Agent may reasonably require with respect to any environmental risks regarding the Real Property, (vii) a zoning report and other evidence of zoning compliance in form and substance acceptable to the Administrative Agent, (viii) opinions of local counsel for the jurisdictions in which any Mortgaged Property is situated in form and substance acceptable to the Administrative Agent, and (ix) mortgage tax affidavits and declarations and other similar information and related certifications as are requested by, and in each such case in form and substance acceptable to, the Administrative Agent.

“Mortgaged Property” means, unless otherwise agreed by Administrative Agent in its discretion, all Real Property of the Loan Parties, whenever acquired.

“Mortgages” means the mortgages, leasehold mortgages, deeds of trust, leasehold deeds of trust or deeds to secure debt executed by a Loan Party on or after the Closing Date, or from time to time thereafter as may be required under the Loan Documents, in favor of the Administrative Agent, for the benefit of the Secured Parties, by which such Loan Party has granted to the Administrative Agent, as security for the Obligations, a Lien upon the Mortgaged Property described therein, together with all mortgages, deeds of trust and comparable documents now or at any time hereafter securing the whole or any part of the Obligations.

“Multiemployer Plan” means any employee benefit plan of the type described in Section 4001(a)(4) of ERISA, to which any Loan Party or any ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

“Multiple Employer Plan” means a Plan which has two or more contributing sponsors (including any Loan Party 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.

“MUSA-Galvanized Earn-out Obligations” means the earn-out amounts owed to Marcegaglia USA, Inc. pursuant to the MUSA-Galvanized Purchase Agreement, in a maximum amount not to exceed \$2,500,000.



“MUSA-Galvanized Purchase Agreement” means the Asset Purchase Agreement by and between Bristol Metals, LLC and Marcegaglia USA, Inc. dated June 29, 2018.

“MUSA-Stainless Earn-out Obligations” means the earn-out amounts owed to Marcegaglia USA, Inc. pursuant to the MUSA-Stainless Purchase Agreement, in a maximum amount not to exceed \$2,500,000.

“MUSA-Stainless Purchase Agreement” means the Asset Purchase Agreement by and between Bristol Metals, LLC and Marcegaglia USA, Inc. dated December 9, 2016, as amended.

“Net Cash Proceeds” means

(a) with respect to the Disposition of any asset of any Loan Party or any Subsidiary thereof, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such Disposition (including any cash received by way of deferred payment pursuant to, or by monetization of, a note receivable or otherwise, but only as and when so received) over (ii) the sum of (A) the principal amount of any Indebtedness that is secured by such asset and that is required to be repaid in connection with the Disposition thereof (other than Indebtedness under the Loan Documents and Indebtedness owing to any Loan Party or Subsidiary thereof), (B) the reasonable out-of-pocket expenses incurred by such Loan Party or any Subsidiary in connection with such Disposition, including any brokerage commissions, underwriting fees and discount, legal fees, finder’s fees and other similar fees and commissions, (C) taxes paid or reasonably estimated to be payable by the Loan Party or any Subsidiary thereof in connection with the relevant Disposition (including Permitted Tax Distributions), (D) the amount of any reasonable reserve required to be established in accordance with GAAP against liabilities (other than taxes deducted pursuant to clause (C) above) to the extent such reserves are (x) associated with the assets that are the object of such Disposition and (y) retained by such Loan Party or applicable Subsidiary thereof, and (E) the amount of any reasonable reserve for purchase price adjustments and retained fixed liabilities reasonably expected to be payable by such Loan Party or applicable Subsidiary thereof in connection therewith to the extent such reserves are (1) associated with the assets that are the object of such Disposition and (2) retained by such Loan Party or applicable Subsidiary thereof; provided that the amount of any subsequent reduction of any reserve provided for in clause (D) or (E) above (other than in connection with a payment in respect of such liability) shall (X) be deemed to be Net Cash Proceeds of such Disposition occurring on the date of such reduction, and (Y) immediately be applied to the prepayment of Loans in accordance with Section 2.06(c);

(b) with respect to any issuance of Indebtedness or Equity Interests by any Loan Party or any Subsidiary thereof, the excess, if any, of (i) the sum of the cash and Cash Equivalents received in connection with such issuance over (ii) the sum of (A) the reasonable out-of-pocket expenses incurred by such Loan Party or any Subsidiary thereof in connection with such issuance, including any brokerage commissions, underwriting fees and discount, legal fees, and other similar fees and commissions and (B) taxes paid or payable to the applicable taxing authorities by the Loan Party or any Subsidiary thereof in connection with and at the time of such issuance; and

(c) with respect to any insurance proceeds and condemnation and similar awards received on account of casualty or condemnation events, the sum of (i) all cash and Cash Equivalents received in connection with such casualty or condemnation event minus (ii) all reasonable out-of-pocket expenses incurred by the Loan Parties or any Subsidiary thereof and other amounts required to be paid in connection therewith.

“NOLV” means with respect to the Borrowers’ Inventory or Equipment, the net orderly liquidation value of such Inventory or Equipment (a percentage of the Cost of Inventory or in

place value of Equipment) that might be realized at an orderly, negotiated sale held within a reasonable period of time, net of all liquidation expenses, as determined from time to time by reference to the most recent appraisal received by the Administrative Agent conducted by an independent appraiser approved by the Administrative Agent.

“Non-Consenting Lender” has the meaning assigned to such term in Section 11.01.

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

“Non-Extension Notice Date” has the meaning specified in Section 2.03(b)(iii).

“Note” means either or both of the Revolving Credit Loan Notes and/or the Term Loan Notes, as applicable.

“NPL” means the National Priorities List pursuant to CERCLA, as updated from time to time.

“Obligations” means (a) all amounts owing by any Loan Party to the Administrative Agent, any Lender or any other Secured Party pursuant to or in connection with this Agreement or any other Loan Document or otherwise with respect to any Loan or Letter of Credit, including, without limitation, all Letter of Credit Obligations, and including all principal, interest (including any interest accruing after the filing of any petition in bankruptcy or the commencement of any proceeding under any Debtor Relief Law relating to any Loan Party, or would accrue but for such filing or commencement, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding), reimbursement obligations, indemnification and reimbursement payments, fees, costs and expenses (including all fees, costs and expenses of counsel to the Administrative Agent) incurred in connection with this Agreement or any other Loan Document, whether direct or indirect, absolute or contingent, liquidated or unliquidated, now existing or hereafter arising hereunder or thereunder, together with all renewals, extensions, modifications or refinancings thereof and (b) Credit Product Obligations; provided, that Obligations of a Loan Party shall not include its Excluded Swap Obligations.

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

“OFAC SDN List” means the list of the Specially Designated Nationals and Blocked Persons maintained by OFAC.

“Ordinary Course of Business” means the ordinary course of business of the Borrowers and their Subsidiaries, consistent with past practices and undertaken in good faith.

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

“Other Connection Taxes” means, with respect to any Recipient, Taxes imposed as a result of a present or former connection between such Recipient and the jurisdiction imposing such Tax (other than connections arising from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan or Loan 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 11.13).

“Outstanding Amount” means (a) with respect to Term Loans, Revolving Credit Loans, Protective Advances and Swing Line Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any Borrowings and any prepayments or repayments of Term Loans, Revolving Credit Loans, Protective Advances or Swing Line Loans occurring on such date; and (b) with respect to any Letter of Credit Obligations on any date, the aggregate outstanding amount of such Letter of Credit Obligations on such date after giving effect to any Letter of Credit Extension occurring on such date plus and any other changes in the aggregate amount of the Letter of Credit Obligations as of such date, including as a result of any reimbursements by the Borrowers of Unreimbursed Amounts and all Letter of Credit Borrowings on such date.

“Overadvance” has the meaning given to such term in Section 2.01(c)(i)(A).

“Overadvance Loan” means a Base Rate Revolving Credit Loan made when an Overadvance exists or is caused by the funding thereof.

“Overnight Rate” means, for any day and from time to time as in effect, the greater of (a) the Federal Funds Rate and (b) an overnight rate determined by the Administrative Agent, the Letter of Credit Issuer, or the Swing Line Lender, as the case may be, in accordance with banking industry rules on interbank compensation.

“Palmer of Texas” has the meaning specified in the introductory paragraph hereto.

“Palmer Ongoing Wind-Down Expenses” means, solely to the extent incurred on or after January 1, 2021, all operating costs incurred by or for the benefit of Palmer of Texas in connection with the wind-down of its operations.

“Participant” has the meaning assigned to such term in clause (d) of Section 11.06.

“Participant Register” has the meaning assigned to such term in clause (d) of Section 11.06.

“Patent Security Agreement” means any patent security agreement pursuant to which a Loan Party assigns to Administrative Agent, for the benefit of the Secured Parties, such Person’s interests in its patents, as security for the Obligations.

“PATRIOT Act” means United States Public Law 107-56, Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT ACT) Act of 2001, as amended from time to time, and the rules and regulations promulgated thereunder from time to time in effect.

“Payment Conditions” means, with respect to any Specified Transaction, the satisfaction of the following conditions:

(a) as of the date of any such Specified Transaction and immediately after giving effect thereto, no Default or Event of Default has occurred and is continuing;

(b) Availability (after giving Pro Forma Effect to such Specified Transaction) during the thirty (30) consecutive day period ending on and including the date of such Specified Transaction shall be not less than the greater of (i) 12.5% of the Aggregate Revolving Credit Commitments and (ii) \$15,000,000, in each case, as of such date;

(c) the Fixed Charge Coverage Ratio as of the end of the most recently ended Measurement Period prior to the making of such Specified Transaction, calculated on a Pro Forma Basis, shall be equal to or greater than 1.10 to 1.00; and

(d) the Administrative Agent shall have received a certificate of a Responsible Officer of the Borrower Agent certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby.

“Payment in Full” means (a) the indefeasible payment in full in cash of all Obligations, together with all accrued and unpaid interest and fees thereon, other than Letter of Credit Obligations that have been fully Cash Collateralized in an amount equal to 105% of the amount thereof or as to which other arrangements with respect thereto satisfactory to the Administrative Agent and the Letter of Credit Issuer shall have been made, (b) the Commitments shall have terminated or expired, (c) the obligations and liabilities of each Loan Party and its Affiliates under all Credit Product Arrangements shall have been fully, finally and irrevocably paid and satisfied in full and the Credit Product Arrangements shall have expired or been terminated, or other arrangements satisfactory to the applicable Credit Product Providers shall have been made with respect thereto, and (d) all claims of the Loan Parties against any Secured Party arising on or before the payment date in connection with the Loan Documents or any Credit Product Arrangements, as applicable, shall have been released on terms acceptable to the Administrative Agent or the applicable Credit Product Providers; provided that notwithstanding full payment or Cash Collateralization of the Obligations as provided herein, the Administrative Agent shall not be required to terminate its Liens in any Collateral unless, with respect to any damages the Administrative Agent may incur as a result of the dishonor or return of Payment Items applied to Obligations, Administrative Agent receives (i) a written agreement, executed by Borrowers and any Person whose advances are used in whole or in part to satisfy the Obligations, indemnifying Agent and Lenders from any such damages; or (ii) such Cash Collateral as the Administrative Agent, in its discretion, deems necessary to protect against any such damage.

“Payment Item” means each check, draft or other item of payment payable to a Borrower, including those constituting proceeds of any Collateral.

“PBGC” means the Pension Benefit Guaranty Corporation.

“Pension Act” means the Pension Protection Act of 2006.

“Pension Funding Rules” means the rules of the Code and ERISA regarding minimum required contributions (including any installment payment thereof) to Pension Plans and Multiemployer Plans and set forth in, with respect to plan years ending prior to the effective date of the Pension Act, Section 412 of the Code and Section 302 of ERISA, each as in effect prior to the Pension Act and, thereafter, Section 412, 430, 431, 432 and 436 of the Code and Sections 302, 303, 304 and 305 of ERISA.

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

“Permitted Acquisition” means any Acquisition by a Borrower so long as:

- (a) the Person to be (or whose assets are to be) acquired does not oppose such Acquisition and the line or lines of business of the Person to be acquired constitute Core Businesses;
- (b) the cost of such Acquisition (including cash and other property given as consideration, any Indebtedness incurred, assumed or acquired by any Loan Party or any Subsidiary thereof in connection with such Acquisition, and all additional purchase price amounts in the form of earn-outs and other contingent obligations calculated at the maximum amount thereof) does not exceed \$25,000,000 individually and \$100,000,000 when aggregated with all other Acquisitions consummated during the term of this Agreement;
- (c) prior to or simultaneously with the closing of such Acquisition, the provisions of Section 7.12 have been satisfied;
- (d) after giving effect to such Acquisition on a Pro Forma Basis and the costs related thereto (including cash and other property (other than Equity Interests or options to acquire Equity Interests of any Loan Party) given as consideration, any Indebtedness incurred, assumed or acquired by any Loan Party or any Subsidiary thereof in connection with such Acquisition, all additional purchase price amounts in the form of earn-outs and other contingent obligations calculated at the maximum amount thereof, and all fees expenses and transaction costs incurred in connection therewith), the Payment Conditions shall have been met with respect thereto;
- (e) the Borrower Agent shall have furnished to the Administrative Agent at least five (5) Business Days prior to the date on which any such Acquisition is to be consummated or such shorter time as Administrative Agent may allow, a certificate of a Responsible Officer of the Borrower Agent, in form and substance reasonably satisfactory to the Administrative Agent, (i) certifying that all of the requirements set forth above will be satisfied on or prior to the consummation of such Acquisition and (ii) a reasonably detailed calculation of item (d) above (and such certificate shall be updated as necessary to make it accurate as of the date the Acquisition is consummated);
- (f) the Person to be (or whose assets are to be) acquired is organized under the laws of, and substantially all its assets (or the assets of such division or line of business, as the case may be) are located in, the United States of America, any State thereof, the District of Columbia or Canada; and
- (g) the Borrower Agent shall have furnished the Administrative Agent with ten (10) days’ prior written notice of such intended Acquisition and shall have furnished the Administrative Agent with a current draft of the applicable acquisition documents (and final copies thereof as and when executed), and to the extent available, appropriate financial statements of the Person which is the subject of such Acquisition, pro forma projected financial statements for the twelve (12) month period following such Acquisition after giving effect to such Acquisition (including balance sheets, cash flows and income statements by month for the acquired Person, individually, and on a Consolidated basis with all Loan Parties), and, to the extent available, such other information as the Administrative Agent may reasonably request.

“Permitted Earn-out Payments” means payments of (a) the ASTI Earn-out Obligations as and when due and payable under the ASTI Purchase Agreement, (b) the MUSA-Galvanized Earn-out Obligations as and when due and payable under the MUSA-Galvanized Purchase Agreement, and (c) the MUSA-Stainless Earn-out Obligations as and when due and payable under the MUSA-Stainless Purchase Agreement.

“Permitted Liens” has the meaning specified in Section 8.02.

“Permitted Tax Distributions” for any taxable period in which the Borrowers and their Subsidiaries are members of a consolidated, combined or similar income tax group of which Synalloy is the common parent (a “Tax Group”), distributions by any such Borrower or Subsidiary thereof to Synalloy to pay federal, foreign, state and local income Taxes of such Tax Group that are attributable to the taxable income of the Borrowers and their Subsidiaries; provided that, for each taxable period, the amount of such payments made in respect of such taxable period in the aggregate shall not exceed the amount that the Borrowers and its Subsidiaries would have been required to pay as a stand-alone Tax Group, reduced by any portion of such income Taxes directly paid by the Borrowers and its Subsidiaries.

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

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

“Platform” has the meaning specified in Section 7.02.

“Post-Closing Agreement” means that certain Post-Closing Agreement by and between the Borrower Agent and the Administrative Agent dated as of the Closing Date with respect to the satisfaction after the Closing Date of certain collateral matters.

“Priority Swap Obligations” means Credit Product Obligations under Swap Contracts (a) owing to BMO or its Affiliates (so long as BMO (in its discretion) shall have established a Credit Product Reserve with respect thereto) or (b) owing to any other Credit Product Provider and expressly identified as “Priority Swap Obligations” in a Credit Product Notice from the Borrower Agent and such Credit Product Provider to the Administrative Agent (which at all times shall be subject to a Credit Product Reserve).

“Pro Forma Adjustment” means, for the purposes of calculating Consolidated EBITDA for the Consolidated Group for any Measurement Period, if at any time during such Measurement Period, any Loan Party or Subsidiary thereof that is a member of the Consolidated Group shall have made a Permitted Acquisition or Disposition, Consolidated EBITDA for such Measurement Period shall be calculated after giving pro forma effect thereto as if any such Permitted Acquisition or Disposition occurred on the first day of such Measurement Period, including (a) with respect to an any Permitted Acquisition, inclusion of (i) the actual historical results of operation of such acquired Person or line of business during such Measurement Period and (ii) pro forma adjustments arising out of events which are directly attributable to such Permitted Acquisition, are factually supportable, and are expected to have a continuing impact, in each case to be mutually and reasonably agreed upon by the Borrower Agent and the Administrative Agent, and (b) with respect to any Disposition, exclusion of the actual historical results of operations of the disposed of Person or line of business or assets during such Measurement Period.

“Pro Forma Basis,” “Pro Forma Compliance” and “Pro Forma Effect” means, with respect to compliance with any test, financial ratio or covenant hereunder required by the terms of this Agreement to be made on a pro forma basis, that (a) to the extent applicable, the Pro Forma Adjustment shall have been made and, without duplication, (b) all Specified Pro Forma Transactions that have been made during the applicable period of measurement or subsequent to such period and prior to or simultaneously with the event for which the calculation is made (the period beginning on the first day of such period and continuing until the date of the consummation of such event, the “Reference Period”) shall be deemed to have occurred as of the first day of the applicable Reference Period; provided that (i) income statement items (whether positive or negative) attributable to the property or Person subject to such Specified Pro Forma Transaction, (A) shall be excluded in the case of a Disposition of all or substantially all Equity Interests in or assets of any Loan Party or its Subsidiaries or any division, product line, or facility used for operations of the Loan Parties or their Subsidiaries, and (B) shall be included in the case of a Permitted Acquisition or Investment described in the definition of Specified Pro Forma Transaction, and (ii) all Indebtedness issued, incurred or assumed as a result of, or to finance, any relevant transactions (other than Indebtedness under the Loan Documents) or permanently repaid in connection with the relevant transaction during the Reference Period shall be deemed to have been issued, incurred, assumed or permanently repaid at the beginning of such Reference Period (with interest expense of such person attributable to any Indebtedness for which pro forma effect is being given as provided in preceding clause (ii) that has a floating or formula rate, shall have an implied rate of interest for the applicable Reference Period determined by utilizing the rate that is or would be in effect with respect to such Indebtedness as at the relevant date of determination); provided, that, the foregoing pro forma adjustments may be applied to any such test, financial ratio or covenant solely to the extent that such adjustments are consistent with the definition of Consolidated EBITDA and the definition of Pro Forma Adjustment.

“Properly Contested” means with respect to any obligation of a Loan Party or Subsidiary thereof, (a) the obligation is subject to a bona fide dispute regarding amount or such Loan Party’s or Subsidiary’s liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment is not greater than \$2,500,000, nor will result in forfeiture or sale of any assets of any Loan Party or Subsidiary thereof; (e) no Lien is imposed on assets of any Loan Party or Subsidiary thereof, unless bonded and stayed to the satisfaction of the Administrative Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

“Protective Advance” has the meaning specified in Section 2.01(c)(ii)(A).

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

“Public Lender” has the meaning specified in Section 7.02.

“QFC” has the meaning specified in Section 11.21(b).

“QFC Credit Support” has the meaning specified in Section 11.21(b).

“Qualified ECP” means any 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 the Commodity Exchange Act.

“Ratable Share” has the meaning specified in Section 2.01(c)(ii)(C).

“Real Property” means all land, together with the buildings, structures, parking areas, and other improvements thereon, now or hereafter owned by any Person, including all easements, rights-of-way, and similar rights appurtenant thereto and all leases, tenancies, and occupancies thereof.

“Realty Reserves” means such reserves as the Administrative Agent from time to time determines in its discretion as being appropriate to reflect the impediments to the Administrative Agent’s ability to realize upon any Real Property. Without limiting the generality of the foregoing, Realty Reserves may include (but are not limited to) (i) environmental compliance reserves, (ii) reserves for (A) municipal taxes and assessments, (B) repairs and (C) remediation of title defects, and (iii) reserves for Indebtedness secured by Liens having priority over the Liens of the Administrative Agent.

“Recipient” means the Administrative Agent, any Lender, any Letter of Credit Issuer or any other recipient of any payment to be made by or on account of any Obligation of a Borrower hereunder.

“Refinancing Conditions” means the following conditions for Refinancing Indebtedness: (a) it is in an aggregate principal amount that does not exceed the principal amount of the Indebtedness being extended, renewed or refinanced plus accrued interest and reasonable fees and expenses incurred in connection with such refinancing, refunding, renewal or extension; (b) the interest rate applicable to any such refinancing, refunding, renewing or extending Indebtedness does not exceed the greater of the (i) interest rate for the Indebtedness being refinanced, refunded, renewed, or extended and (ii) the otherwise market rate of interest for such Indebtedness; (c) it has a final maturity no sooner than and a weighted average life no less than the Indebtedness being extended, renewed or refinanced; (d) it is subordinated to the Obligations at least to the same extent as the Indebtedness being extended, renewed or refinanced; (e) no additional Liens, if any, are granted with respect to such Refinancing Indebtedness; (f) no additional Person is obligated, primarily or contingently, on such Refinancing Indebtedness; (g) such Refinancing Indebtedness shall be on terms no less favorable to the Administrative Agent and the Lenders, and no more restrictive to the Loan Parties (taken as a whole), than the Indebtedness being extended, renewed or refinanced; and (h) upon giving effect to such Refinancing Indebtedness, no Default or Event of Default exists.

“Refinancing Indebtedness” means Indebtedness that is the result of an extension, renewal or refinancing of Indebtedness permitted under Section 8.01 (b), (c), (g), (h), and (p) and as to which the Refinancing Conditions are satisfied; provided that the incurrence of any such Refinancing Indebtedness will be deemed to utilize permitted amounts of Indebtedness, if any, under each clause thereof.

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

“Registered Public Accounting Firm” has the meaning specified in the Securities Laws and shall be independent of the Loan Parties and their Affiliates as prescribed in the Securities Laws.

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

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



“Rent and Charges Reserve” means the aggregate of (a) all past due rent and other amounts, as applicable, owing by a Borrower to any landlord, warehouseman, processor, repairman, mechanic, shipper, freight forwarder, broker, logistics provider or other Person who possesses or has control over any Collateral or could assert a Lien on any Collateral; and (b) a reserve at least equal to three months’ rent and other charges that could be payable to any such Person, unless it has executed a Lien Waiver.

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

“Reporting Trigger Period” means any period (a) commencing on the day that (i) an Event of Default occurs and is continuing, or (ii) Availability is less than the greater of (x) 10% of the Aggregate Revolving Credit Commitments at such time and (y) \$7,500,000, and (b) continuing until the date that (i) in the case of clause (a)(i), no Event of Default exists, and (ii) in the case of clause (a)(ii), during the previous thirty (30) consecutive days, Availability has been equal to or greater than the greater of (x) 10% of the Aggregate Revolving Credit Commitments at such time and (y) \$7,500,000.

“Request for Credit Extension” means (a) with respect to a Borrowing, conversion or continuation of Loans, a Committed Loan Notice, (b) with respect to a Letter of Credit Extension, a Letter of Credit Application, and (c) with respect to a Swing Line Loan, a Swing Line Loan Notice.

“Required Lenders” means, as of any date of determination, at least two non-Affiliate Lenders holding at least sixty-six and two-thirds percent (66⅔%) of the Total Credit Exposure of all Lenders. The Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

“Reserve” means any reserve constituting all or any portion of the Availability Reserve or the Line Reserve.

“Responsible Officer” means, with respect to each Loan Party, the chief executive officer, president, senior vice president (finance) or chief financial officer of such Loan Party. Any document delivered hereunder that is signed by a Responsible Officer of a Loan Party shall be conclusively presumed to have been authorized by all necessary corporate, partnership and/or other action on the part of such Loan Party and such Responsible Officer shall be conclusively presumed to have acted on behalf of such Loan Party.

“Restricted Payment” means (i) any dividend or other distribution (whether in cash, securities or other property) with respect to any capital stock or other Equity Interest of any Loan Party or any Subsidiary thereof, (ii) any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such capital stock or other Equity Interest, or on account of any return of capital to any Loan Party’s or any Subsidiary’s stockholders, partners or members (or the equivalent Person thereof) or (iii) any distribution, advance or repayment of Indebtedness to or for the account of a holder of Equity Interests of any Loan Party or its Affiliates.

“Revolving Credit Borrowing” means a borrowing consisting of simultaneous Revolving Credit Loans of the same Type and, in the case of SOFR Loans, having the same Interest Period, made by each of the Revolving Credit Lenders pursuant to Section 2.01(a).

“Revolving Credit Commitment” means, as to each Revolving Credit Lender, its obligation to (a) make Revolving Credit Loans to the Borrowers pursuant to Section 2.01(a).

(b) purchase participations in Letter of Credit Obligations, and (c) purchase participations in Swing Line Loans, in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender's name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement.

"Revolving Credit Exposure" means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Revolving Credit Loans and such Lender's participation in outstanding Letter of Credit Obligations, Swing Line Loans and Protective Advances at such time.

"Revolving Credit Facility" means the facility described in Sections 2.01(a), 2.03 and 2.04 providing for Revolving Credit Loans, Letters of Credit and Swing Line Loans to or for the benefit of the Borrowers by the Revolving Credit Lenders, Letter of Credit Issuer and Swing Line Lender, as the case may be, in the maximum aggregate principal amount at any time outstanding of \$80,000,000 as adjusted from time to time pursuant to the terms of this Agreement, including, without limitation, under Section 2.18 hereof.

"Revolving Credit Lender" means each Lender that has a Revolving Credit Commitment or, following termination of the Revolving Credit Commitments, has any Revolving Credit Exposure.

"Revolving Credit Loan" has the meaning specified in Section 2.01(a).

"Revolving Credit Loan Note" means a promissory note made by the Borrowers in favor of a Revolving Credit Lender evidencing Revolving Credit Loans made by such Revolving Credit Lender, substantially in the form of Exhibit A-1.

"Revolving Credit Termination Date" means the earliest of (a) the Maturity Date, (b) the date of termination of the Aggregate Revolving Credit Commitments pursuant to Section 2.07(a), and (c) the date of termination of the commitment of each Lender to make Loans and of the obligation of the Letter of Credit Issuer to make Letter of Credit Extensions pursuant to Section 9.02.

"Royalties" means all royalties, fees, expense reimbursement and other amounts payable by a Loan Party under a License.

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

"Same Day Funds" means immediately available funds.

"Sanctioned Person" means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including the OFAC SDN List), the United States Department of State, the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, or any other relevant sanctions authority, (b) any Person located, organized or resident in a Designated Jurisdiction or (c) any Person 50% or more owned by any Person described in clauses (a) or (b) above.

"Sanctions" means all economic or financial sanctions, sectoral sanctions, secondary sanctions or trade embargoes imposed, administered or enforced from time to time by (a) the United States government (including those administered by OFAC or the United States

Department of State), or (b) the United Nations Security Council, the European Union, any European Union member state, Her Majesty's Treasury of the United Kingdom, or any other relevant sanctions authority with jurisdiction over any Loan Party or any of their respective Subsidiaries or Affiliates.

“Sarbanes-Oxley” means the Sarbanes-Oxley Act of 2002.

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

“Second Amendment” means that certain Limited Consent, Second Amendment to Credit Agreement and Omnibus Amendment to Loan Documents, dated as of the Second Amendment Effective Date, by and among the Borrowers, the Lenders party thereto and the Administrative Agent.

“Second Amendment Effective Date” has the meaning specified in the Second Amendment, which date is December 22, 2023.

“Secured Party” means (a) each Lender, (b) each Credit Product Provider, (c) the Administrative Agent, (d) the Letter of Credit Issuer, (e) the Arranger and (f) the successors and permitted assigns of each of the foregoing.

“Securities Laws” means the Securities Act of 1933, the Exchange Act, Sarbanes-Oxley and the applicable accounting and auditing principles, rules, standards and practices promulgated, approved or incorporated by the SEC or the Public Company Accounting Oversight Board, as each of the foregoing may be amended and in effect on any applicable date hereunder.

“Security Agreement” means the Pledge and Security Agreement dated as of the date hereof by the Loan Parties and the Administrative Agent for the benefit of the Secured Parties, substantially in the form of Exhibit C.

“Security Instruments” means, collectively or individually as the context may indicate, the Security Agreement, the Control Agreements, the Mortgages, the Mortgage Related Documents, any Copyright Security Agreement, any Patent Security Agreement, any Trademark Security Agreement, each Lien Waiver and all other agreements (including securities account control agreements), instruments and other documents, whether now existing or hereafter in effect, pursuant to which any Loan Party, any Subsidiary thereof, or any other Person shall grant or convey to the Administrative Agent or the Lenders a Lien in property as security for all or any portion of the Obligations.

“Settlement Date” has the meaning provided in Section 2.14.

“Shrink” means Inventory which has been lost, misplaced, stolen, or is otherwise unaccounted for.

“SOFR” means a rate equal to the secured overnight financing rate as administered by the Federal Reserve Bank of New York (or a successor administrator of the secured overnight financing rate).

“SOFR Loan” means a Loan bearing interest based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “Base Rate.”

“SOFR Revolving Credit Loan” means a Revolving Credit Loan that bears interest based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “Base Rate”.

“SOFR Term Loan” means a segment of a Term Loan that bears interest based on Adjusted Term SOFR, other than pursuant to clause (c) of the definition of “Base Rate”.

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

“Specialty Disposition” has the meaning specified in the Second Amendment.

“Specialty Pipe” means Specialty Pipe & Tube, Inc., a Delaware corporation.

“Specified Debt Payment” means any prepayment of Indebtedness made pursuant to Section 8.11(a)(ii) or (iii).

“Specified Investment” means any Investment made pursuant to Section 8.03(g) or (h).

“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 2.15(c)).

“Specified Pro Forma Transaction” means, with respect to any period, any Specified Transaction or other event that by the terms of the Loan Documents requires “Pro Forma Compliance” with a test or covenant hereunder or requires such test or covenant to be calculated on a “Pro Forma Basis.”

“Specified Restricted Payment” means any Restricted Payment pursuant to Section 8.06(e).

“Specified Transaction” means each Specified Debt Payment, Specified Investment, Specified Restricted Payment, and Permitted Acquisition.

“Subordinated Debt” means Indebtedness of any Loan Party or Subsidiary thereof which is expressly subordinated in right of payment to Payment in Full and which is in form and on terms satisfactory to, and approved in writing by, the Administrative Agent (including, without limitation, the obligations under the Master Intercompany Note).

“Subordinated Debt Documents” means any documents evidencing, or otherwise relating to, any Subordinated Debt, including, without limitation, the Master Intercompany Note, and any other subordination agreement entered into with respect to Subordinated Debt.

“Subordination Agreement” means each of (a) the Master Intercompany Note, and (b) any other written subordination agreement with respect to Subordinated Debt by and among Administrative Agent, the holder(s) of such Subordinated Debt, the issuer(s) of such Subordinated Debt and the other parties thereto, which agreement subordinates all of such Subordinated Debt to Payment in Full of all Obligations and is otherwise on subordination terms satisfactory to Administrative Agent, in its discretion.

“Subordination Provisions” means any provision relating to debt or lien subordination applicable to or contained in any documents evidencing any Subordinated Debt (including, without limitation, the obligations under any Master Intercompany Note).

“Subsidiary” of a Person means a corporation, partnership, joint venture, limited liability company or other business entity (but not a representative office of such Person) of which a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned, or the management of which is otherwise controlled, directly, or indirectly through one or more intermediaries, or both, by such Person. Unless the context clearly otherwise requires, each reference to Subsidiaries in this Agreement refers to Subsidiaries of the Loan Parties.

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

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

“Swap Termination Value” means, in respect of any one or more Swap Contracts, after taking into account the effect of any legally enforceable netting agreement relating to such Swap Contracts, (a) for any date on or after the date such Swap Contracts have been closed out and termination value(s) determined in accordance therewith, such termination value(s), and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Swap Contracts, as determined based upon one or more mid-market or other readily available quotations provided by any recognized dealer in such Swap Contracts (which may include a Lender or any Affiliate of a Lender); provided, however that it is understood and agreed that such amounts provided by the applicable Credit Product Provider with respect to Credit Product Obligations under Swap Contracts may include a commercially reasonable level of “cushion” to account for normal short-term market fluctuations.

“Swing Line” means the revolving credit facility made available by the Swing Line Lender pursuant to Section 2.04.

“Swing Line Borrowing” means a borrowing of a Swing Line Loan pursuant to Section 2.04.

“Swing Line Lender” means BMO in its capacity as provider of Swing Line Loans, or any successor swing line lender hereunder.

“Swing Line Loan” has the meaning specified in Section 2.04(a).

“Swing Line Loan Notice” means a notice, which may be in the form of Exhibit H, of a Swing Line Borrowing pursuant to Section 2.04(b).

“Swing Line Sublimit” means an amount equal to the lesser of (a) \$11,000,000 and (b) the Aggregate Revolving Credit Commitments. The Swing Line Sublimit is part of, and not in addition to, the Aggregate Revolving Credit Commitments.

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

“Synthetic Lease Obligation” means the monetary obligation of a Person under (a) a so-called synthetic, off-balance sheet or tax retention lease, or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment).

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

“Term Borrowing” means a borrowing consisting of simultaneous Term Loans of the same Type and, in the case of SOFR Loans, having the same Interest Period, made by each of the Term Lenders pursuant to Section 2.02.

“Term Credit Exposure” means, as to any Lender at any time, the aggregate principal amount at such time of its outstanding Term Loans and such Lender’s participation in Protective Advances at such time.

“Term Lender” means each Lender that has a Term Loan Commitment or, following termination of the Term Loan Commitments, has Term Credit Exposure.

“Term Loan” means a Base Rate Loan or a SOFR Loan made to the Borrowers pursuant to Section 2.01(b).

“Term Loan Commitment” means, as to each Term Lender, its obligation to make Term Loans to the Borrowers pursuant to Section 2.01(b) in an aggregate principal amount at any one time outstanding not to exceed the amount set forth opposite such Term Lender’s name on Schedule 2.01 or in the Assignment and Assumption pursuant to which such Term Lender becomes a party hereto, as applicable, as such amount may be adjusted from time to time in accordance with this Agreement. On the Second Amendment Effective Date, the Term Loan Commitments of all Lenders will be reduced to \$0 and the Term Loan Commitments will have expired.

“Term Loan Facility” means the facility described in Section 2.01(b), providing for Term Loans to the Borrowers by the Term Lenders in the maximum aggregate principal amount of \$5,000,000.

“Term Loan Note” means a promissory note made by the Borrowers in favor of a Term Lender evidencing Term Loans made by such Term Lender, substantially in the form of Exhibit A-2.

“Term Loan Outstandings” means, with respect to any Term Lender at any time, the sum of the Outstanding Amount of such Term Lender’s Term Loans at such time.

“Term SOFR” means, for the applicable tenor, the Term SOFR Reference Rate on the day (such day, the “Term SOFR Determination Day”) that is two (2) U.S. Government Securities Business Days prior to (a) in the case of SOFR Loans, the first day of such applicable Interest Period, or (b) with respect to Base Rate, such day of determination of the Base Rate, in each case as such rate is published by the Term SOFR Administrator; provided, however, that if as of 5:00 p.m. (New York City time) on any Term SOFR Determination Day the Term SOFR Reference Rate for the applicable tenor has not been published by the Term SOFR Administrator and a Benchmark Replacement Date with respect to the Term SOFR Reference Rate has not occurred, then Term SOFR will be the Term SOFR Reference Rate for such tenor as published by the Term SOFR Administrator on the first preceding U.S. Government Securities Business Day for which such Term SOFR Reference Rate for such tenor was published by the Term SOFR Administrator so long as such first preceding U.S. Government Securities Business Day is not more than three (3) U.S. Government Securities Business Days prior to such Term SOFR Determination Day.

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

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

“Threshold Amount” means \$1,000,000.

“Total Credit Exposure” means, as to any Lender at any time, the unused outstanding Commitments of such Lender and the Credit Exposure of such Lender at such time.

“Total Revolving Credit Outstandings” means, without duplication, the aggregate Outstanding Amount of all Revolving Credit Loans, Protective Advances, Swing Line Loans and Letter of Credit Obligations.

“Trademark Security Agreement” means any trademark security agreement pursuant to which any Loan Party grants to the Administrative Agent, for the benefit of the Secured Parties, a security interest such Person’s trademarks as security for the Obligations.

“Transactions” means the entering by the Borrowers of the Loan Documents to which they are a party, the funding of the Revolving Credit Facility on the Closing Date, and the funding of the Term Loan Facility on the Closing Date.

“Treasury Management and Other Services” means (a) all arrangements for the delivery of treasury and cash management services, including controlled disbursements, accounts or services and ACH transactions, (b) all commercial credit card, purchase card, p-card, debit cards, credit card processing services and merchant card services; and (c) all other banking products or services, including trade and supply chain finance services and leases and foreign currency

exchange, other than Letters of Credit, in each case, to or for the benefit of any Loan Party or an Affiliate of any Loan Party which are entered into or maintained with an entity that is a Lender or an Affiliate of a Lender at the time such agreement or other arrangement in connection with such Treasury Management and Other Services is entered into and which are not prohibited by the express terms of the Loan Documents.

“Trust Accounts” means Deposit Accounts or Securities Accounts containing cash, Cash Equivalents or Securities (a) held exclusively for payroll and payroll taxes, (b) held exclusively for employee benefit payments and expenses related to a Loan Party’s employees, (c) required to be collected, remitted or withheld exclusively to pay taxes (including, without limitation, federal and state withholding taxes (including the employer’s share thereof)) or (d) held by any Loan Party expressly in trust or as an escrow or fiduciary for another person which is not a Loan Party.

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

“UCC” means the Uniform Commercial Code as in effect from time to time in the State of Illinois; provided that if, with respect to any financing statement or by reason of any mandatory provisions of law, the perfection or the effect of perfection or non-perfection of the security interests granted to the Administrative Agent pursuant to any applicable Loan Document is governed by the Uniform Commercial Code as in effect in a jurisdiction of the United States other than Illinois, the term “UCC” shall also include the Uniform Commercial Code as in effect from time to time in such other jurisdiction for purposes of the provisions of this Agreement, each Loan Document and any financing statement relating to such perfection or effect of perfection or non-perfection.

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

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

“Unreimbursed Amount” has the meaning specified in Section 2.03(c)(i).

“Unused Facility Amount” means the daily amount by which (a) the Aggregate Revolving Credit Commitments exceeds (b) the sum of (i) Outstanding Amount of all Revolving Credit Loans other than Swing Line Loans and (ii) the Outstanding Amount of all Letter of Credit Obligations, subject to adjustment as provided in Section 2.17. For the avoidance of doubt, the Outstanding Amount of Swing Line Loans shall not be considered usage for purposes of determining the Unused Facility Amount.

“Unused Fee” has the meaning specified in Section 2.09(a).

“Unused Fee Rate” means a per annum rate equal to (a) 0.25%, if the average daily Unused Facility Amount was less than 40% of the Aggregate Revolving Credit Commitments during the preceding Fiscal Quarter, or (b) 0.35%, if the average daily Unused Facility Amount was 40% or more of the Aggregate Revolving Credit Commitments during such Fiscal Quarter.

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

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



“Value” means, for an Eligible Account, the face amount of such Eligible Account, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could reasonably be expected to be claimed by the Account Debtor or any other Person.

“Voting Equity Interests” means Equity Interests with respect to which the holders thereof are ordinarily, in the absence of contingencies, entitled to vote for the election of members of the Board of Directors of the issuer thereof, even if the right so to vote has been suspended by the happening of such a contingency.

“Wage Claim Reserves” means the reserves established by the Administrative Agent from time to time, in its reasonable discretion, to reflect the aggregate amount of liabilities of the Loan Parties that are or, upon nonpayment of or creation of a claim with respect to such liability, would, pursuant to Law, be secured by Liens on the Collateral that are senior to the Administrative Agent’s Liens arising from any state or Federal statutory provision for wage claims, unpaid taxes or other obligations or liabilities of the Loan Parties.

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

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

- (a) The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include,” “includes” and “including” shall be deemed to be followed by the phrase “without limitation.” The word “will” shall be construed to have the same meaning and effect as the word “shall.” Unless the context requires otherwise, (i) any definition of or reference to any agreement, instrument or other document (including any Organization Document) shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein or in any other Loan Document), (ii) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (iii) the words “herein,” “hereof” and “hereunder,” and words of similar import when used in any Loan Document, shall be construed to refer to such Loan Document in its entirety and not to any particular provision thereof, (iv) the phrase “in its discretion” shall be construed to mean in its sole and absolute discretion, (v) all references in a Loan Document to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, the Loan Document in which such references appear, (vi) any reference to any law shall include all statutory and regulatory provisions consolidating, amending, replacing or interpreting such law and any reference to any law or regulation shall, unless otherwise specified, refer to such law or regulation as amended, modified or supplemented from time to time, (vii) 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 and (viii) for avoidance of doubt, all covenants in Article VIII shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or be otherwise within the limitations of, another covenant (other than specific cross references permitting actions or conditions under other covenants) shall not

avoid the occurrence of an Event of Default or Default if such action is taken or condition exists.

- (b) In the computation of periods of time from a specified date to a later specified date, the word “from” means “from and including,” the words “to” and “until” each mean “to but excluding,” and the word “through” means “to and including.”
- (c) Section headings herein and in the other Loan Documents are included for convenience of reference only and shall not affect the interpretation of this Agreement or any other Loan Document.
- (d) A reference to Loan Parties’ “knowledge” or similar concept means actual knowledge of a Responsible Officer, or knowledge that a Responsible Officer would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter. “Actually known”, “knowingly” and “knowing” or other similar terms shall have correlative meanings.

### **1.03 Accounting Terms.**

- (a) Generally. All accounting terms not specifically or completely defined herein shall be construed in conformity with, and all financial data (including financial ratios and other financial calculations) required to be submitted pursuant to this Agreement shall be prepared in conformity with, GAAP applied on a consistent basis, as in effect on the Closing Date, except (i) with respect to any reports or financial information required to be delivered pursuant to Section 7.01, which shall be prepared in accordance with GAAP as in effect and applicable to that accounting period in respect of which reference to GAAP is being made and (ii) as otherwise specifically prescribed herein. Notwithstanding the foregoing, for purposes of determining compliance with any covenant (including the computation of any financial covenant) contained herein, Indebtedness of each Borrower and its Subsidiaries shall be deemed to be carried at 100% of the outstanding principal amount thereof, and the effects of FASB ASC 825 and FASB ASC 470-20 on financial liabilities shall be disregarded.
- (b) Changes in GAAP. If at any time any change in GAAP would affect the computation of any financial ratio or requirement set forth in any Loan Document, and either the Borrower Agent or the Required Lenders shall so request, the Administrative Agent, the Lenders and the Borrower Agent shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the approval of the Required Lenders); provided that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP prior to such change therein and (ii) the Borrower Agent shall provide to the Administrative Agent and the Lenders financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP. Notwithstanding anything to the contrary contained in this Section 1.03 or the definition of “Capital Lease Obligations”, in the event of a change in GAAP requiring all leases to be capitalized, only those leases that would have constituted Capital Leases on the Closing Date (assuming for purposes hereof that such leases were in existence on the Closing Date) shall be considered Capital Leases, and all calculations and deliverables under this Agreement or any other Loan Document shall be made in accordance therewith (provided that all financial statements delivered to the Administrative Agent in accordance with the terms of this Agreement after the date of such change in GAAP shall contain a schedule showing the adjustments necessary to

reconcile such financial statements with GAAP as in effect immediately prior to such change).

- (c) Consolidation of Variable Interest Entities. Except as expressly provided otherwise herein, all references herein to Consolidated financial statements of the Consolidated Group or to the determination of any amount for the Consolidated Group on a Consolidated basis or any similar reference shall, in each case, be deemed to include each variable interest entity that the Consolidated Group is required to consolidate pursuant to FASB ASC 810 as if such variable interest entity were a Subsidiary as defined herein.
- (d) Calculations. In computing financial ratios and other financial calculations of the Consolidated Group required to be submitted pursuant to this Agreement, all Indebtedness of the Consolidated Group shall be calculated at par value irrespective if the Consolidated Group has elected the fair value option pursuant to FASB Interpretation No. 159 – The Fair Value Option for Financial Assets and Financial Liabilities—Including an amendment of FASB Statement No. 115 (February 2007).

**1.04 Uniform Commercial Code.** As used herein, the following terms are defined in accordance with the UCC in effect in the State of Illinois from time to time: “Chattel Paper,” “Commodity Account,” “Commodity Contracts,” “Deposit Account,” “Documents,” “Equipment,” “General Intangibles,” “Instrument,” “Inventory,” “Record,” and “Securities Account.”

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

**1.06 Times of Day.** Unless otherwise specified, all references herein to times of day shall be references to Central time (daylight or standard, as applicable).

**1.07 Letter of Credit Amounts.** Unless otherwise specified herein, the amount of a Letter of Credit at any time shall be deemed to be the stated amount of such Letter of Credit in effect at such time; provided, however, that with respect to any Letter of Credit that, by its terms or the terms of any Issuer 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.

**1.08 Interest Rates.** The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to (a) the continuation of, administration of, submission of, calculation of or any other matter related to the Benchmark, any component definition thereof or rates referred to in the definition thereof, or any alternative, successor or replacement rate thereto (including any Benchmark Replacement), including whether the composition or characteristics of any such alternative, successor or replacement rate (including any Benchmark Replacement) will be similar to, or produce the same value or economic equivalence of, or have the same volume or liquidity as, the Benchmark or any other Benchmark prior to its discontinuance or unavailability, or (b) the effect, implementation or composition of any Conforming Changes. The Administrative Agent and its affiliates or other related entities may engage in transactions that affect the calculation of the Benchmark, any alternative, successor or replacement rate (including any Benchmark Replacement) and/or any relevant adjustments thereto, in each case, in a manner adverse to any Borrower. The Administrative Agent may select information sources or services in its reasonable discretion to ascertain the

Benchmark or any other Benchmark, in each case pursuant to the terms of this Agreement, and shall have no liability to any Borrower, any Lender or any other person or entity for damages of any kind, including direct or indirect, special, punitive, incidental or consequential damages, costs, losses or expenses (whether in tort, contract or otherwise and whether at law or in equity), for any error or calculation of any such rate (or component thereof) provided by any such information source or service.

## ARTICLE II THE COMMITMENTS AND CREDIT EXTENSIONS

### 2.01 Loan Commitments.

- (a) Revolving Credit Commitments. Subject to the terms and conditions set forth herein, each Lender severally agrees to make loans (each such loan, a “Revolving Credit Loan”) to the Borrowers from time to time during the Availability Period for the Revolving Credit Facility, in an aggregate amount not to exceed at any time outstanding the lesser of (i) the amount of such Lender’s Revolving Credit Commitment, or (ii) such Lender’s Applicable Revolving Credit Percentage of the Borrowing Base; provided however, that after giving effect to any Revolving Credit Borrowing, (A) the Total Revolving Credit Outstandings shall not exceed the Maximum Borrowing Amount, and (B) the Revolving Credit Exposure of each Lender shall not exceed such Lender’s Revolving Credit Commitment.

Within such limits and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.01(a), prepay under Section 2.06(a), and reborrow under this Section 2.01(a). The Administrative Agent shall have the right, at any time and from time to time on and after the Closing Date in its Credit Judgment, to establish, modify or eliminate Reserves by written notice to the Borrowers, including pursuant to Section 7.02(a).

- (b) Term Loan Commitments. Subject to the terms and conditions set forth herein, each Lender severally agrees to make one or more loans to the Borrowers from time to time, on any Business Day during the Availability Period for the Term Loan Facility, in an aggregate amount not to exceed such Lender’s Term Loan Commitment. Each advance of the Term Loan shall be made simultaneously by the Lenders in accordance with their respective Applicable Percentages of the Term Loan Facility. Amounts borrowed under this Section 2.01(b) and repaid or prepaid may not be reborrowed. Term Loans may be Base Rate Term Loans or SOFR Term Loans, as further provided herein.

- (c) Overadvances and Protective Advances.

- (i) Overadvances.

- (1) If at any time the aggregate principal balance of all Loans exceeds the Borrowing Base (an “Overadvance”), the excess amount shall be payable by the Borrowers on demand by the Administrative Agent. All Overadvance Loans shall constitute Obligations secured by the Collateral and shall be entitled to all benefits of the Loan Documents.
- (2) The Administrative Agent may, in its discretion (but shall have absolutely no obligation to), require Lenders to honor requests for Overadvance Loans and to forbear from requiring the applicable Borrower(s) to cure an Overadvance as long as (a) such Overadvance does not continue for more than 30 consecutive days and (b) the aggregate amount of the Overadvances existing at any time, together with the Protective Advances outstanding at any time, do not exceed ten percent (10.0%) of the Commitments then in effect. Overadvance Loans may be required even if the

conditions set forth in Section 5.02 have not been satisfied. In no event shall Overadvance Loans be required that would cause the Total Revolving Credit Outstandings to exceed the Aggregate Revolving Credit Commitments. Required Lenders may at any time revoke the Administrative Agent's authority to make further Overadvance Loans to any or all Borrowers by written notice to the Administrative Agent. Any funding of an Overadvance Loan or sufferance of an Overadvance shall not constitute a waiver by the Administrative Agent or Lenders of the Event of Default caused thereby. In no event shall any Borrower or other Loan Party be deemed a beneficiary of this Section 2.01(c) nor authorized to enforce any of its terms.

(ii) Protective Advances.

- (1) The Administrative Agent shall be authorized by each Borrower and the Lenders from time to time in the Administrative Agent's sole discretion (but shall have absolutely no obligation to), to make Base Rate Loans to the Borrowers on behalf of the Lenders (any of such Loans are herein referred to as "Protective Advances") which the Administrative Agent deems necessary or desirable to (a) preserve or protect Collateral or any portion thereof or (b) to enhance the likelihood of, or maximize the amount of, repayment of the Loans and other Credit Exposure; provided that no Protective Advance shall cause the aggregate amount of the Total Revolving Credit Outstandings at such time to exceed the Aggregate Revolving Credit Commitments then in effect. All Protective Advances made by the Administrative Agent constitute Obligations, secured by the Collateral and shall be treated for all purposes as Base Rate Loans.
- (2) The aggregate amount of Protective Advances outstanding at any time shall not exceed ten percent (10.0% percent) of the Aggregate Revolving Credit Commitments then in effect, and such Protective Advances, together with the aggregate amount of Overadvances existing at any time, shall not exceed ten percent (10.0%) of the Aggregate Revolving Credit Commitments then in effect. Protective Advances may be made even if the conditions set forth in Section 5.02 have not been satisfied. Each Lender shall participate in each Protective Advance on a ratable basis. Required Lenders may at any time revoke the Administrative Agent's authority to make further Protective Advances to any or all Borrowers by written notice to the Administrative Agent. Absent such revocation, the Administrative Agent's determination that funding of a Protective Advance is appropriate shall be conclusive. At any time that there is sufficient Availability and the conditions precedent set forth in Section 5.02 have been satisfied, the Administrative Agent may request the Lenders to make a Loan to repay a Protective Advance. At any other time, the Administrative Agent may require the Lenders to fund their risk participations described in Section 2.01(c)(ii)(C).
- (3) Upon the making of a Protective Advance by the Administrative Agent (whether before or after the occurrence of a Default or Event of Default), each Lender shall be deemed, without further action by any party hereto, to have unconditionally and irrevocably purchased from the Administrative Agent without recourse or warranty, an undivided interest and participation in such Protective Advance equal to the proportion of the Total Credit Exposure of such Lender to the Total Credit Exposure of all Lenders (its "Ratable Share") of such Protective Advance. Each Lender shall transfer (a "Transfer") the amount of such Lender's purchased interest and participation promptly when requested to the Administrative Agent, to such account of the Administrative Agent as the Administrative Agent may designate, but in any case not later than 3:00 P.M. on the Business Day notified (if notice is provided by the Administrative Agent prior to 12:00 P.M. and otherwise on the immediately following Business Day (the "Transfer Date"). Transfers may occur during the existence of a

Default or Event of Default and whether or not the applicable conditions precedent set forth in Section 5.02 have then been satisfied. Such amounts transferred to the Administrative Agent shall be applied against the amount of the applicable Protective Advance and shall constitute Loans of such Lenders, respectively. If any such amount is not transferred to the Administrative Agent by any Lender on such Transfer Date, the Administrative Agent shall be entitled to recover such amount on demand from such Lender together with interest thereon for each day from the date such payment was due until the date such amount is paid to the Administrative Agent, at the Overnight Rate for three (3) Business Days and thereafter at the Base Rate. From and after the date, if any, on which any Lender is required to fund, and funds, its interest and participation in any Protective Advance purchased hereunder, the Administrative Agent shall promptly distribute to such Lender, such Lender's Ratable Share of all payments of principal and interest and all proceeds of Collateral received by the Administrative Agent in respect of such Protective Advance.

(d) Determination of the Borrowing Base. The Borrowing Base shall be established and adjusted from time to time as follows:

- (i) The amount of the Borrowing Base shall initially be established in each Borrowing Base Certificate delivered to the Administrative Agent by the Borrower Agent pursuant to Section 7.02(a). The Administrative Agent shall have the right, at any time and from time to time on and after the Closing Date in good faith and in the exercise of its Credit Judgment to establish, modify or eliminate Reserves. The Borrowing Base shall also be subject to adjustment by the Administrative Agent in its Credit Judgment (A) to reflect any determination that the amount of the Borrowing Base set forth in a Borrowing Base Certificate differs materially from the actual Borrowing Base determined by the Administrative Agent; (B) to reflect Administrative Agent's reasonable estimate of declines in value of Borrowing Base Assets due to collections received in the Concentration Account or otherwise; (C) to reflect changes in advance rates as a result of changes in dilution, quality, mix and other factors affecting the Borrowing Base Assets, (D) to the extent any information or calculation does not comply with this Agreement and (E) to reflect other adjustments in accordance with the terms of this Agreement.
- (ii) In connection with any adjustment to the Borrowing Base, the Agent shall (A) promptly notify the Borrower Agent in writing (including via e-mail) whenever the Agent determines that the amount of the Borrowing Base set forth in a Borrowing Base Certificate differs materially from the actual Borrowing Base determined by the Agent and (B) discuss with Borrower Agent (1) the basis for any such difference and (2) any changes made or proposed to be made to the amount of the Borrowing Base, including the reasons for any imposition of or changes in Reserves or any change in advance rates or eligibility criteria with respect to Borrowing Base Assets. The Agent shall provide the Borrower Agent with reasonable time to consider and discuss with the Agent the discrepancy and any proposed changes to the amount of the Borrowing Base. After such discussion, the determination of the Borrowing Base by the Agent, in its reasonable discretion, shall be presumptively correct and shall constitute the Borrowing Base for all purposes hereunder.

## **2.02 Borrowings, Conversions and Continuations of Loans.**

- (a) Each Borrowing, each conversion of Loans from one Type to the other, and each continuation of SOFR Loans shall be made upon the Borrower's irrevocable notice to the Administrative Agent, which may be given by telephone. Each such notice must be received by the Administrative Agent not later than 10:00 A.M. (i) three Business Days

prior to the requested date of any Borrowing of, conversion to or continuation of SOFR Loans or of any conversion of SOFR Loans to Base Rate Loans, and (ii) on the requested date of any Borrowing of Base Rate Loans. Each telephonic notice by the Borrowers pursuant to this Section 2.02(a) must be promptly confirmed in writing by a Responsible Officer of the Borrower Agent. Each Borrowing of, conversion to or continuation of SOFR Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. Except as provided in Sections 2.02(f), 2.03(c) and 2.04(c), each Borrowing of or conversion to Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof. During a Dominion Trigger Period, there shall be no minimum borrowing amounts for Base Rate Loans. Each such notice (whether telephonic or written) shall specify (i) whether the Borrowers are requesting a Term Loan Borrowing or a Revolving Credit Borrowing, (ii) the principal amount of Loans to be borrowed, converted or continued, (iii) the Type of Loans to be borrowed or to which existing Loans are to be converted, (iv) the requested date of the Borrowing, conversion or continuation, as the case may be (which shall be a Business Day) and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrowers fail to specify a Type of Loan or if the Borrowers fail to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to, Base Rate Loans. Any such automatic conversion to Base Rate Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable SOFR Loans. If the Borrowers request a Borrowing of, conversion to, or continuation of SOFR Loans in any such Committed Loan Notice, but fail to specify an Interest Period, they will be deemed to have specified an Interest Period of one month.

- (b) Following receipt of a Committed Loan Notice for a Facility, the Administrative Agent shall promptly notify each Appropriate Lender of the amount of its Applicable Percentage under such Facility of the applicable Loans, and if no timely notice of a conversion or continuation is provided by the Borrowers, the Administrative Agent shall notify each Appropriate Lender of the details of any automatic conversion to Base Rate Loans described in the preceding subsection. In the case of a Term Loan Borrowing or Revolving Credit Borrowing, each Appropriate Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 P.M. on the Business Day specified in the applicable Committed Loan Notice. Upon satisfaction of the applicable conditions set forth in Section 5.02 and 5.03, as applicable (and, if such Borrowing is the initial Credit Extension, Section 5.01), the Administrative Agent shall make all funds so received available to the Borrowers in like funds as received by the Administrative Agent either by (i) crediting the account of the Borrowers on the books of BMO with the amount of such funds or (ii) wire transfer of such funds, in each case in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower; provided, however, that if, on the date a Committed Loan Notice with respect to a Revolving Credit Borrowing is given by the Borrower, there are Letter of Credit Borrowings outstanding, then the proceeds of such Revolving Credit Borrowing, first, shall be applied to the payment in full of any such Letter of Credit Borrowings, and second, shall be made available to the Borrowers as provided above.
- (c) Except as otherwise provided herein, a SOFR Loan may be continued or converted only on the last day of an Interest Period for such SOFR Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as SOFR Loans without the consent of the Required Lenders.
- (d) The Administrative Agent shall promptly notify the Borrower Agent and the Lenders of the interest rate applicable to any Interest Period for SOFR Loans upon determination of such interest rate. At any time that Base Rate Loans are outstanding, the Administrative

Agent shall notify the Borrower Agent and the Lenders of any change in BMO's prime rate used in determining the Base Rate promptly following the public announcement of such change.

(e) [Reserved].

(f) Borrowers and each Lender hereby irrevocably authorize the Administrative Agent, in the Administrative Agent's sole discretion, to advance to Borrowers, and/or to pay and charge to Borrowers' Loan Account hereunder, all sums necessary to pay (i) any interest accrued on the Obligations when due and to pay all fees, costs and expenses and other Obligations at any time owed by any Loan Party to the Administrative Agent or any Lender hereunder and (ii) any service charge or expenses due pursuant to Section 11.04 when due. The Administrative Agent shall advise the Borrower Agent of any such advance or charge promptly after the making thereof. Such action on the part of the Administrative Agent shall not constitute a waiver of the Administrative Agent's rights and the Borrowers' obligations under this Agreement. Any amount which is added to the principal balance of the Loan Account as provided in this Section 2.02(f) shall constitute Revolving Credit Loans (notwithstanding the failure of the Borrowers to satisfy any of the conditions to Credit Extensions in Section 5.02) and Obligations hereunder and shall bear interest at the interest rate then and thereafter applicable to Base Rate Loans.

## **2.03 Letters of Credit.**

(a) The Letter of Credit Commitment.

(i) Subject to the terms and conditions set forth herein, (A) the Letter of Credit Issuer agrees, in reliance upon the agreements of the Revolving Credit Lenders set forth in this Section 2.03, (1) from time to time on any Business Day during the period from the Closing Date until the earlier to occur of the Letter of Credit Expiration Date or the termination of the Availability Period, to issue Letters of Credit at the request of the Borrower Agent for the account of a Borrower and to amend Letters of Credit previously issued by it, in accordance with subsection (b) below, and (2) to honor drafts under the Letters of Credit; and (B) the Revolving Credit Lenders severally agree to participate in Letters of Credit issued for the account of a Borrower and any drawings thereunder; provided that the Letter of Credit Issuer shall not be obligated to make any Letter of Credit Extension with respect to any Letter of Credit, and no Revolving Credit Lender shall be obligated to participate in any Letter of Credit, if as of the date of such Letter of Credit Extension, (A) the Total Revolving Credit Outstandings would exceed the Maximum Borrowing Amount, (B) the Revolving Credit Exposure of any Revolving Credit Lender would exceed such Revolving Credit Lender's Revolving Credit Commitment, or (C) the Outstanding Amount of all Letter of Credit Obligations would exceed the Letter of Credit Sublimit. Each request by the Borrower Agent for the issuance or amendment of a Letter of Credit shall be deemed to be a representation by the Borrower Agent that the Letter of Credit Extension so requested complies with the conditions set forth in the proviso to the preceding sentence. Within the foregoing limits, and subject to the terms and conditions hereof, the Borrowers' ability to obtain Letters of Credit shall be fully revolving, and accordingly the Borrowers may, during the foregoing period, obtain Letters of Credit to replace Letters of Credit that have expired or that have been drawn upon and reimbursed.

(ii) The Letter of Credit Issuer shall not issue any Letter of Credit, if:



- (1) subject to Section 2.03(b)(iii), the expiry date of such requested Letter of Credit would occur more than twelve months after the date of issuance or last renewal, unless in each case the Required Lenders have approved such expiry date; or
  - (2) the expiry date of such requested Letter of Credit would occur after the Letter of Credit Expiration Date, unless Cash Collateralized or all the Lenders have approved such expiry date.
- (iii) The Letter of Credit Issuer shall not be under any obligation to issue any Letter of Credit if:
- (1) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain the Letter of Credit Issuer from issuing such Letter of Credit or any Law applicable to the Letter of Credit Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over the Letter of Credit Issuer shall prohibit, or request that the Letter of Credit Issuer refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon the Letter of Credit Issuer with respect to such Letter of Credit any restriction, reserve or capital requirement (for which the Letter of Credit Issuer is not otherwise compensated hereunder) not in effect on the Closing Date, or shall impose upon the Letter of Credit Issuer any unreimbursed loss, cost or expense which was not applicable on the Closing Date and which the Letter of Credit Issuer in good faith deems material to it;
  - (2) the issuance of such Letter of Credit would violate one or more policies of the Letter of Credit Issuer; provided those policies have been provided or made available to Borrowers;
  - (3) such Letter of Credit is in an initial amount less than \$10,000; or
  - (4) any Lender is at that time a Defaulting Lender, unless the Letter of Credit Issuer has entered into arrangements, including the delivery of Cash Collateral, satisfactory to the Letter of Credit Issuer (in its discretion) with the Borrowers or such Lender to eliminate the Letter of Credit Issuer's actual or potential Fronting Exposure (after giving effect to Section 2.17(a)(iv)) 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 the Letter of Credit Issuer has actual or potential Fronting Exposure, as it may elect in its discretion.
- (iv) The Letter of Credit Issuer shall not amend any Letter of Credit if the Letter of Credit Issuer would not be permitted at such time to issue such Letter of Credit in its amended form under the terms hereof.
- (v) The Letter of Credit Issuer shall be under no obligation to amend any Letter of Credit if (A) the Letter of Credit Issuer would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (B) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.
- (vi) The Letter of Credit Issuer shall act on behalf of the Revolving Credit Lenders with respect to any Letters of Credit issued by it and the documents associated therewith, and the Letter of Credit Issuer shall have all of the benefits and immunities (A) provided to the Administrative Agent in Article X with respect to any acts taken or omissions suffered by the Letter of Credit Issuer in connection with Letters of Credit

issued by it or proposed to be issued by it and Issuer Documents pertaining to such Letters of Credit as fully as if the term "Administrative Agent" as used in Article X included the Letter of Credit Issuer with respect to such acts or omissions, and (B) as additionally provided herein with respect to the Letter of Credit Issuer.

(b) Procedures for Issuance and Amendment of Letters of Credit; Auto-Extension Letters of Credit

- (i) Each Letter of Credit shall be issued or amended, as the case may be, upon the request of the Borrower Agent delivered to the Letter of Credit Issuer (with a copy to the Administrative Agent) in the form of a Letter of Credit Application, appropriately completed and signed by a Responsible Officer of the Borrower Agent and, if applicable, of the applicable Borrower. Such Letter of Credit Application must be received by the Letter of Credit Issuer and the Administrative Agent not later than 12:00 noon at least two (2) Business Days (or such later date and time as the Administrative Agent and the Letter of Credit Issuer may agree in a particular instance in its discretion) prior to the proposed issuance date or date of amendment, as the case may be. In the case of a request for an initial issuance of a Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Letter of Credit Issuer: (A) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (B) the amount thereof; (C) the expiry date thereof; (D) the name and address of the beneficiary thereof; (E) the documents to be presented by such beneficiary in case of any drawing or presentation thereunder; (F) the full text of any certificate to be presented by such beneficiary in case of any drawing or presentation thereunder; and (G) such other matters as the Letter of Credit Issuer may require. In the case of a request for an amendment of any outstanding Letter of Credit, such Letter of Credit Application shall specify in form and detail satisfactory to the Letter of Credit Issuer (A) the Letter of Credit to be amended; (B) the proposed date of amendment thereof (which shall be a Business Day); (C) the nature of the proposed amendment; and (D) such other matters as the Letter of Credit Issuer may require. Additionally, the Borrower Agent shall furnish to the Letter of Credit Issuer and the Administrative Agent such other documents and information pertaining to such requested Letter of Credit issuance or amendment, including any Issuer Documents, as the Letter of Credit Issuer or the Administrative Agent may require.
- (ii) Promptly after receipt of any Letter of Credit Application, the Letter of Credit Issuer will confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has received a copy of such Letter of Credit Application from the applicable Borrower and, if not, the Letter of Credit Issuer will provide the Administrative Agent with a copy thereof. Unless the Letter of Credit Issuer has received written notice from any Revolving Credit Lender, the Administrative Agent or any Borrower, at least one (1) Business Day prior to the requested date of issuance or amendment of the applicable Letter of Credit, that one or more applicable conditions contained in Article V shall not then be satisfied, then, subject to the terms and conditions hereof, the Letter of Credit Issuer shall, on the requested date, issue a Letter of Credit for the account of the applicable Borrower or enter into the applicable amendment, as the case may be, in each case in accordance with the Letter of Credit Issuer's usual and customary business practices. Immediately upon the issuance of each Letter of Credit, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Letter of Credit Issuer a risk participation in such Letter of Credit in an amount equal to the product of such Revolving Credit Lender's Applicable Percentage times the amount of such Letter of Credit.

(iii) If the Borrower Agent so requests in any applicable Letter of Credit Application, the Letter of Credit Issuer may, in its discretion, agree to issue a Letter of Credit other than a commercial 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 Letter of Credit Issuer 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 Letter of Credit Issuer, the Borrower Agent shall not be required to make a specific request to the Letter of Credit Issuer for any such extension. Once an Auto-Extension Letter of Credit has been issued, the Revolving Credit Lenders shall be deemed to have authorized (but may not require) the Letter of Credit Issuer to permit the extension of such Letter of Credit at any time to an expiry date not later than the Letter of Credit Expiration Date; provided, however, that the Letter of Credit Issuer shall not permit any such extension if (A) the Letter of Credit Issuer 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 (by reason of the provisions clause (ii) or (iii) of Section 2.03(a) or otherwise), or (B) it has received notice (which may be by telephone or in writing) on or before the day that is five (5) Business Days before the Non-Extension Notice Date (1) from the Administrative Agent that the Required Lenders have elected not to permit such extension or (2) from the Administrative Agent, any Revolving Credit Lender or the Borrower Agent that one or more of the applicable conditions specified in Section 5.02 is not then satisfied, and in each such case directing the Letter of Credit Issuer not to permit such extension.

(iv) Promptly after its delivery of any Letter of Credit or any amendment to a Letter of Credit to an advising bank with respect thereto or to the beneficiary thereof, the Letter of Credit Issuer will also deliver to the Borrower Agent and the Administrative Agent a true and complete copy of such Letter of Credit or amendment.

(c) Drawings and Reimbursements; Funding of Participations.

(i) Upon receipt from the beneficiary of any Letter of Credit of any notice of a drawing or presentation of documents under such Letter of Credit, the Letter of Credit Issuer shall notify the Borrower Agent and the Administrative Agent thereof. Not later than 1:00 P.M. on the date of any payment by the Letter of Credit Issuer under a Letter of Credit (each such date, an “Honor Date”), the Borrowers shall reimburse the Letter of Credit Issuer through the Administrative Agent in Dollars and in an amount equal to the amount of such drawing. If the Borrowers fail to reimburse the Letter of Credit Issuer by such time, the Administrative Agent shall promptly notify each Revolving Credit Lender of the Honor Date, the amount of the unreimbursed drawing or payment (the “Unreimbursed Amount”), and the amount of such Revolving Credit Lender’s Applicable Percentage thereof. In such event, the Borrower Agent shall be deemed to have requested a Revolving Credit Borrowing of Base Rate Loans to be disbursed on the Honor Date in an amount equal to the Unreimbursed Amount, without regard to the minimum and multiples specified in Section 2.03 for the principal amount of Base Rate Loans, but subject to the amount of the unutilized portion of the Aggregate Revolving Credit Commitments and the conditions set forth in Section 5.02 (other than the delivery of a Committed Loan Notice). Any notice given by the Letter of Credit Issuer or the Administrative Agent pursuant to this Section 2.03(c)(i) may be given by telephone if immediately confirmed in writing; provided that the lack of such an immediate confirmation shall not affect the conclusiveness or binding effect of such notice.

- (ii) Each Revolving Credit Lender shall upon any notice pursuant to Section 2.03(c)(i) make funds available (and the Administrative Agent may apply Cash Collateral provided for this purpose) to the Administrative Agent for the account of the Letter of Credit Issuer, in Dollars, at the Administrative Agent's Office for Dollar denominated payments an amount equal to its Applicable Percentage of the Unreimbursed Amount not later than 3:00 P.M. on the Business Day specified in such notice by the Administrative Agent, whereupon, subject to the provisions of Section 2.03(c)(iii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Revolving Credit Loan to the Borrower Agent in such amount. The Administrative Agent shall remit the funds so received to the Letter of Credit Issuer in Dollars.
- (iii) With respect to any Unreimbursed Amount that is not fully refinanced by a Revolving Credit Borrowing of Base Rate Loans because the conditions set forth in Section 5.02 cannot be satisfied or for any other reason, the Borrowers shall be deemed to have incurred from the Letter of Credit Issuer a Letter of Credit Borrowing in the amount of the Unreimbursed Amount that is not so refinanced, which Letter of Credit Borrowing shall be due and payable on demand (together with interest) and shall bear interest at the Default Rate. In such event, each Revolving Credit Lender's payment to the Administrative Agent for the account of the Letter of Credit Issuer pursuant to Section 2.03(c)(ii) shall be deemed payment in respect of its participation in such Letter of Credit Borrowing and shall constitute a Letter of Credit Advance from such Revolving Credit Lender in satisfaction of its participation obligation under this Section 2.03.
- (iv) Until each Revolving Credit Lender funds its Revolving Credit Loan or Letter of Credit Advance pursuant to this Section 2.03(c) to reimburse the Letter of Credit Issuer for any amount drawn under any Letter of Credit, interest in respect of such Revolving Credit Lender's Applicable Percentage of such amount shall be solely for the account of the Letter of Credit Issuer.
- (v) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or Letter of Credit Advances to reimburse the Letter of Credit Issuer for amounts drawn under Letters of Credit, as contemplated by this Section 2.03(c), shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against the Letter of Credit Issuer, any Borrower or any other Person for any reason whatsoever; (B) the occurrence or continuance of a Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing. No such making of a Letter of Credit Advance shall relieve or otherwise impair the obligation of the Borrowers to reimburse the Letter of Credit Issuer for the amount of any payment made by the Letter of Credit Issuer under any Letter of Credit, together with interest as provided herein.
- (vi) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Letter of Credit Issuer any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.03(c) by the time specified in Section 2.03(c)(ii), then, without limiting the other provisions of this Agreement, the Letter of Credit Issuer shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Letter of Credit Issuer at a rate per annum equal to the applicable Overnight Rate for three (3) Business Days and thereafter at the Base Rate, plus any administrative,

processing or similar fees customarily charged by the Letter of Credit Issuer in connection with the foregoing. A certificate of the Letter of Credit Issuer submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (vi) shall be conclusive absent manifest error.

- (d) Repayment of Participations. At any time after the Letter of Credit Issuer has made a payment under any Letter of Credit and has received from any Revolving Credit Lender such Revolving Credit Lender's Letter of Credit Advance in respect of such payment in accordance with Section 2.03(c), if the Administrative Agent receives for the account of the Letter of Credit Issuer any payment in respect of the related Unreimbursed Amount or interest thereon (whether directly from the Borrowers or otherwise, including proceeds of Cash Collateral applied thereto by the Administrative Agent), the Administrative Agent will distribute to such Revolving Credit Lender its Applicable Revolving Credit Percentage thereof in Dollars (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender's Letter of Credit Advance was outstanding) and in the same funds as those received by the Administrative Agent.
- (e) Obligations Absolute. The obligation of the Borrowers to reimburse the Letter of Credit Issuer for each drawing under each Letter of Credit, and to repay each Letter of Credit Borrowing shall be joint and several and absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:
- (i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other agreement or instrument relating thereto;
  - (ii) the existence of any claim, counterclaim, set-off, defense or other right that any Loan Party or any Subsidiary thereof may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), the Letter of Credit Issuer or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction;
  - (iii) any draft, demand, certificate or other document or endorsement presented under or in connection with such 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; or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit;
  - (iv) any payment by the Letter of Credit Issuer under such Letter of Credit against presentation of a draft or certificate that does not strictly comply with the terms of such Letter of Credit, or any payment made by the Letter of Credit Issuer under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit, including any arising in connection with any proceeding under any Debtor Relief Law; or
  - (v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or a discharge of, any Loan Party or any Subsidiary thereof.

- (f) Role of Letter of Credit Issuer. Each Revolving Credit Lender and the Borrowers agree that, in paying any drawing under a Letter of Credit, the Letter of Credit Issuer 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. None of the Letter of Credit Issuer, the Administrative Agent, any of their respective Related Parties nor any correspondent, participant or assignee of the Letter of Credit Issuer shall be liable to any Lender for (i) any action taken or omitted in connection herewith at the request or with the approval of the Revolving Credit Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; or (iii) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Each Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit. The Letter of Credit Issuer 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 the Letter of Credit Issuer shall not be responsible for the validity or sufficiency of any instrument endorsing, transferring or assigning or purporting to endorse, 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.
- (g) Applicability of ISP and UCP. Unless otherwise expressly agreed by the Letter of Credit Issuer and the Borrower Agent, 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.
- (h) Fronting Fee and Documentary and Processing Charges Payable to Letter of Credit Issuer. The Borrowers shall pay directly to the Letter of Credit Issuer for its own account a fronting fee with respect to each Letter of Credit, at a rate equal to one-eighth of one percent (0.125%) per annum, computed on the amount of such Letter of Credit (a “Fronting Fee”), and payable upon the issuance or renewal (automatic or otherwise) thereof or upon any amendment increasing the amount thereof. In addition, the Borrowers shall pay directly to the Letter of Credit Issuer for its own account, in Dollars, the customary issuance, amendment, cancellation, negotiation, presentation and other processing fees, and other standard costs and charges, of the Letter of Credit Issuer relating to letters of credit issued by it as from time to time in effect. Such customary fees and standard costs and charges are due and payable on demand and are nonrefundable.
- (i) Conflict with Issuer Documents. In the event of any conflict between the terms hereof and the terms of any Issuer Document, the terms hereof shall control.

#### **2.04 Swing Line Loans.**

- (a) The Swing Line. Subject to the terms and conditions set forth herein, the Swing Line Lender may, but shall not be obligated to, make loans in reliance upon the agreements of the other Lenders set forth in this Section 2.04 in Dollars (each such loan, a “Swing Line Loan”) to the Borrowers from time to time on any Business Day during the Availability Period in an aggregate amount not to exceed at any time outstanding the amount of the Swing Line Sublimit, notwithstanding the fact that such Swing Line Loans, when aggregated with the Applicable Percentage of the Outstanding Amount of Revolving

Credit Loans and Letter of Credit Obligations of the Revolving Credit Lender acting as Swing Line Lender, may exceed the amount of such Revolving Credit Lender's Revolving Credit Commitment; provided, however, that after giving effect to any Swing Line Loan, (i) the Total Revolving Credit Outstandings shall not exceed the Maximum Borrowing Amount, and (ii) the Revolving Credit Exposure of any Revolving Credit Lender shall not exceed such Revolving Credit Lender's Revolving Credit Commitment, and provided, further, that the Borrowers shall not use the proceeds of any Swing Line Loan to refinance any outstanding Swing Line Loan. Within the foregoing limits and subject to the discretion of the Swing Line Lender to make Swing Line Loans, and subject to the other terms and conditions hereof, the Borrowers may borrow under this Section 2.04, prepay under Section 2.06(a)(ii), and reborrow under this Section 2.04. Each Swing Line Loan shall be a Base Rate Revolving Credit Loan. Immediately upon the making of a Swing Line Loan, each Revolving Credit Lender shall be deemed to, and hereby irrevocably and unconditionally agrees to, purchase from the Swing Line Lender a risk participation in such Swing Line Loan in an amount equal to the product of such Revolving Credit Lender's Applicable Percentage times the amount of such Swing Line Loan.

- (b) Borrowing Procedures. Each Swing Line Borrowing shall be made upon the Borrower Agent's irrevocable notice to the Swing Line Lender and the Administrative Agent, which may be given by telephone. Each such notice must be received by the Swing Line Lender and the Administrative Agent not later than 12:00 noon on the requested borrowing date, and shall specify (i) the amount to be borrowed, which shall be a minimum of \$500,000 and integral multiples of \$100,000 in excess thereof, and (ii) the requested borrowing date, which shall be a Business Day. Each such telephonic notice must be confirmed promptly by delivery to the Swing Line Lender and the Administrative Agent of a written Swing Line Loan Notice, appropriately completed and signed by a Responsible Officer of the Borrower Agent. Promptly after receipt by the Swing Line Lender of any telephonic Swing Line Loan Notice, the Swing Line Lender will (i) deliver notice to the Borrower Agent and the Administrative Agent as to whether it will or will not make such Swing Line Loan available to the Borrowers and, if agreeing to make such Swing Line Loan, (ii) confirm with the Administrative Agent (by telephone or in writing) that the Administrative Agent has also received such Swing Line Loan Notice and, if not, the Swing Line Lender will notify the Administrative Agent (by telephone or in writing) of the contents thereof. Unless the Swing Line Lender has received notice (by telephone or in writing) from the Administrative Agent (including at the request of any Revolving Credit Lender) prior to 1:00 P.M. on the date of the proposed Swing Line Borrowing (A) directing the Swing Line Lender not to make such Swing Line Loan as a result of the limitations set forth in the proviso to the first sentence of Section 2.04(a), or (B) that one or more of the applicable conditions specified in Article V is not then satisfied, then, subject to the terms and conditions hereof, the Swing Line Lender may, not later than 3:00 P.M. on the borrowing date specified in such Swing Line Loan Notice, make the amount of its Swing Line Loan available to the Borrower Agent at its office by crediting the account of the Borrower Agent on the books of the Swing Line Lender in Same Day Funds.

(c) Refinancing of Swing Line Loans.

- (i) The Swing Line Lender at any time in its discretion, but no less frequently than weekly, may request, on behalf of the Borrowers (which hereby irrevocably authorize the Swing Line Lender to so request on their behalf), that each Revolving Credit Lender make a Base Rate Revolving Credit Loan in an amount equal to such Revolving Credit Lender's Applicable Revolving Credit Percentage of the amount of Swing Line Loans then outstanding. Such request shall be made in writing (which written request shall be

deemed to be a Committed Loan Notice for purposes hereof) and in accordance with the requirements of Section 2.02 without regard to the minimum and multiples specified therein for the principal amount of Base Rate Loans, but subject to the unutilized portion of the Aggregate Revolving Credit Commitments and the conditions set forth in Section 5.02. The Swing Line Lender shall furnish the Borrower Agent with a copy of the applicable Committed Loan Notice promptly after delivering such notice to the Administrative Agent. Each Revolving Credit Lender shall make an amount equal to its Applicable Percentage of the amount specified in such Committed Loan Notice available to the Administrative Agent in Same Day Funds (and the Administrative Agent may apply Cash Collateral available with respect to the applicable Swing Line Loan) for the account of the Swing Line Lender at the Administrative Agent's Office not later than 2:00 P.M. on the day specified in such Committed Loan Notice, whereupon, subject to Section 2.04(c)(ii), each Revolving Credit Lender that so makes funds available shall be deemed to have made a Base Rate Revolving Credit Loan to the Borrowers in such amount. The Administrative Agent shall remit the funds so received to the Swing Line Lender.

(ii) If for any reason any Swing Line Loan cannot be refinanced by such a Revolving Credit Borrowing in accordance with Section 2.04(c)(i), the request for Base Rate Revolving Credit Loans submitted by the Swing Line Lender as set forth herein shall be deemed to be a request by the Swing Line Lender that each of the Revolving Credit Lenders fund its risk participation in the relevant Swing Line Loan and each Revolving Credit Lender's payment to the Administrative Agent for the account of the Swing Line Lender pursuant to Section 2.04(c)(i) shall be deemed payment in respect of such participation.

(iii) If any Revolving Credit Lender fails to make available to the Administrative Agent for the account of the Swing Line Lender any amount required to be paid by such Revolving Credit Lender pursuant to the foregoing provisions of this Section 2.04(c) by the time specified in Section 2.04(c)(i), the Swing Line Lender shall be entitled to recover from such Revolving Credit Lender (acting through the Administrative Agent), on demand, such amount with interest thereon for the period from the date such payment is required to the date on which such payment is immediately available to the Swing Line Lender at a rate per annum equal to the applicable Overnight Rate for three (3) Business Days and thereafter at the Base Rate, plus any administrative processing or similar fees customarily charged by the Swing Line Lender in connection with the foregoing. A certificate of the Swing Line Lender submitted to any Revolving Credit Lender (through the Administrative Agent) with respect to any amounts owing under this clause (iii) shall be conclusive absent manifest error.

(iv) Each Revolving Credit Lender's obligation to make Revolving Credit Loans or to purchase and fund risk participations in Swing Line Loans pursuant to this Section 2.04(c) shall be absolute and unconditional and shall not be affected by any circumstance, including (A) any set-off, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against the Swing Line Lender, the Borrowers or any other Person for any reason whatsoever, (B) the occurrence or continuance of an Event of Default, or (C) any other occurrence, event or condition, whether or not similar to any of the foregoing; provided, however, that each Revolving Credit Lender's obligation to make Revolving Credit Loans pursuant to this Section 2.04(c) is subject to the conditions set forth in Section 5.02. No such funding of risk participations shall relieve or otherwise impair the obligation of the Borrowers to repay Swing Line Loans, together with interest as provided herein.



- (v) All refinancings and fundings under this Section 2.04(c) shall be in addition to and without duplication of the settlement procedures and obligations under Section 2.14.
- (d) Repayment of Participations. At any time after any Revolving Credit Lender has purchased and funded a risk participation in a Swing Line Loan, if the Swing Line Lender receives any payment on account of such Swing Line Loan, the Swing Line Lender will distribute to such Revolving Credit Lender its Applicable Percentage of such payment (appropriately adjusted, in the case of interest payments, to reflect the period of time during which such Revolving Credit Lender's risk participation was funded) in the same funds as those received by the Swing Line Lender.
- (e) Interest for Account of Swing Line Lender. The Swing Line Lender shall be responsible for invoicing the Borrowers for interest on the Swing Line Loans. Until each Revolving Credit Lender funds its Base Rate Revolving Credit Loan or risk participation pursuant to this Section 2.04 to refinance such Revolving Credit Lender's Applicable Percentage of any Swing Line Loan, interest in respect of such Applicable Percentage shall be solely for the account of the Swing Line Lender.
- (f) Payments Directly to Swing Line Lender. The Borrowers shall make all payments of principal and interest in respect of the Swing Line Loans directly to the Swing Line Lender.

## **2.05 Repayment of Loans.**

- (a) Term Loans. The Borrowers, jointly and severally, unconditionally promise to pay to the Administrative Agent for the account of each Term Lender the aggregate principal amount of all Term Loans outstanding through consecutive quarterly installment payments on the last day of each Fiscal Quarter, commencing with the first Fiscal Quarter end date occurring after a Term Loan is advanced under this Agreement, each such installment in an amount equal to 1/28 of the original aggregate principal amount of all Term Loans (subject to adjustment as provided in Section 2.06(a) and (c)). The outstanding unpaid balance and all accrued and unpaid interest on the Term Loan shall be due and payable on the earlier of (i) the Maturity Date, and (ii) the date of the acceleration of the Term Loan in accordance with the terms hereof.
- (b) Revolving Credit Loans. The Borrowers shall repay to the Administrative Agent for the account of each the Revolving Credit Lenders on the Maturity Date the aggregate principal amount of and all accrued and unpaid interest on all Revolving Credit Loans outstanding on such date.
- (c) Swing Line Loans. The Borrowers shall repay each Swing Line Loan on the earlier to occur of (i) each refinancing date arising under Section 2.04(c) (with the proceeds of Loans advanced by the Lenders pursuant to such Section), and (ii) the Maturity Date.
- (d) Protective Advances. The Borrowers shall repay all Protective Advances on the earlier to occur of (i) demand by the Administrative Agent and (ii) the Maturity Date.
- (e) Other Obligations. Obligations other than principal and interest on the Loans, including Letter of Credit Obligations and Extraordinary Expenses, shall be paid by Borrowers as specifically provided herein and in any other applicable Loan Documents or, if no payment date is specified, on demand.

## **2.06 Prepayments.**

(a) Optional.

(i) The Borrowers may, upon notice to the Administrative Agent from the Borrower Agent, at any time or from time to time voluntarily prepay Term Loans or Revolving Credit Loans in whole or in part without premium or penalty; provided that except with respect to prepayments in accordance with Section 4.04(c), (A) such notice must be received by the Administrative Agent not later than 11:00 A.M. (1) two (2) Business Days prior to any date of prepayment of SOFR Loans and (2) on the date of prepayment of Base Rate Loans; (B) any prepayment of SOFR Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof, and shall be accompanied by payment of all amounts due under Section 3.05; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. During a Dominion Trigger Period, there shall be no minimum repayment amount for Base Rate Loans. Each such notice shall specify the date and amount of such prepayment and the Type(s) of Loans to be prepaid and, if SOFR Loans are to be prepaid, the Interest Period(s) of such Loans. The Administrative Agent will promptly notify each Lender of its receipt of each such notice, and of the amount of such Lender's ratable portion of such prepayment (based on such Lender's Applicable Percentage in respect of the relevant Facility). If such notice is given by the Borrower Agent, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of a SOFR Loan shall be accompanied by all accrued interest on the amount prepaid, together with any additional amounts required pursuant to Section 3.05. Subject to Section 2.17(b), each prepayment of the outstanding Term Loans pursuant to this Section 2.06(a) shall be applied to the principal repayment installments thereof in inverse order of maturity. Subject to Section 2.17, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentages in respect of each of the relevant Facilities.

(ii) The Borrowers may, upon notice to the Swing Line Lender (with a copy to the Administrative Agent) from the Borrower Agent, at any time or from time to time, voluntarily prepay Swing Line Loans in whole or in part without premium or penalty; provided that (A) such notice must be received by the Swing Line Lender and the Administrative Agent not later than 1:00 P.M. on the date of the prepayment, and (B) any such prepayment shall be in a minimum principal amount of \$100,000. Each such notice shall specify the date and amount of such prepayment. If such notice is given by the Borrower Agent, the Borrowers shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein.

(b) Mandatory.

1. [Reserved].

2. Asset Dispositions. Upon the consummation of the Specialty Disposition and any other Disposition that occurs with respect to any property of any Loan Party or any of its Subsidiaries (other than any Disposition of property permitted by Section 8.05(a) through (c)), the Borrowers shall prepay an aggregate principal amount of Loans (and Cash Collateralize Letter of Credit Obligations, if applicable) equal to 100% of such Net Cash Proceeds immediately upon receipt thereof by such Person; provided, with the Administrative Agent's prior written consent in its discretion, Borrowers may be required to prepay less than 100% of all Net Cash Proceeds received therefrom.

3. Equity Issuance. Upon the sale or issuance by any Loan Party or any of its Subsidiaries of any of its Equity Interests, the Borrowers shall prepay an aggregate principal amount of Loans (and Cash Collateralize Letter of Credit Obligations, if applicable) equal to 100% of all Net Cash Proceeds received therefrom within three (3) Business Days upon receipt thereof by such Loan Party or such Subsidiary; provided that the requirements of this clause (iii) shall only apply during a Dominion Trigger Period; provided further, with the Administrative Agent's prior written consent in its discretion, Borrowers may be required to prepay less than 100% of all Net Cash Proceeds received therefrom.

4. Debt Incurrence. Upon the incurrence or issuance by any Loan Party or any of its Subsidiaries of any Indebtedness, the Borrowers shall prepay an aggregate principal amount of Loans (and Cash Collateralize Letter of Credit Obligations, if applicable) equal to 100% of all Net Cash Proceeds received therefrom immediately upon receipt thereof by such Loan Party or such Subsidiary; provided that the requirements of this clause (iii) shall only apply during a Dominion Trigger Period.

5. Extraordinary Receipts. Upon receipt of any cash by (or paid to or for the account of) any Loan Party or its Subsidiaries not in the ordinary course of business, including tax refunds, pension plan reversions, proceeds of insurance, indemnity payments, purchase price adjustments, judgments, settlements or other payments in connection with any cause of action, and not otherwise included in clause (ii), (iii) or (iv) of this Section 2.06(b), the Borrowers shall prepay an aggregate principal amount of Loans (and Cash Collateralize Letter of Credit Obligations, if applicable) equal to 100% of the cash amount thereof (net of all reasonable out-of-pocket expenses or other amounts required to be paid in connection therewith) within five (5) Business Days of receipt.

6. Overadvances. If for any reason the Total Revolving Credit Outstandings at any time exceed the Borrowing Base at such time, the Borrowers shall upon demand prepay Revolving Credit Loans, Swing Line Loans and Letter of Credit Borrowings and/or Cash Collateralize the Letter of Credit Obligations in an aggregate amount equal to such excess; provided, however, that the Borrowers shall not be required to Cash Collateralize the Letter of Credit Obligations pursuant to this Section 2.06(b)(vi) unless, after the prepayment of the Revolving Credit Loans and Swing Line Loans, the Total Revolving Credit Outstandings exceed the Aggregate Revolving Credit Commitments at such time.

(c) Application of Mandatory Prepayments. Subject to Section 9.03:

(i) Each prepayment of Loans pursuant to the provisions of Section 2.06(b) (other than prepayments from any Disposition (other than the Specialty Disposition) of assets of the type included in the Borrowing Base) shall be applied, first, to the principal repayment installments of the Term Loans in inverse order of maturity and, second, to the Revolving Credit Facility in the manner set forth in clause (ii) below. Subject to Section 2.17, such prepayments shall be paid to the Lenders in accordance with their respective Applicable Percentage in respect of the relevant Facilities. Notwithstanding the foregoing, any prepayment hereunder arising from a Disposition of assets of the type then included in the Borrowing Base shall be applied to repay Revolving Credit Facility in accordance with clause (ii) below.

(ii) Except as otherwise provided in Section 2.17, prepayments of the Revolving Credit Facility made pursuant to Section 2.06(b), first, shall be applied ratably to the Letter of Credit Borrowings and the Swing Line Loans, second, shall be applied ratably to the outstanding Revolving Credit Loans, third, shall be used to Cash Collateralize the

remaining Letter of Credit Obligations in the Minimum Collateral Amount and, fourth, the amount remaining, if any, after the prepayment in full of all outstanding Obligations (other than Credit Product Obligations) and the Cash Collateralization of the remaining Letter of Credit Obligations in the Minimum Collateral Amount may be retained by the Borrowers for use in the ordinary course of Borrowers' business. Upon the drawing of any Letter of Credit that has been Cash Collateralized, the funds held as Cash Collateral shall be applied (without any further action by or notice to or from the Borrowers or any other Loan Party or any Defaulting Lender that has provided Cash Collateral) to reimburse the Letter of Credit Issuer or the Revolving Credit Lenders, as applicable.

(d) [Reserved].

## **2.07 Termination or Reduction of Commitments.**

- (a) Revolving Credit Commitment. The Borrowers may, upon notice to the Administrative Agent from the Borrower Agent, terminate the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit, or from time to time permanently reduce the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit; provided that (i) any such notice shall be received by the Administrative Agent not later than 11:00 A.M. five Business Days prior to the date of termination or reduction, (ii) any such partial reduction shall be in an aggregate amount of \$5,000,000 or any whole multiple of \$5,000,000 in excess thereof, (iii) the Borrowers shall not terminate or reduce (A) the Aggregate Revolving Credit Commitments if, after giving effect thereto and to any concurrent prepayments hereunder, the Total Revolving Credit Outstandings would exceed the Aggregate Revolving Credit Commitments, (B) the Letter of Credit Sublimit if, after giving effect thereto, the Outstanding Amount of Letter of Credit Obligations not fully Cash Collateralized hereunder would exceed the Letter of Credit Sublimit, or (C) the Swing Line Sublimit if, after giving effect thereto and to any concurrent prepayments hereunder, the Outstanding Amount of Swing Line Loans would exceed the Swing Line Sublimit and (iv) if, after giving effect to any reduction or termination of the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit exceeds the amount of the Aggregate Revolving Credit Commitments, such Sublimit shall be automatically reduced by the amount of such excess; provided further that notwithstanding the notice requirement set forth in clause (i) of the foregoing proviso, the prepayment of the Loans in connection with the Specialty Disposition shall be accompanied by a permanent reduction in Revolving Credit Commitments to \$80,000,000 concurrently with such prepayment. The Administrative Agent will promptly notify the Lenders of any such notice of termination or reduction of the Aggregate Revolving Credit Commitments, the Letter of Credit Sublimit or the Swing Line Sublimit. Any reduction of the Aggregate Revolving Credit Commitments shall be applied to the Revolving Credit Commitment of each Revolving Credit Lender according to its Applicable Revolving Credit Percentage. All fees accrued until the effective date of any termination of the Aggregate Revolving Credit Commitments shall be paid on the effective date of such termination.
- (b) Term Loan Commitment. The aggregate Term Loan Commitments shall be automatically and permanently reduced to zero at the end of the Availability Period with respect thereto.

## **2.08 Interest.**

- (a) Subject to the provisions of subsection (b) below and Sections 3.03 and 3.08, (i) each SOFR Loan shall bear interest on the outstanding principal amount thereof for each

Interest Period at a rate per annum equal to the Adjusted Term SOFR for such Interest Period plus the Applicable Margin; (ii) each Base Rate Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin; (iii) each Swing Line Loan shall bear interest on the outstanding principal amount thereof from the applicable borrowing date at a rate per annum equal to the Base Rate plus the Applicable Margin; and (iv) each other Obligation (including, to the extent not prohibited by applicable Law, interest not paid when due) shall bear interest on the unpaid amount thereof at a rate per annum equal to the Base Rate plus the Applicable Margin.

- (b) (i) If any amount payable by the Borrowers under any Loan Document is not paid when due (giving effect to any applicable grace periods), whether at stated maturity, by acceleration or otherwise, then such unpaid amount shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate to the fullest extent permitted by applicable Laws.
- (i) If any Event of Default exists, then the Administrative Agent may, and upon the request of the Required Lenders shall, require (and notify the Borrowers thereof) that all outstanding Loan Obligations shall thereafter bear interest at a fluctuating interest rate per annum at all times equal to the Default Rate.
- (ii) Accrued and unpaid interest on past due amounts (including interest on past due interest) shall be due and payable upon demand.
- (c) Interest on each Loan shall be due and payable in arrears on each Interest Payment Date applicable thereto and at such other times as may be specified herein. Interest hereunder shall be due and payable in accordance with the terms hereof before and after judgment, and before and after the commencement of any proceeding under any Debtor Relief Law.
- (d) If, for any reason (including inaccurate reporting in any Compliance Certificate, Borrowing Base Certificate or other Borrower Materials), it is determined that a higher Applicable Margin should have applied to a period than was actually applied, then the proper margin shall be applied retroactively and the Borrowers shall immediately pay to the Administrative Agent, for the ratable benefit of Lenders, an amount equal to the difference between the amount of interest and fees that would have accrued using the proper margin and the amount actually paid.

## **2.09 Fees.**

- (a) Unused Fee. The Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender in accordance with its Applicable Revolving Credit Percentage, a fee (the “Unused Fee”) equal to the Unused Fee Rate times the Unused Facility Amount. The Unused Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the first Business Day after each Fiscal Quarter, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. If there is any change in the Unused Fee Rate during any quarter, the actual daily amount shall be computed and multiplied by the Unused Fee Rate separately for each period during such quarter that such Unused Fee Rate was in effect.
- (b) Letter of Credit Fees. Subject to the provisions of the last sentence of this clause (b), the Borrowers shall pay to the Administrative Agent for the account of each Revolving Credit Lender (including the Letter of Credit Issuer in its capacity as a Revolving Credit

Lender) in accordance with its Applicable Percentage, in Dollars, a Letter of Credit fee (“Letter of Credit Fee”) for each Letter of Credit equal to the Applicable Margin for SOFR Revolving Credit Loans times the daily maximum amount available to be drawn under such Letter of Credit (whether or not such maximum amount is then in effect under such Letter of Credit); provided, however, any Letter of Credit Fees otherwise payable for the account of a Defaulting Lender with respect to any Letter of Credit as to which such Defaulting Lender has not provided Cash Collateral satisfactory to the Letter of Credit Issuer shall be payable, to the maximum extent permitted by applicable Law, to the other Revolving Credit Lenders in accordance with the upward adjustments in their respective Applicable Percentages allocable to such Letter of Credit pursuant to Section 2.17(a)(iv), with the balance of such fee, if any, payable to the Letter of Credit Issuer for its own account. For purposes of computing the daily amount available to be drawn under any Letter of Credit, the amount of such Letter of Credit shall be determined in accordance with Section 1.07. The Letter of Credit Fee shall accrue at all times during the Availability Period, including at any time during which one or more of the conditions in Article V is not met, and shall be due and payable quarterly in arrears on the first Business Day after each Fiscal Quarter, commencing with the first such date to occur after the Closing Date, and on the last day of the Availability Period. If there is any change in the Applicable Margin for SOFR Revolving Credit Loans during any quarter, the daily maximum amount of each Letter of Credit shall be computed and multiplied by the Applicable Margin for SOFR Revolving Credit Loans separately for each period during such quarter that such Applicable Margin was in effect. At all times that the Default Rate shall be applicable to any Loans pursuant to Section 2.08(b), the Letter of Credit Fees payable under this clause (b) shall accrue and be payable at the Default Rate.

- (c) Fee Letter. The Borrowers agree to pay to the Administrative Agent, for its own account, the fees payable in the amounts and at the times set forth in the Fee Letter.
- (d) Generally. All fees payable hereunder shall be paid on the dates due, in immediately available funds, to (i) the Administrative Agent for distribution, in the case of commitment fees and participation fees, to the Revolving Credit Lenders, and otherwise, to the Lenders entitled thereto or (ii) the Letter of Credit Issuer, in the case of fees payable to it. Fees paid shall not be refundable under any circumstances.

## **2.10 Computation of Interest and Fees.**

All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to the Term SOFR) and the Unused Fee shall be made on the basis of a year of 365 or 366 days, as the case may be, and actual days elapsed. All other computations of fees and interest shall be made on the basis of a 360-day year and actual days elapsed (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Interest shall accrue on each Loan or other Loan Obligation not paid when due for the day on which the Loan is made or such Loan Obligation is due and unpaid, and shall not accrue on a Loan, or any portion thereof, or such Loan Obligation for the day on which the Loan, or such portion thereof, or Loan Obligation is paid, provided that any Loan that is repaid on the same day on which it is made shall, subject to Section 2.12(a), bear interest for one day. Each determination by the Administrative Agent of an interest rate or fee hereunder shall be conclusive and binding for all purposes, absent manifest error. In connection with the use or administration of Term SOFR, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document. The Administrative Agent will promptly notify the Borrower Agent and the

Lenders of the effectiveness of any Conforming Changes in connection with the use or administration of Term SOFR.

## **2.11 Evidence of Debt.**

- (a) Loan Account. The Credit Extensions made by each Lender shall be evidenced by one or more accounts or records maintained by the Administrative Agent (the “Loan Account”) in the ordinary course of business. In addition, each Lender may record in such Lender’s internal records, an appropriate notation evidencing the date and amount of each Loan from such Lender, each payment and prepayment of principal of any such Loan, and each payment of interest, fees and other amounts due in connection with the Loan Obligations due to such Lender. The accounts or records maintained by the Administrative Agent and each Lender shall be conclusive absent manifest error of the amount of the Credit Extensions made by the Lenders to the Borrowers and the interest and payments thereon. Any failure to so record or any error in doing so shall not, however, limit or otherwise affect the obligation of the Borrowers hereunder to pay any amount owing with respect to the Loan Obligations. In the event of any conflict between the accounts and records maintained by any Lender and the accounts and records of the Administrative Agent in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error. Upon the request of any Lender made through the Administrative Agent, the Borrowers shall execute and deliver to such Lender (through the Administrative Agent) a Note, which shall evidence such Lender’s Loans in addition to such accounts or records. Each Lender may attach schedules to its Note and endorse thereon the date, Type (if applicable), amount and maturity of its Loans and payments with respect thereto.
- (b) Account Records. In addition to the accounts and records referred to in (a) above, each Lender and the Administrative Agent shall maintain in accordance with its usual practice accounts or records evidencing the purchases and sales by such Lender of participations in Letters of Credit and Swing Line Loans. In the event of any conflict between the accounts and records maintained by the Administrative Agent and the accounts and records of any Lender in respect of such matters, the accounts and records of the Administrative Agent shall control in the absence of manifest error.

## **2.12 Payments Generally; the Administrative Agent’s Clawback.**

- (a) General. All payments to be made by the Borrowers shall be made without condition or deduction for any counterclaim, defense, recoupment or setoff. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent’s Office in Dollars and in immediately available funds not later than 2:00 P.M. on the date specified herein. Subject to Section 2.14, Section 9.03, and payments made during a Dominion Trigger Period from the Concentration Account, the Administrative Agent will promptly distribute to each Lender its Applicable Percentage in respect of the relevant Facility (or other applicable share as provided herein) of such payment in like funds as received by wire transfer to such Lender’s Lending Office. All payments received by the Administrative Agent after 2:00 P.M. shall be deemed received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. If any payment to be made by the Borrowers shall come due on a day other than a Business Day, payment shall be made on the next following Business Day, and such extension of time shall be reflected on computing interest or fees, as the case may be.
- (b) Presumptions by Administrative Agent.

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

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

- (c) Failure to Satisfy Conditions Precedent. If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Article II, and such funds are not made available to the Borrowers by the Administrative Agent because the conditions to the applicable Credit Extension set forth in Article V are not satisfied or waived in accordance with the terms



hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender, without interest.

- (d) Obligations of Lenders Several. The obligations of the Lenders hereunder to make Term Loans and Revolving Credit Loans, to fund participations in Letters of Credit and Swing Line Loans and to make payments pursuant to Section 11.04(c) are several and not joint. The failure of any Lender to make any Loan, to fund any such participation or to make any payment under Section 11.04(c) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan, to purchase its participation or to make its payment under Section 11.04(c).
- (e) Funding Source. Nothing herein shall be deemed to obligate any Lender to obtain the funds for any Loan in any particular place or manner or to constitute a representation by any Lender that it has obtained or will obtain the funds for any Loan in any particular place or manner.
- (f) Insufficient Funds. If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, Letter of Credit Borrowings, interest and fees then due hereunder, such funds shall be applied as provided in Section 2.06(c).

## **2.13 Sharing of Payments by Lenders.**

If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (a) the Loan Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Loan Obligations due and payable to such Lender at such time to (ii) the aggregate amount of the Loan Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Loan Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (b) the Loan Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (i) the amount of such Loan Obligations owing (but not due and payable) to such Lender at such time to (ii) the aggregate amount of the Loan Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Loan Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time, then, in each case under clauses (a) and (b) above, the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans and subparticipations in Letter of Credit Obligations and Swing Line Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Loan Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

- (i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and
- (ii) the provisions of this Section shall not be construed to apply to (A) any payment made by or on behalf of any Loan Party pursuant to and in accordance with the express

terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender), (B) the application of Cash Collateral provided for in [Section 2.16](#), or (C) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or subparticipations in Letter of Credit Obligations or Swing Line Loans to any assignee or participant, other than an assignment to any Loan Party or any Affiliate thereof (as to which the provisions of this Section shall apply).

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

#### **2.14 Settlement Among Lenders.**

- (a) The amount of each Revolving Credit Lender's Applicable Revolving Credit Percentage of outstanding Revolving Credit Loans shall be computed weekly (or more frequently in the Administrative Agent's discretion) and such amount shall be adjusted upward or downward based on all Revolving Credit Loans and repayments of Revolving Credit Loans received by the Administrative Agent as of 3:00 P.M. on the first Business Day (such date, the "[Settlement Date](#)") following the end of the period specified by the Administrative Agent.
- (b) The Administrative Agent shall deliver to each of the Revolving Credit Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Credit Loans for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Revolving Credit Lender its Applicable Percentage of repayments, and (ii) each Revolving Credit Lender shall transfer to the Administrative Agent (as provided below) or the Administrative Agent shall transfer to each Revolving Credit Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the Revolving Credit Exposure of each Revolving Credit Lender shall be equal to such Revolving Credit Lender's Applicable Percentage of the Total Revolving Credit Outstandings as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Revolving Credit Lenders and is received prior to 1:00 P.M. on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 P.M. that day; and, if received after 1:00 P.M., then no later than 3:00 P.M. on the next Business Day. The obligation of each Revolving Credit Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Revolving Credit Lender shall not have so made its transfer to the Administrative Agent, such Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, equal to the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation plus any reasonable administrative, processing, or similar fees customarily charged by the Administrative Agent in connection with the foregoing.

#### **2.15 Nature and Extent of Liability.**

- (a) Joint and Several Liability. Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to the Administrative Agent and Lenders, all Obligations, except Excluded Swap Obligations, and all agreements under

the Loan Documents. Each Borrower agrees that its guaranty obligations hereunder constitute a continuing guaranty of payment and not of collection, that such obligations shall not be discharged until the Facility Termination Date, and that such obligations are absolute and unconditional, irrespective of (i) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Loan Party or Subsidiary thereof is or may become a party or be bound; (ii) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by the Administrative Agent or any Lender with respect thereto; (iii) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for the Obligations or any action, or the absence of any action, by the Administrative Agent or any Lender in respect thereof (including the release of any security or guaranty); (iv) the insolvency of any Loan Party or Subsidiary thereof; (v) any election by the Administrative Agent or any Lender in proceeding under Debtor Relief Laws for the application of Section 1111(b)(2) of the Bankruptcy Code; (vi) any borrowing or grant of a Lien by any other Loan Party or Subsidiary thereof, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (vii) the disallowance of any claims of the Administrative Agent or any Lender against any Loan Party or Subsidiary thereof for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (viii) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Payment in Full on the Facility Termination Date.

(b) Waivers.

(i) Each Borrower expressly waives all rights that it may have now or in the future under any statute, at common law, in equity or otherwise, to compel the Administrative Agent or Lenders to marshal assets or to proceed against any Loan Party, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor or accommodation co-obligor other than Payment in Full. It is agreed among each Loan Party, the Administrative Agent and Lenders that the provisions of this Section 2.15 are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, the Administrative Agent and Lenders would decline to make Loans and issue Letters of Credit. Each Borrower acknowledges that its guaranty pursuant to this Section is necessary to the conduct and promotion of its business, and can be expected to benefit such business.

(ii) The Administrative Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral by judicial foreclosure or non-judicial sale or enforcement, without affecting any rights and remedies under this Section 2.15. If, in taking any action in connection with the exercise of any rights or remedies, the Administrative Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Loan Party or other Person, whether because of any applicable Laws pertaining to "election of remedies" or otherwise, each Borrower consents to such action and waives any claim of forfeiture of such rights or remedies based upon it, even if the action may result in loss of any rights of subrogation that such Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of the Administrative Agent or any Lender to seek a deficiency judgment against any Loan Party shall not impair any Borrower's obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for the Obligations, even though that election of remedies destroys such Borrower's rights of

subrogation against any other Person. The Administrative Agent may bid all or a portion of the Obligations at any foreclosure or trustee's sale or at any private sale, and the amount of such bid need not be paid by the Administrative Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether the Administrative Agent or any other Person is the successful bidder, shall be conclusively deemed to be the Fair Market Value of the Collateral, and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Section 2.15, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which the Administrative Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

(c) Extent of Liability; Contribution.

(i) Notwithstanding anything herein to the contrary, each Borrower's liability under this Section 2.15 shall be limited to the greater of (i) all amounts for which such Borrower is primarily liable, as described below, and (ii) such Borrower's Allocable Amount.

(ii) If any Borrower makes a payment under this Section 2.15 of any Obligations (other than amounts for which such Borrower is primarily liable) (a "Guarantor Payment") that, taking into account all other Guarantor Payments previously or concurrently made by any other Borrower, exceeds the amount that such Borrower would otherwise have paid if each Borrower had paid the aggregate Obligations satisfied by such Guarantor Payments in the same proportion that such Borrower's Allocable Amount bore to the total Allocable Amounts of all Borrowers, then such Borrower shall be entitled to receive contribution and indemnification payments from, and to be reimbursed by, each other Borrower for the amount of such excess, pro rata based upon their respective Allocable Amounts in effect immediately prior to such Guarantor Payment. The "Allocable Amount" for any Borrower shall be the maximum amount that could then be recovered from such Borrower under this Section 2.15 without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(iii) 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 such funds or other support to each Specified Loan Party with respect to such Swap Obligation as may be needed by such Specified Loan Party from time to time to honor all of its obligations under 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 2.15 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 Payment in Full. 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.

(d) Direct Liability; Separate Borrowing Availability. Nothing contained in this Section 2.15 shall limit the liability of any Borrower to pay Loans made directly or indirectly to that Borrower (including Loans advanced to any other Borrower and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower), Letter of Credit

Obligations relating to Letters of Credit issued to support such Borrower's business, and all accrued interest, fees, expenses and other related Obligations with respect thereto, for which such Borrower shall be primarily liable for all purposes hereunder. The Administrative Agent and Lenders shall have the right, at any time in their discretion, to condition Revolving Credit Loans and Letters of Credit upon a separate calculation of borrowing availability consistent with the Borrowing Base for each Borrower and to restrict the disbursement and use of such Revolving Credit Loans and Letters of Credit to such Borrower.

- (e) Joint Enterprise. Each Loan Party has requested that the Administrative Agent and Lenders make this credit facility available to Borrowers on a combined basis, in order to finance Borrowers' business most efficiently and economically. The Loan Parties' business is a mutual and collective enterprise, and the successful operation of each Loan Party is dependent upon the successful performance of the integrated group. The Loan Parties believe that consolidation of their credit facility will enhance the borrowing power of each Loan Party and ease administration of the Facility, all to their mutual advantage. The Loan Parties acknowledge that the Administrative Agent's and Lenders' willingness to extend credit and to administer the Collateral on a combined basis hereunder is done solely as an accommodation to Loan Parties and at Loan Parties' request.
- (f) Subordination. Each Loan Party hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Loan Party, howsoever arising, to the Payment in Full on the Facility Termination Date.
- (g) Borrower Agent.
  - (i) Each Loan Party hereby irrevocably appoints and designates (or, if not a party hereto, by execution and delivery of a guaranty agreement acceptable to Administrative Agent or otherwise becoming a Guarantor hereunder shall be deemed to have irrevocably appointed and designated) Synalloy ("Borrower Agent") as its representative and agent and attorney-in-fact for all purposes under the Loan Documents, including, as applicable, requests for Credit Extensions, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with the Administrative Agent, the Letter of Credit Issuers, Swing Line Lender or any Lender.
  - (ii) Any notice, election, representation, warranty, agreement or undertaking by or on behalf of any Loan Party by the Borrower Agent shall be deemed for all purposes to have been made by such Loan Party and shall be binding upon and enforceable against such Loan Party to the same extent as if made directly by such Loan Party.
  - (iii) The Borrower Agent hereby accepts the appointment by each Loan Party hereunder to act as its agent and attorney-in-fact.
  - (iv) The Administrative Agent and Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any notice of borrowing) delivered by Borrower Agent on behalf of any Borrower or other Loan Party. The Administrative Agent and Lenders may give any notice to or communication with a Loan Party hereunder to the Borrower Agent on behalf of such Loan Party. Each of the Administrative Agent, the Letter of Credit Issuers and the Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent

for any or all purposes under the Loan Documents. Each Loan Party agrees (or, if not a party hereto, by execution and delivery of a guaranty agreement acceptable to Administrative Agent or otherwise becoming a Guarantor hereunder shall be deemed to have agreed) that any notice, election, communication, representation, agreement or undertaking made on its behalf by Borrower Agent shall be binding upon and enforceable against it.

## **2.16 Cash Collateral.**

- (a) Certain Credit Support Events. If (i) the Letter of Credit Issuer has honored any full or partial drawing request under any Letter of Credit upon presentation and such drawing has resulted in a Letter of Credit Borrowing, (ii) as of the Letter of Credit Expiration Date, any Letter of Credit Obligation for any reason remains outstanding, (iii) any Protective Advance shall not have been funded by the Lenders upon demand by the Administrative Agent, (iv) the Borrowers shall be required to provide Cash Collateral pursuant to Section 9.02 or (v) there shall exist a Defaulting Lender, the Borrowers shall immediately (in the case of clause (iv) above) or within one Business Day (in all other cases) following any request by the Administrative Agent or the Letter of Credit Issuer, provide Cash Collateral in an amount not less than the Minimum Collateral Amount (determined in the case of Cash Collateral provided pursuant to clause (v) above, after giving effect to Section 2.17(a)(iv) and any Cash Collateral provided by the Defaulting Lender).
- (b) Grant of Security Interest. The Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grant to (and subjects to the control of) the Administrative Agent, for the benefit of the Administrative Agent, the Letter of Credit Issuer and the Lenders, and agree to maintain, a first priority security interest in all such cash, deposit accounts and all balances therein, and all other property so provided as collateral pursuant hereto, and in all proceeds of the foregoing, all as security for the obligations to which such Cash Collateral may be applied pursuant to Section 2.16(c). If at any time the Administrative Agent determines that Cash Collateral is less than the Minimum Collateral Amount or otherwise deficient for any reason, the Borrowers will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency. All Cash Collateral (other than credit support not constituting funds subject to deposit) shall be maintained in one or more blocked, non-interest bearing deposit accounts at BMO.
- (c) Application. Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided in respect of Letters of Credit, Swing Line Loans or Protective Advances shall be held and applied to the specific Letter of Credit Obligations, Swing Line Loans or Protective Advances (including any the Defaulting Lender's obligation to fund participations in respect thereof) for which the Cash Collateral was so provided (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) and other obligations for which the Cash Collateral was so provided, prior to any other application of such property as may be provided for herein.
- (d) Release. Cash Collateral (or the appropriate portion thereof) provided to reduce Fronting Exposure or to secure other obligations shall be released promptly following (i) the elimination of the applicable Fronting Exposure or other obligations giving rise thereto (including by the termination of Defaulting Lender status of the applicable Revolving Credit Lender (or, as appropriate, its assignee following compliance with Section 11.06(b)(vi)) or (ii) the determination by the Administrative Agent and the Letter of Credit Issuer that there exists excess Cash Collateral.

## 2.17 Defaulting Lenders.

- (a) Adjustments. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable Law:
- (i) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders", "Required Supermajority Lenders" and Section 11.01.
- (ii) Reallocation of Payments. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article IX or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 11.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, if such Defaulting Lender is a Revolving Credit Lender, to the payment on a pro rata basis of any amounts owing by that Defaulting Lender to the Letter of Credit Issuer or Swing Line Lender hereunder; third, if such Defaulting Lender is a Revolving Credit Lender, to Cash Collateralize the Letter of Credit Issuer's and the Administrative Agent's Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.16; fourth, as the Borrower Agent may request (so long as no Default or Event of Default exists) to the funding of any Loan in respect of which that Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrower Agent, to be held in a deposit account and released in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) if such Defaulting Lender is a Revolving Credit Lender, Cash Collateralize the Letter of Credit Issuer's and the Administrative Agent's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit and Protective Advances; sixth, in the case of a Defaulting Lender under any Facility, to the payment of any obligations owing to the other Lenders under such Facility (in the case of the Revolving Credit Facility, including the Letter of Credit Issuer or Swing Line Lender) as a result of any judgment of a court of competent jurisdiction obtained by any Lender under such Facility (in the case of the Revolving Credit Facility, including the Letter of Credit Issuer or Swing Line Lender) against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or Letter of Credit Borrowings in respect of which that Defaulting Lender has not fully funded its appropriate share and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 5.02 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and Letter of Credit Obligations owed to, all Non-Defaulting Lenders under the applicable Facility on a pro rata basis (and ratably among all applicable Facilities computed in accordance with the Defaulting Lenders' respective funding deficiencies) prior to being applied to the payment of any Loans of, or Letter of Credit Obligations owed to, such Defaulting Lender under the applicable Facility until such time as all Loans and funded

and unfunded participations in Letter of Credit Obligations, Swing Line Loans and Protective Advances are held by the Lenders pro rata in accordance with the Commitments hereunder without giving effect to Section 2.17(a)(iv). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section 2.17(a)(ii) shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(iii) Certain Fees. No Defaulting Lender shall be entitled to receive any Unused Fee payable pursuant to Section 2.09(a) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender). Each Defaulting Lender which is a Revolving Credit Lender shall be entitled to receive Letter of Credit Fees for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Applicable Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to Section 2.16. With respect to any Letter of Credit Fee not required to be paid to any Defaulting Lender pursuant to this clause (iii), the Borrowers shall (A) pay to each Non-Defaulting Lender which is a Revolving Credit Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in Letter of Credit Obligations that has been reallocated to such Non-Defaulting Lender pursuant to clause (iv) below, (y) pay to the Letter of Credit Issuer the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Letter of Credit Issuer's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(iv) Reallocation of Applicable Percentages to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in Letter of Credit Obligations, Swing Line Loans and Protective Advances shall be reallocated among the Non-Defaulting Lenders which are Revolving Credit Lenders in accordance with their respective Applicable Percentages (calculated without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that (x) the conditions set forth in Section 5.02 are satisfied at the time of such reallocation (and, unless the Borrower Agent shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y) such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. Subject to Section 11.20, no reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(b) Defaulting Lender Cure. If the Borrower Agent, the Administrative Agent and, in the case that a Defaulting Lender is a Revolving Credit Lender, the Swing Line Lender and the Letter of Credit Issuer, agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Revolving Credit Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Revolving Credit Loans and funded and unfunded participations in Letters of Credit, Swing Line Loans and Protective Advances to be held on a pro rata basis by the Lenders in accordance with their Applicable Percentages



(without giving effect to Section 2.17(a)(iv)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

## **2.18 Increase in Revolving Credit Commitments.**

- (a) Request for Increase. Provided there exists no Default or Event of Default, upon notice to and with the written consent of the Administrative Agent (which shall promptly notify the applicable Revolving Credit Lenders), the Borrower Agent may from time to time request an increase in the Aggregate Revolving Credit Commitments by an amount (for all such requests) not exceeding \$40,000,000 (each such increase, a "Commitment Increase"); provided that (i) any such request for an increase shall be in a minimum amount of \$5,000,000 in the aggregate or, if less, the entire unutilized amount of the maximum amount of all such requests set forth above and (ii) no more than three (3) such requests shall be made during the term of this Agreement. At the time of sending such notice, the Borrower Agent (in consultation with the Administrative Agent) shall specify the time period within which each applicable Revolving Credit Lender is requested to respond (which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the applicable Revolving Credit Lenders).
- (b) Revolving Credit Lender Elections to Increase. Each Revolving Credit Lender shall notify the Administrative Agent within such time period whether or not it agrees to commit to a portion of the requested increase of the Revolving Credit Facility and, if so, whether by an amount equal to, greater than, or less than its Applicable Percentage. Any Revolving Credit Lender not responding within such time period shall be deemed to have declined to commit to any portion of the requested increase.
- (c) Notification by Administrative Agent: Additional Revolving Credit Lenders. The Administrative Agent shall notify the Borrower Agent of the Revolving Credit Lenders' responses to each request made hereunder. In the event that Revolving Credit Lenders do not timely issue commitments for the full amount of any requested increase, to achieve the full amount of such requested increase and subject to the approval of the Administrative Agent in its discretion, the Borrower Agent may also invite additional Eligible Assignees to become Revolving Credit Lenders pursuant to a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel (each such Eligible Assignee issuing a commitment, executing and delivering such joinder agreement and becoming a Revolving Credit Lender, an "Additional Commitment Lender"); provided, however, that without the consent of the Administrative Agent, at no time shall the Commitment of any Additional Commitment Lender be less than \$5,000,000.
- (d) Effective Date and Allocations. If the Aggregate Revolving Credit Commitments are increased in accordance with this Section 2.18, the Administrative Agent and the Borrower Agent shall determine the effective date (the "Increase Effective Date") and the final allocation of such increase. The Administrative Agent shall promptly notify the Borrower Agent and the Revolving Credit Lenders of the final allocation of such increase and the Increase Effective Date.
- (e) Conditions to Effectiveness of Increase. As a condition precedent to such increase, (i) the Borrower Agent shall deliver to the Administrative Agent a certificate of each Loan Party

dated as of the Increase Effective Date (in sufficient copies for each Lender) signed by a Responsible Officer of such Loan Party (A) certifying and attaching the resolutions adopted by such Loan Party approving or consenting to such increase, and (B) certifying that, before and after giving effect to such increase, the representations and warranties contained in Article VI and in the other Loan Documents, or which are contained in any document furnished at any time under or in connection herewith or therewith, are true and correct on and as of the Increase Effective Date, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they are true and correct as of such earlier date, and except that for purposes of this Section 2.18, the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 7.01, (ii) the Loan Parties, the Administrative Agent, and any Additional Commitment Lender shall have executed and delivered a joinder agreement in form and substance satisfactory to the Administrative Agent and its counsel; (iii) the Borrowers shall have paid such fees and other compensation to the Revolving Credit Lenders increasing their Revolving Credit Commitments and to the Additional Commitment Lenders as the Borrowers and such Lenders and Additional Commitment Lenders shall agree; (iv) the Borrowers shall have paid such arrangement fees, if any, to the Administrative Agent as the Borrowers and the Administrative Agent may agree; (v) other than the fees and compensation referred to in clauses (iii) and (iv) above, the Commitment Increase shall be on the same terms and pursuant to the same documentation applicable to the existing Revolving Credit Commitments, (vi) the Loan Parties shall deliver to the Administrative Agent (A) an opinion or opinions, in form and substance reasonably satisfactory to the Administrative Agent, from counsel to the Loan Parties reasonably satisfactory to the Administrative Agent and dated such date and (B) a certification from the Borrower Agent, or other evidence satisfactory to the Administrative Agent, that such increase is permitted under the documents governing the Term Loan Debt, any Subordinated Debt and any other Indebtedness constituting a Material Contract; (viii) the Loan Parties, the Lenders increasing their Commitments and each Additional Commitment Lender shall have delivered such other instruments, documents and agreements as the Administrative Agent may reasonably have requested; (ix) the definition of Required Lenders shall have been revised in a manner acceptable to Administrative Agent in its discretion; and (x) no Default or Event of Default exists or shall result therefrom. The Revolving Credit Loans outstanding on the Increase Effective Date shall be reallocated and adjusted between and among the applicable Lenders, and the Borrowers shall pay any additional amounts required pursuant to Section 3.05 resulting therefrom, to the extent necessary to keep the outstanding applicable Revolving Credit Loans ratable among the applicable Lenders with any revised Applicable Percentages, as applicable, arising from any non-ratable increase in the applicable Revolving Credit Loans under this Section 2.18.

- (f) Conflicting Provisions. This Section 2.18 shall supersede any provisions in Section 2.13 or 11.01 to the contrary.

### **ARTICLE III TAXES, YIELD PROTECTION AND ILLEGALITY**

#### **3.01 Taxes.**

- (a) Payments Free of Taxes; Obligation to Withhold; Payments on Account of Taxes

- (i) Any and all payments by or on account of any obligation of the Loan Parties hereunder or under any other Loan Document shall to the extent permitted by applicable Laws be made free and clear of and without reduction or withholding for any Taxes. If,

however, applicable Laws require the Loan Parties or the Administrative Agent to withhold or deduct any Tax, such Tax shall be withheld or deducted in accordance with such Laws as determined by the Borrower Agent or the Administrative Agent, as the case may be, upon the basis of the information and documentation to be delivered pursuant to subsection (e) below.

(ii) If any Loan Party or the Administrative Agent shall be required by the Code to withhold or deduct any Taxes, including both United States federal backup withholding and withholding taxes, from any payment, then (A) the Administrative Agent shall withhold or make such deductions as are determined by the Administrative Agent to be required based upon the information and documentation it has received pursuant to subsection (e) below, (B) the Administrative Agent shall timely pay the full amount withheld or deducted to the relevant Governmental Authority in accordance with the Code, and (C) to the extent that the withholding or deduction is made on account of Indemnified Taxes or Other Taxes, the sum payable by the Loan Parties shall be increased as necessary so that after any required withholding or the making of all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Letter of Credit Issuer, as the case may be, receives an amount equal to the sum it would have received had no such withholding or deduction been made.

(b) Payment of Other Taxes by the Borrowers. Without limiting the provisions of subsection (a) above, the Loan Parties shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable Law.

(c) Tax Indemnification by the Borrowers.

(i) Without limiting the provisions of subsection (a) or (b) above, each Loan Party shall, and does hereby, indemnify the Administrative Agent, each Lender and the Letter of Credit Issuer, and shall make payment in respect thereof within ten (10) days after demand therefor, for the full amount of any Indemnified Taxes or Other Taxes (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) withheld or deducted by the Loan Parties or the Administrative Agent or paid by the Administrative Agent, such Lender or the Letter of Credit Issuer, as the case may be, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided, the Administrative Agent shall deliver notice of any such proposed imposition or assessment of Indemnified Taxes or Other Taxes to the Borrowers as soon as possible after receipt of notice thereof, but in no event less than ten (10) Business Days prior to the payment of the imposed or asserted Indemnified Taxes or Other Taxes. Each Loan Party shall also, and does hereby, indemnify the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, for any amount which a Lender or the Letter of Credit Issuer for any reason fails to pay indefeasibly to the Administrative Agent as required by clause (ii) of this subsection. A certificate as to the amount of any such payment or liability delivered to the Borrower Agent by a Lender or the Letter of Credit Issuer (with a copy to the Administrative Agent), or by the Administrative Agent on its own behalf or on behalf of a Lender or the Letter of Credit Issuer, shall be conclusive absent manifest error.

(ii) Without limiting the provisions of subsection (a) or (b) above, each Lender and the Letter of Credit Issuer shall, and does hereby, indemnify the Loan Parties and the Administrative Agent, and shall make payment in respect thereof within ten (10) days after demand therefor, against any and all Taxes and any and all related losses, claims,

liabilities, penalties, interest and expenses (including the fees, charges and disbursements of any counsel for the Borrowers or the Administrative Agent) incurred by or asserted against the Loan Parties or the Administrative Agent by any Governmental Authority as a result of the failure by such Lender or the Letter of Credit Issuer, as the case may be, to deliver, or as a result of the inaccuracy, inadequacy or deficiency of, any documentation required to be delivered by such Lender or the Letter of Credit Issuer, as the case may be, to the Borrower Agent or the Administrative Agent pursuant to subsection (e). Each Lender and the Letter of Credit Issuer hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender or the Letter of Credit Issuer, as the case may be, under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this clause (ii). The agreements in this clause (ii) shall survive the resignation and/or replacement of the Administrative Agent, any assignment of rights by, or the replacement of, a Lender or the Letter of Credit Issuer and the occurrence of the Facility Termination Date.

- (d) Evidence of Payments. Upon request by the Borrower Agent or the Administrative Agent, as the case may be, after any payment of Taxes by the Loan Parties or by the Administrative Agent to a Governmental Authority as provided in this Section 3.01, the Borrower Agent shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Borrower Agent, as the case may be, the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by Laws to report such payment or other evidence of such payment reasonably satisfactory to the Borrower Agent or the Administrative Agent, as the case may be.
- (e) Status of Lenders; Tax Documentation.
- (i) Each Lender shall deliver to the Borrower Agent and to the Administrative Agent, at the time or times prescribed by applicable Laws or when reasonably requested by the Borrower Agent or the Administrative Agent, such properly completed and executed documentation prescribed by applicable Laws or by the taxing authorities of any jurisdiction and such other reasonably requested information as will permit the Borrower Agent or the Administrative Agent, as the case may be, to determine (A) whether or not payments made hereunder or under any other Loan Document are subject to Taxes, (B) if applicable, the required rate of withholding or deduction, and (C) such Lender's entitlement to any available exemption from, or reduction of, applicable Taxes in respect of all payments to be made to such Lender by the Loan Parties pursuant to this Agreement or otherwise to establish such Lender's status for withholding tax purposes in the applicable jurisdiction.
- (ii) Without limiting the generality of the foregoing, if a Borrower is resident for tax purposes in the United States,
- (1) any Lender that is a "United States person" within the meaning of Section 7701(a)(30) of the Code shall deliver to the Borrower Agent and the Administrative Agent executed originals of Internal Revenue Service Form W-9 or such other documentation or information prescribed by applicable Laws or reasonably requested by the Borrower Agent or the Administrative Agent as will enable the Borrower Agent or the Administrative Agent, as the case may be, to determine whether or not such Lender is subject to backup withholding or information reporting requirements; and
- (2) each Foreign Lender that is entitled under the Code or any applicable treaty to an exemption from or reduction of withholding tax with respect to payments hereunder or

under any other Loan Document shall deliver to the Borrower Agent and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the request of the Borrower Agent or the Administrative Agent, but only if such Foreign Lender is legally entitled to do so), whichever of the following is applicable:

- (a) executed originals of Internal Revenue Service Form W-8BEN-E (or, if applicable W-8BEN) claiming eligibility for benefits of an income tax treaty to which the United States is a party,
  - (b) executed originals of Internal Revenue Service Form W-8ECI,
  - (c) executed originals of Internal Revenue Service Form W-8IMY and all required supporting documentation,
  - (d) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate to the effect that such Foreign Lender is not (A) a “bank” within the meaning of Section 881(c)(3)(A) of the Code, (B) a “10 percent shareholder” of any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or (C) a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code and (y) executed originals of Internal Revenue Service Form W-8BEN, or
  - (e) executed originals of any other form prescribed by applicable Laws as a basis for claiming exemption from or a reduction in United States federal withholding tax together with such supplementary documentation as may be prescribed by applicable Laws to permit the Borrower Agent or the Administrative Agent to determine the withholding or deduction required to be made; and
- (3) 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 Agent and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by any 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 any Borrower or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (C), “FATCA” shall include any amendments made to FATCA after the date of this Agreement. For purposes of this Section 3.01, “Laws” shall include FATCA
- (iii) Each Lender shall promptly (A) notify the Borrower Agent and the Administrative Agent of any change in circumstances which would modify or render invalid any claimed exemption or reduction, and (B) take such steps as shall not be materially disadvantageous to it, in the reasonable judgment of such Lender, and as may be reasonably necessary (including the re-designation of its Lending Office) to avoid any requirement of applicable Laws of any jurisdiction that the Loan Parties or the Administrative Agent make any withholding or deduction for taxes from amounts payable to such Lender.

- (f) **Treatment of Certain Refunds.** Unless required by applicable Laws, at no time shall the Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or the Letter of Credit Issuer, or have any obligation to pay to any Lender or the Letter of Credit Issuer, any refund of Taxes withheld or deducted from funds paid for the account of such Lender or the Letter of Credit Issuer, as the case may be. If the Administrative Agent, any Lender or the Letter of Credit Issuer determines, in its discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by any Loan Party or with respect to which any Loan Party has paid additional amounts pursuant to this Section, it shall pay to such Loan Party an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by any Loan Party under this Section with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses incurred by the Administrative Agent, such Lender or the Letter of Credit Issuer, as the case may be, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that each Loan Party, upon the request of the Administrative Agent, such Lender or the Letter of Credit Issuer, agrees to repay the amount paid over to any Loan Party (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent, such Lender or the Letter of Credit Issuer in the event the Administrative Agent, such Lender or the Letter of Credit Issuer is required to repay such refund to such Governmental Authority. This subsection shall not be construed to require the Administrative Agent, any Lender or the Letter of Credit Issuer to make available its tax returns (or any other information relating to its taxes that it deems confidential) to any Loan Party or any other Person.

**3.02 Illegality.** If any Lender determines that any Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Term SOFR, or to determine or charge interest rates based upon Term SOFR, then, on notice thereof by such Lender to the Borrower Agent through the Administrative Agent, (i) any obligation of such Lender to make or continue SOFR Loans or to convert Base Rate Loans to SOFR Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining Base Rate Loans the interest rate on which is determined by reference to the Term SOFR component of the Base Rate, the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower Agent that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Loan Parties shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all SOFR Loans of such Lender to Base Rate Loans (the interest rate on which Base Rate Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the Term SOFR component of the Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such SOFR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such SOFR Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon Term SOFR, the Administrative Agent shall during the period of such suspension compute the Base Rate applicable to such Lender without reference to the Term SOFR component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon Term SOFR. Upon any such prepayment or conversion, the Loan Parties shall also pay accrued interest on the amount so prepaid or converted.

**3.03 Inability to Determine Rates.** Subject to Section 3.08, if, on or prior to the first day of any Interest Period for any SOFR Loan:

(i) the Administrative Agent determines (which determination shall be conclusive and binding absent manifest error) that Term SOFR cannot be determined, or

(ii) the Required Lenders determine that for any reason in connection with any request for a SOFR Loan or a conversion thereto or a continuation thereof that Term SOFR for any requested Interest Period with respect to a proposed SOFR Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, and the Required Lenders have provided notice of such determination to the Administrative Agent,

then the Administrative Agent will promptly so notify the Borrower Agent and each Lender. Upon notice thereof by the Administrative Agent to the Borrower Agent, any obligation of the Lenders to make or continue SOFR Loans shall be suspended (to the extent of the affected SOFR Loans and, in the case of a SOFR Loan, the affected Interest Periods) until the Administrative Agent revokes such notice. Upon receipt of such notice, (i) the Borrower Agent may revoke any pending request for a borrowing of, conversion to or continuation of SOFR Loans (to the extent of the affected SOFR Loans and, in the case of a SOFR Loans, the affected Interest Periods) or, failing that, the Borrower Agent will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans in the amount specified therein and (ii) any outstanding affected SOFR Loans will be deemed to have been converted into Base Rate Loans immediately or, in the case of SOFR Loans, at the end of the applicable Interest Period. Upon any such conversion, the Borrowers shall also pay any additional amounts required pursuant to this Agreement.

### **3.04 Increased Costs.**

(a) Increased Costs Generally. If any Change in Law shall:

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

(ii) subject any Lender or the Letter of Credit Issuer to any tax of any kind whatsoever with respect to this Agreement, any Letter of Credit, any participation in a Letter of Credit, or any SOFR Loan made by it, or change the basis of taxation of payments to such Lender or the Letter of Credit Issuer in respect thereof (except for Indemnified Taxes or Other Taxes covered by Section 3.01 and the imposition of, or any change in the rate of, any Excluded Tax payable by such Lender or the Letter of Credit Issuer); or

(iii) impose on any Lender or the Letter of Credit Issuer or the SOFR market any other condition, cost or expense affecting this Agreement or SOFR Loans made by such Lender or any Letter of Credit or participation therein;

and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Loan the interest on which is determined by reference to the Term SOFR (or of maintaining its obligation to make any such Loan), or to increase the cost to such Lender or the Letter of Credit Issuer issuing or maintaining any Letter of Credit (or of maintaining its obligation to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by such Lender or the Letter of Credit Issuer hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or the Letter of Credit Issuer, the Loan Parties will pay to such Lender or the Letter of Credit Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the Letter of Credit Issuer, as the case may be, for such additional costs incurred or reduction suffered.

- (b) Capital Requirements. If any Lender or the Letter of Credit Issuer determines, in its reasonable discretion, that any Change in Law affecting such Lender or the Letter of Credit Issuer or any Lending Office of such Lender or such Lender's or the Letter of Credit Issuer's holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's or the Letter of Credit Issuer's capital or on the capital of such Lender's or the Letter of Credit Issuer's holding company, if any, as a consequence of this Agreement, the Revolving Credit Commitments of such Lender or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by the Letter of Credit Issuer, to a level below that which such Lender or the Letter of Credit Issuer or such Lender's or the Letter of Credit Issuer's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or the Letter of Credit Issuer's policies and the policies of such Lender's or the Letter of Credit Issuer's holding company with respect to capital adequacy), then from time to time pursuant to subsection (c) below the Loan Parties will pay to such Lender or the Letter of Credit Issuer, as the case may be, such additional amount or amounts as will compensate such Lender or the Letter of Credit Issuer or such Lender's or the Letter of Credit Issuer's holding company for any such reduction suffered.
- (c) Certificates for Reimbursement. A certificate of a Lender or the Letter of Credit Issuer setting forth the amount or amounts necessary to compensate such Lender or the Letter of Credit Issuer or its holding company, as the case may be, as specified in subsection (a) or (b) of this Section and delivered to the Borrower Agent shall be conclusive absent manifest error. The Loan Parties shall pay such Lender or the Letter of Credit Issuer, as the case may be, the amount shown as due on any such certificate within ten (10) Business Days after receipt thereof.
- (d) Delay in Requests. Failure or delay on the part of any Lender or the Letter of Credit Issuer to demand compensation pursuant to the foregoing provisions of this Section shall not constitute a waiver of such Lender's or the Letter of Credit Issuer's right to demand such compensation, provided that the Loan Parties shall not be required to compensate a Lender or the Letter of Credit Issuer pursuant to the foregoing provisions of this Section for any increased costs incurred or reductions suffered more than six months prior to the date that such Lender or the Letter of Credit Issuer, as the case may be, notifies the Loan Parties of the Change in Law giving rise to such increased costs or reductions and of such Lender's or the Letter of Credit Issuer's intention to claim compensation therefor (except that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the six-month period referred to above shall be extended to include the period of retroactive effect thereof).

**3.05 Compensation for Losses.** Upon demand of any Lender (with a copy to the Administrative Agent) from time to time, the Borrowers shall promptly compensate such Lender for and hold such Lender harmless from any loss, cost or expense incurred by it as a result of:

- (a) any continuation, conversion, payment or prepayment of any Loan other than a Base Rate Loan on a day other than the last day of the Interest Period for such Loan (whether voluntary, mandatory, automatic, by reason of acceleration, or otherwise);
- (b) any failure by Borrowers (for a reason other than the failure of such Lender to make a Loan) to prepay, borrow, continue or convert any Loan other than a Base Rate Loan on the date or in the amount notified by the Borrower Agent; or
- (c) any assignment of a SOFR Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower Agent pursuant to Section 11.13;



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

For purposes of calculating amounts payable by the Borrowers to the Lenders under this Section 3.05, each Lender shall be deemed to have funded each SOFR Loan made by it at Term SOFR for such Loan by a matching deposit or other borrowing in the SOFR market for a comparable amount and for a comparable period, whether or not such SOFR Loan was in fact so funded.

### **3.06 Mitigation Obligations; Replacement of Lenders.**

- (a) Designation of a Different Lending Office. If any Lender requests compensation under Section 3.04, or the Borrowers are required to pay any additional amount to any Lender, the Letter of Credit Issuer or any Governmental Authority for the account of any Lender or the Letter of Credit Issuer pursuant to Section 3.01, or if any Lender gives a notice pursuant to Section 3.02, then such Lender or the Letter of Credit Issuer, as applicable, 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 judgment of such Lender or the Letter of Credit Issuer, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 3.04, as the case may be, in the future, or eliminate the need for the notice pursuant to Section 3.02, as applicable, and (ii) in each case, would not subject such Lender or the Letter of Credit Issuer, as the case may be, to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or the Letter of Credit Issuer, as the case may be. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender or the Letter of Credit Issuer in connection with any such designation or assignment.
- (b) Replacement of Lenders. If any Lender requests compensation under Section 3.04, or if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, the Borrowers may replace such Lender in accordance with Section 11.13.

**3.07 Survival.** All of the Borrowers' obligations under this Article III shall survive the resignation of the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender, the replacement of any Lender and the occurrence of the Facility Termination Date.

### **3.08 Effect of Benchmark Transition Event.**

Notwithstanding anything to the contrary herein or in any other Loan Document and any Swap Contract shall be deemed not to be a "Loan Document" for purposes of this Section 3.08:

- (a) Benchmark Replacement. If a Benchmark Transition Event and its related Benchmark Replacement Date have occurred prior to any setting of the then-current Benchmark, then (A) if a Benchmark Replacement is determined in accordance with clause (a) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of such Benchmark setting and subsequent Benchmark settings without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document and (B) if a Benchmark Replacement is determined in accordance with clause (b) of the definition of "Benchmark Replacement" for such Benchmark Replacement Date, such Benchmark Replacement

will replace such Benchmark for all purposes hereunder and under any Loan Document in respect of any Benchmark setting at or after 5:00 p.m. (New York City time) on the fifth (5th) Business Day after the date notice of such Benchmark Replacement is provided to the Lenders without any amendment to, or further action or consent of any other party to, this Agreement or any other Loan Document so long as the Administrative Agent has not received, by such time, written notice of objection to such Benchmark Replacement from Lenders comprising the Required Lenders. If the Benchmark Replacement is Daily Simple SOFR, all interest payments will be payable on a monthly basis.

- (b) Benchmark Replacement Conforming Changes. In connection with the use, administration, adoption or implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Conforming Changes will become effective without any further action or consent of any other party to this Agreement or any other Loan Document.
- (c) Notice; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrower Agent and the Lenders of (A) the implementation of any Benchmark Replacement and (B) the effectiveness of any Conforming Changes in connection with the use, administration, adoption or implementation of a Benchmark Replacement. The Administrative Agent will promptly notify the Borrower Agent of the removal or reinstatement of any tenor of a Benchmark pursuant to Section 3.08. Any determination, decision or election that may be made by the Administrative Agent or, if applicable, any Lender (or group of Lenders) pursuant to this Section 3.08 including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action or any selection, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party to this Agreement or any other Loan Document, except, in each case, as expressly required pursuant to this Section 3.08.
- (d) Unavailability of Tenor of Benchmark. At any time (including in connection with the implementation of a Benchmark Replacement) (A) if the then-current Benchmark is a term rate (including the Term SOFR Reference Rate) and either (1) any tenor for such Benchmark is not displayed on a screen or other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion or (2) the administration of such Benchmark or the regulatory supervisor for the administrator of such Benchmark has provided a public statement or publication of information announcing that any tenor for such Benchmark is not or will not be representative, then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for any Benchmark settings at or after such time to remove such unavailable, non-representative, non-compliant or non-aligned tenor and (B) if a tenor that was removed pursuant to clause (A) above either (1) is subsequently displayed on a screen or information service for a Benchmark (including a Benchmark Replacement) or (2) ceases to be not be representative for a Benchmark (including a Benchmark Replacement), then the Administrative Agent may modify the definition of “Interest Period” (or any similar or analogous definition) for all Benchmark settings at or after such time to reinstate such previously removed tenor.
- (e) Benchmark Unavailability Period. Upon the Borrower Agent’s receipt of notice of the commencement of a Benchmark Unavailability Period, the Borrower Agent may revoke any pending request for a SOFR Loan, or conversion to or continuation of SOFR Loans to be made, converted or continued during any Benchmark Unavailability Period and,

failing that, the Borrower Agent will be deemed to have converted any such request into a request for a Borrowing of or conversion to Base Rate Loans. During a Benchmark Unavailability Period or at any time that a tenor for the then-current Benchmark is not an Available Tenor, the component of Base Rate based upon the then-current Benchmark or such tenor for such Benchmark, as applicable, will not be used in any determination of Base Rate.

## **ARTICLE IV SECURITY AND ADMINISTRATION OF COLLATERAL**

### **4.01 Security.**

- (a) Generally. As security for the full and timely payment and performance of all Obligations, Borrower Agent shall, and shall cause each other Loan Party to, on or before the Closing Date, do or cause to be done all things necessary in the opinion of the Administrative Agent and its counsel to grant to the Administrative Agent for the benefit of the Secured Parties a duly perfected first priority security interest in all Collateral (subject to no prior Lien or other encumbrance or restriction on transfer, other than Permitted Liens expressly permitted hereunder). Without limiting the foregoing, on the Closing Date Borrower Agent shall deliver, and shall cause each Loan Party to deliver, to the Administrative Agent, in form and substance reasonably acceptable to the Administrative Agent, (a) the Security Agreement, which shall pledge to the Administrative Agent for the benefit of the Secured Parties certain personal property of the Borrowers and the other Loan Parties more particularly described therein, and (b) Uniform Commercial Code financing statements in form, substance and number as requested by the Administrative Agent, reflecting the Lien in favor of the Secured Parties on the Collateral, and shall take such further action and deliver or cause to be delivered such further documents as required by the Security Instruments or otherwise as the Administrative Agent may request to effect the transactions contemplated by this Article IV; provided, however, that the Administrative Agent shall not be required to accept a Lien or Mortgage on any Real Property prior to the receipt of all Flood Documentation with respect thereto.

### **4.02 Collateral Administration.**

- (a) Administration of Accounts.
- (i) Records and Schedules of Accounts. Each Borrower shall keep accurate and complete records of its Accounts, including all payments and collections thereon, and shall submit to the Administrative Agent sales, collection, reconciliation and other reports in form reasonably satisfactory to the Administrative Agent, on such periodic basis as the Administrative Agent may request.
- (ii) Taxes. If an Account of any Loan Party includes a charge for any Taxes and an Event of Default exists, Administrative Agent is authorized, in its discretion, to pay the amount thereof to the proper taxing authority for the account of such Borrower and to charge Borrowers therefor; provided, however, that neither the Administrative Agent nor Lenders shall be liable for any Taxes that may be due from Borrowers or with respect to any Collateral.
- (iii) Account Verification. If a Default or Event of Default exists, the Administrative Agent shall have the right at any time, in the name of the Administrative Agent, any designee of the Administrative Agent or (during the continuance of any Event of Default) any Borrower, to verify the validity, amount or any other matter relating to any

Accounts of Borrowers by mail, telephone or otherwise. Borrowers shall cooperate fully with the Administrative Agent in an effort to facilitate and promptly conclude any such verification process.

- (iv) Proceeds of Collateral. Borrowers shall request in writing and otherwise take all necessary steps to ensure that all payments on Accounts or otherwise relating to Collateral are made directly to a Controlled Deposit Account (or a lockbox relating to a Controlled Deposit Account). If any Borrower or Subsidiary receives cash or Payment Items with respect to any Collateral, it shall hold same in trust for the Administrative Agent and promptly (not later than the next Business Day) deposit same into a Controlled Deposit Account.
- (v) Extensions of Time for Payment. In addition, upon the occurrence and during the continuance of an Event of Default, other than in the Ordinary Course of Business and in amounts which are not material to such Borrower, each Borrower will not (i) grant any extension of the time for payment of any Account, (ii) compromise or settle any Account for less than the full amount thereof, (iii) release, wholly or partially, any Person liable for the payment of any Account, (iv) allow any credit or discount whatsoever on any Account or (v) amend, supplement or modify any Account in any manner that could adversely affect the value thereof.

(b) Administration of Inventory.

- (i) Records and Reports of Inventory. Each Borrower shall keep accurate and complete records of its Inventory, including costs and daily withdrawals and additions, and shall submit to Agent inventory and reconciliation reports in form reasonably satisfactory to the Administrative Agent, on such periodic basis as the Administrative Agent may request. Each Borrower shall conduct a physical inventory at least once per calendar year (and on a more frequent basis if requested by the Administrative Agent when an Event of Default exists) and periodic cycle counts consistent with historical practices, and shall provide to the Administrative Agent a report based on each such inventory and count promptly upon completion thereof, together with such supporting information as the Administrative Agent may request. The Administrative Agent may participate in and observe each physical count.

The Administrative Agent, in its reasonable discretion, if any Event of Default is continuing, may cause additional such inventories to be taken as the Administrative Agent determines (each, at the expense of the Loan Parties).

- (ii) Returns of Inventory. No Borrower shall return any Inventory to a supplier, vendor or other Person, whether for cash, credit or otherwise, unless (a) such return is in the Ordinary Course of Business; (b) no Default, Event of Default or Overadvance exists or would result therefrom; (c) the Administrative Agent is promptly notified if the aggregate value of all Eligible Inventory included in any Borrowing Base Certificate returned in any month exceeds \$500,000; and (d) any payment received by a Borrower for a return is promptly remitted to the Administrative Agent for application to the Obligations in accordance with Section 2.06(c).
- (iii) Acquisition, Sale and Maintenance. No Borrower shall acquire or accept any Inventory on consignment or approval, and shall take all steps to assure that all Inventory is produced in accordance with applicable Law, including the FLSA. No Borrower shall sell any Inventory on consignment or approval or any other basis under which the customer may return or require a Borrower to repurchase such Inventory. The Borrowers shall use, store and maintain all Inventory with reasonable care and

caution, in accordance with applicable standards of any insurance and in conformity with all applicable Laws, and shall make current rent payments (within applicable grace periods provided for in leases) at all locations where any Collateral is located.

- (c) Collateral at Locations Subject to a Material Third-Party Agreement. With respect to any location of Collateral subject to a Material Third-Party Agreement entered into after the Closing Date, each Loan Party shall use commercially reasonable efforts to provide the Administrative Agent with Lien Waivers with respect to the premises subject to such Material Third-Party Agreements. Loan Parties acknowledge that if such Lien Waivers are not delivered, then, at the election of the Administrative Agent, all or a portion of the Collateral at such locations may be deemed ineligible for inclusion in the Borrowing Base and/or the Administrative Agent may establish a Rent and Charges Reserve for such location.

#### **4.03 After Acquired Property; Further Assurances.**

- (a) New Deposit Accounts and Securities Accounts. Concurrently with or prior to the opening of any Deposit Account, Securities Account or Commodity Account by any Loan Party, other than any Excluded Deposit Account, such Loan Party shall deliver to the Administrative Agent a Control Agreement covering such Deposit Account, Securities Account or Commodity Account, duly executed by such Loan Party, the Administrative Agent and the applicable Controlled Account Bank, securities intermediary or financial institution at which such account is maintained.
- (b) Future Locations Subject to Material Third-Party Agreements. With respect to any location of Collateral subject to a Material Third-Party Agreement entered into after the Closing Date, each Loan Party shall use commercially reasonable efforts to provide the Administrative Agent with Lien Waivers with respect to the premises subject to such Material Third-Party Agreements. Loan Parties acknowledge that if such Lien Waivers are not delivered, then, at the election of the Administrative Agent, all or a portion of the Collateral at such locations may be deemed ineligible for inclusion in the Borrowing Base and/or the Administrative Agent may establish a Rent and Charges Reserve for such location.
- (c) Acquired Real Property. If any Loan Party acquires any Real Property on or after the Closing Date, such Loan Party shall promptly notify the Administrative Agent thereof. With respect to all Real Property acquired on or after the Closing Date, but solely upon written request from the Administrative Agent in its discretion, the Loan Parties shall be required to provide, within 90 days of any such request (or such longer period as Administrative Agent may in its discretion agree) a Mortgage and all Mortgage Related Documents, including all Flood Documentation, with respect to such Real Property. For avoidance of doubt, the Administrative Agent shall not be required to accept a Lien or Mortgage on any Real Property (whether existing or acquired on or after the Closing Date) if, in its discretion, it chooses not to accept such Lien or Mortgage for any reason, including, without limitation, the failure to receive the Flood Documentation with respect thereto.
- (d) UCC Authorization. The Administrative Agent is hereby irrevocably authorized to execute (if necessary) and file or cause to be filed, with or if permitted by applicable Law without the signature of any Borrower appearing thereon, all UCC financing statements reflecting any Borrower as “debtor” and the Administrative Agent as “secured party”, and continuations thereof and amendments thereto, as the Administrative Agent reasonably deems necessary or advisable to give effect to the transactions contemplated hereby and by the other Loan Documents.

#### 4.04 Cash Management.

- (a) Controlled Deposit Accounts. Each Loan Party shall enter into a Control Agreement with respect to each Deposit Account listed on Schedule 6.19, other than Excluded Deposit Accounts, which shall include all lockboxes and related lockbox accounts used for the collection of Accounts. Each Loan Party agrees that it shall ensure that all payments in respect of Accounts or other Collateral be paid to a Controlled Deposit Account in its name, including ensuring that all invoices rendered and other requests made by any Loan Party for payment in respect of Accounts shall contain a written statement directing payment in respect of such Accounts to be paid to a Controlled Deposit Account in its name. The Borrower Agent shall cause bank statements and/or other reports from the Controlled Account Banks to be delivered to the Administrative Agent not less often than monthly, accurately setting forth all amounts deposited in each Controlled Deposit Account to ensure the proper transfer of funds as set forth above. All remittances received by any Loan Party on account of Accounts, together with the proceeds of any other Collateral, shall be held as the Administrative Agent's property, for its benefit and the benefit of Lenders, by such Loan Party as trustee of an express trust for Administrative Agent's benefit and such Loan Party shall immediately deposit same in kind in a Controlled Deposit Account. The Administrative Agent retains the right at all times after the occurrence and during the continuance of a Default or an Event of Default to notify Account Debtors that a Loan Party's Accounts have been assigned to the Administrative Agent and to collect such Loan Party's Accounts directly in its own name, or in the name of the Administrative Agent's agent, and to charge the collection costs and expenses, including reasonable attorneys' fees, to the Loan Account.
- (b) Concentration Account. Each Control Agreement with respect to a Controlled Deposit Account shall require that, during a Dominion Trigger Period, the Controlled Account Bank transfer all cash receipts and other collections by ACH or wire transfer no less frequently than daily (and whether or not there are then any outstanding Obligations) to the concentration account maintained by the Administrative Agent at BMO (the "Concentration Account"). The Concentration Account shall at all times be under the sole dominion and control of the Administrative Agent. The Loan Parties hereby acknowledge and agree that (i) the Loan Parties have no right of withdrawal from the Concentration Account, (ii) the funds on deposit in the Concentration Account shall at all times be collateral security for all of the Obligations and (iii) the funds on deposit in the Concentration Account shall be applied as provided in Section 4.04(c) below. In the event that, notwithstanding the provisions of this Section 4.04, any Loan Party receives or otherwise has dominion and control of any such proceeds or collections described above, such proceeds and collections shall be held in trust by such Loan Party for the Administrative Agent, shall not be commingled with any of such Loan Party's other funds or deposited in any account of such Loan Party and shall, not later than the Business Day after receipt thereof, be deposited into a Controlled Deposit Account, or during a Dominion Trigger Period, the Concentration Account, or dealt with in such other fashion as such Loan Party may be instructed by the Administrative Agent.
- (c) Application of Funds in the Concentration Account. All funds received in the Concentration Account in immediately available funds shall, subject to Section 9.03, be applied on a daily basis first, to the Letter of Credit Borrowings and the Swing Line Loans, second, to the outstanding Revolving Credit Loans and third, to any fees, expenses, costs or reimbursement obligations due and owing to the Agent or the Lenders. All funds received in the Concentration Account that are not immediately available funds (checks, drafts and similar forms of payment) shall be deemed applied by Administrative Agent on account of the Obligations (subject to final payment of such items) in accordance with the foregoing sentence on the first Business Day after receipt by

Administrative Agent of such items in Administrative Agent's account located in Chicago, Illinois. If as the result of such application of funds a credit balance exists in the Loan Account, such credit balance shall not accrue interest in favor of Borrowers but shall, so long as no Default or Event of Default then exists, be disbursed to Borrowers or otherwise at Borrower Agent's direction, upon Borrower Agent's request. Upon and during the continuance of any Event of Default, the Administrative Agent may, at its option, offset such credit balance against any of the Obligations or hold such credit balance as Collateral for the Obligations.

- (d) **Controlled Securities Accounts.** On the Closing Date, each Loan Party shall enter into a Control Agreement with respect to each Securities Account and Commodity Account listed on part (b) of Schedule 6.19. The Borrower Agent shall cause account statements and/or other reports from the applicable broker, financial institution or other financial intermediary to be delivered to the Administrative Agent not less often than monthly, accurately setting forth all assets, including securities entitlements, financial assets or other amounts, held in each Securities Account or Commodity Account.

**4.05 Information Regarding Collateral.** Each Borrower represents, warrants and covenants that Schedule 4.05 sets forth as of the Closing Date, (a) the exact legal name, jurisdiction of formation, organizational identification number, chief executive office and any trade name or other trade style of each Loan Party and each of its Subsidiaries, (b) each Person that has effected any merger or consolidation with a Loan Party or sold, contributed or transferred to a Loan Party any property constituting Collateral at any time since, in each case, January 1, 2016 (excluding Persons making sales in the ordinary course of their businesses to a Loan Party of property constituting Inventory in the hands of such seller), (c) any prior legal name, jurisdiction of formation, organizational identification number, trade name or location of the chief executive office of each Loan Party at any time since January 1, 2016, and (d) each location within the United States in which material goods constituting Collateral are located as of the Closing Date (together with the name of each owner of the property located at such address if not the applicable Loan Party, a summary description of the relationship between the applicable Loan Party and such Person and the maximum approximate book or market value of the Collateral held or to be held at such location). No Loan Party shall change, or permit any other Loan Party or Subsidiary thereof to change, its name, jurisdiction of formation (whether by reincorporation, merger or otherwise), the location of its chief executive office or any location specified in clause (d) of the immediately preceding sentence, or use or permit any other Loan Party to use, any additional trade name or other trade style, except upon giving not less than thirty (30) days' prior written notice to the Administrative Agent (or such shorter period as the Administrative Agent may agree) and taking or causing to be taken all such action at Borrowers' or such other Loan Parties' expense as may be reasonably requested by the Administrative Agent to perfect or maintain the perfection and priority of the Lien of the Administrative Agent in the Collateral.

## ARTICLE V CONDITIONS PRECEDENT TO CREDIT EXTENSIONS

**5.01 Conditions of Initial Credit Extension.** The obligation of each Lender and the Letter of Credit Issuer to make any initial Credit Extension hereunder is subject to satisfaction of the following conditions precedent:

- (a) The Administrative Agent's receipt of the following items (except those items that are expressly permitted to be delivered after the Closing Date pursuant to the Post-Closing Agreement), each properly executed by a Responsible Officer of the applicable Loan Party, each dated as of the Closing Date (or, in the case of certificates of governmental officials, a recent date before the Closing Date) and each in form and substance satisfactory to the Administrative Agent in its discretion:

- (i) executed counterparts of this Agreement and each of the Security Instruments;
- (ii) Notes executed by the Borrowers in favor of each Lender requesting a Note;
- (iii) such certificates of resolutions or other action, incumbency certificates (including specimen signatures), and/or other certificates of Responsible Officers of each Loan Party as the Administrative Agent may require evidencing the identity, authority and capacity of each Responsible Officer thereof authorized to act as a Responsible Officer in connection with this Agreement and the other Loan Documents to which such Loan Party is a party;
- (iv) such documents and certifications as the Administrative Agent may reasonably require to evidence that each Loan Party is duly organized or formed, and that each Loan Party is validly existing, in good standing and qualified to engage in business in its jurisdiction of organization and in any other jurisdiction in which the failure to be so qualified could reasonably be expected to have a Material Adverse Effect, including certified copies of such Loan Party's Organization Documents, agreements among holders of Equity Interests, certificates of good standing and qualification to engage in business in each applicable jurisdiction;
- (v) a favorable opinion of Whiteford Taylor Preston LLP, counsel to the Loan Parties, and acceptable local counsel to the Loan Parties, each addressed to the Administrative Agent and each Lender and their successors and assigns, as to the matters concerning the Loan Parties and the Loan Documents as the Administrative Agent may reasonably request;
- (vi) certificates of Responsible Officers of the Borrower Agent or the applicable Loan Parties either (A) identifying all consents, licenses and approvals required in connection with the execution, delivery and performance by each Borrower and the validity against each such Loan Party of the Loan Documents to which it is a party, and stating that such consents, licenses and approvals shall be in full force and effect, and attaching true and correct copies thereof or (B) stating that no such consents, licenses or approvals are so required;
- (vii) a certificate signed by a Responsible Officer of the Borrower Agent certifying (A) that the conditions specified in Sections 5.02(a) and 5.02(b) have been satisfied and (B) as to the matters described in Section 5.01(d) and 5.01(j);
- (viii) (A) audited financial statements of the Consolidated Group for each of the three (3) fiscal years immediately preceding the Closing Date, (B) unaudited interim financial statements for the Consolidated Group as of November 30, 2020, and (C) financial projections of the Consolidated Group for the next three (3) fiscal years;
- (ix) a certificate signed by the chief financial officer or, chief accounting officer of the Borrower Agent certifying that, after giving effect to the entering into of the Loan Documents and the consummation of all of the Transactions, (A) each Borrower is Solvent and (B) the Loan Parties, taken as a whole, are Solvent;
- (x) evidence that all insurance required to be maintained pursuant to the Loan Documents has been obtained and is in effect (including, without limitation, the related insurance policy endorsements in favor of the Administrative Agent);
- (xi) an initial Borrowing Base Certificate;



- (xii) initial written notice of Borrowing;
  - (xiii) delivery of Uniform Commercial Code financing statements, suitable in form and substance for filing in all places required by applicable law to perfect the Liens of the Administrative Agent under the Security Instruments as a first priority Lien as to items of Collateral in which a security interest may be perfected by the filing of financing statements, and such other documents and/or evidence of other actions as may be reasonably necessary under applicable law to perfect the Liens of the Administrative Agent under such Security Instruments as a first priority Lien (or in and to such other Collateral as the Administrative Agent may require;
  - (xiv) Uniform Commercial Code search results showing only those Liens as are acceptable to the Administrative Agent and Lenders;
  - (xv) evidence of the payment in full and cancellation of the Existing Credit Facility, including terminations of Uniform Commercial Code financing statements filed in connection with the Existing Credit Agreement and other evidence of lien releases and other related matters on terms acceptable to the Administrative Agent;
  - (xvi) evidence satisfactory to the Administrative Agent of the consummation (in compliance with all applicable laws and regulations, with the receipt of all material governmental, shareholder and third party consents and approvals relating thereto) of the Transactions;
  - (xvii) executed counterparts of the Post-Closing Agreement; and
  - (xviii) such other assurances, certificates, documents, consents or opinions as the Administrative Agent, the Letter of Credit Issuer, the Swing Line Lender or the Required Lenders may reasonably require, including, without limitation, all documents on the closing checklist last delivered by Administrative Agent to counsel for the Loan Parties.
- (b) Any fees required to be paid on or before the Closing Date shall have been paid.
- (c) Unless waived by the Administrative Agent, the Borrowers shall have paid all reasonable fees, charges and disbursements of counsel to the Administrative Agent to the extent invoiced prior to or on the Closing Date, plus such additional amounts of such reasonable fees, charges and disbursements as shall constitute its reasonable estimate of such reasonable fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrowers and the Administrative Agent).
- (d) The Administrative Agent shall be satisfied, in its reasonable discretion, that after giving effect to (i) the initial Credit Extension hereunder, (ii) consummation of the Transactions and payment of all fees and expenses in connection therewith and (iii) any payables stretched beyond their customary historical levels, Availability shall be at least \$15,000,000.
- (e) On the Closing Date, after giving effect to the Transaction, the capital structure, corporate structure, and management of the Loan Parties and their Subsidiaries is satisfactory to each of the Lenders, in its discretion.
- (f) (i) at least five (5) days prior to the Closing Date, to the extent a Borrower qualifies as a “legal entity customer” under the Beneficial Ownership Regulation and requested by any

Lender, each such requesting Lender(s) shall have received a Beneficial Ownership Certification in relation to such Borrower, in form and substance reasonably satisfactory to each such requesting Lender and (ii) each of the Lenders shall have received all requested disclosures and information related to “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act.

- (g) The Administrative Agent shall have completed all due diligence with respect to the Loan Parties, including a review of historical and projected financial statements and the Consolidated Group’s financial model, insurance review, management background checks and other confirmatory third party due diligence (including, without limitation, a collateral field audit and an inventory appraisal), in each case, as applicable, conducted by third parties acceptable to the Administrative Agent in its discretion, and the results of which shall be satisfactory to the Administrative Agent in its discretion.
- (h) The Administrative Agent shall be satisfied, in its discretion, with the resolution of all legal, tax and regulatory matters relating to this Agreement and the Transactions.
- (i) No event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect, shall have occurred since the date of the most recent audited financial statements referenced in Section 5.01(a)(viii)(A) (and, in addition, since the date of the unaudited financial statements referenced in Section 5.01(a)(viii)(B)).
- (j) The representations and warranties of the Loan Parties which are contained in Article VI or any other Loan Document, or which are contained in any document furnished at any time prior to or on the Closing Date, shall be true and correct in all respects on and as of the Closing Date.

Without limiting the generality of the provisions of Section 10.04, for purposes of determining compliance with the conditions specified in this Section 5.01, each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Closing Date specifying its objection thereto.

**5.02 Conditions to all Credit Extensions.** The obligation of each Lender or Letter of Credit Issuer to honor any Request for Credit Extension (other than one requesting only a conversion of Loans to the other Type or a continuation of SOFR Loans) hereunder (including, for avoidance of doubt, any Request for Credit Extension hereunder) is subject to the following conditions precedent:

- (a) The representations and warranties of the Loan Parties contained in Article VI or any other Loan Document, or which are contained in any document furnished at any time under or in connection herewith or therewith, shall be true and correct on and as of the date of such Credit Extension, except to the extent that such representations and warranties specifically refer to an earlier date, in which case they shall be true and correct as of such earlier date, and except that for purposes of this Section 5.02(a), the representations and warranties contained in subsections (a) and (b) of Section 6.05 shall be deemed to refer to the most recent statements furnished pursuant to clauses (a) and (b), respectively, of Section 7.01.
- (b) No Default shall have occurred and be continuing or would result from such proposed Credit Extension or from the application of the proceeds thereof.

- (c) The Administrative Agent and, if applicable, the Letter of Credit Issuer or the Swing Line Lender shall have received a Request for Credit Extension in accordance with the requirements hereof.
- (d) After giving effect to each Credit Extension, Total Revolving Credit Outstandings do not exceed the Maximum Borrowing Amount.

Each Request for Credit Extension (other than one requesting only a conversion of Loans to the other Type or a continuation of SOFR Loans) submitted by the Borrower Agent shall be deemed to be a representation and warranty that the conditions specified in Sections 5.02(a), 5.02(b) and 5.02(d) have been satisfied on and as of the date of the applicable Credit Extension. As an additional condition to any Credit Extension, Administrative Agent may request any other information, certification, document, instrument or agreement as it deems appropriate.

**5.03 Additional Conditions to Term Loans.** The obligation of each Lender to make Term Loans is subject to the following further conditions precedent:

- (a) Administrative Agent is satisfied in its sole discretion that Borrowers will use the proceeds of the requested Term Loan, concurrently on the requested borrowing date, in accordance with Section 7.11.
- (b) Each Term Loan shall be in an amount not to exceed 80% of the Cost of the applicable purchased Equipment (excluding soft costs such as installation and sales tax), and the Borrowers shall have delivered to Administrative Agent an invoice evidencing such Cost.
- (c) The aggregate amount of all Term Loans made by Lenders shall not exceed \$2,500,000 in any fiscal year; provided that if Borrowers do not borrow the entire amount of Term Loans permitted in any fiscal year, then Borrowers may carry forward, to the immediately succeeding fiscal year only, 100% of such unborrowed amount.
- (d) Each Borrowing of Term Loans shall be in a principal amount of at least \$250,000.

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES**

To induce the Secured Parties to enter into this Agreement and to make Loans and to issue Letters of Credit hereunder, each Loan Party represents and warrants to the Administrative Agent and the Lenders, subject to the limitation set forth in Section 5.02(a), that:

**6.01 Existence, Qualification and Power.** Each Loan Party and each Subsidiary thereof (a) is a corporation, partnership or limited liability company duly organized or formed, validly existing and in good standing under the Laws of the jurisdiction of its incorporation, organization or formation, (b) has all requisite power and authority and all requisite governmental licenses, authorizations, consents and approvals to (i) own or lease its assets and carry on its business as is now being conducted and (ii) execute, deliver and perform its obligations under the Loan Documents to which it is a party and to consummate the Transactions to which it is a party, and (c) is duly qualified and is licensed and in good standing under the Laws of each jurisdiction where its ownership, lease or operation of properties or the conduct of its business requires such qualification or license; except in each case referred to in clause (b)(i), or (c), to the extent that failure to do so could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Loan Party is (a) an EEA Financial Institution or (b) a Covered Entity (as defined in Section 11.21(b)).

**6.02 Authorization; No Contravention.** The execution, delivery and performance by each Loan Party of each Loan Document to which such Person is party, and the consummation of the Transactions, have been duly authorized by all necessary corporate or other organizational action, and do not and will not (a) contravene the terms of the Organization Documents of any such Person; (b) conflict with or result in any breach or contravention of, or the creation of any Lien under (i) any Contractual Obligation to which such Person is a party or (ii) any order, injunction, writ or decree of any Governmental Authority or any arbitral award to which such Person or its property is subject; or (c) violate any Law.

**6.03 Governmental Authorization; Other Consents.** No approval, consent, exemption, authorization, or other action by, or notice to, or filing with, any Governmental Authority or any other Person is necessary or required in connection with (a) the execution, delivery or performance by, or enforcement against, any Loan Party of this Agreement or any other Loan Document or the consummation of the Transactions, (b) the grant by any Loan Party of the Liens granted by it pursuant to the Collateral Documents, (c) the perfection or maintenance of the Liens created under the Collateral Documents (including the first priority nature thereof) or (d) the exercise by the Administrative Agent or any Lender of its rights under the Loan Documents or the remedies in respect of the Collateral pursuant to the Collateral Documents, except for the authorizations, approvals, actions, notices and filings listed on Schedule 6.03, all of which have been duly obtained, taken, given or made on or prior to the date hereof and are in full force and effect.

**6.04 Binding Effect.** This Agreement has been, and each other Loan Document, when delivered hereunder, will have been, duly executed and delivered by each Loan Party that is party thereto. This Agreement constitutes, and each other Loan Document when so delivered will constitute, a legal, valid and binding obligation of such Loan Party, enforceable against each Loan Party that is party thereto in accordance with its terms, except (a) as rights to indemnification hereunder may be limited by applicable Law and (b) as the enforcement hereof may be limited by any applicable Debtor Relief Laws or by general equitable principles.

**6.05 Financial Statements; No Material Adverse Effect.**

- (a) The Audited Financial Statements (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (ii) fairly present the financial condition of the Consolidated Group as of the date thereof and their results of operations for the period covered thereby in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein; (iii) show all material Indebtedness and other liabilities, direct or contingent, of the Consolidated Group as of the date thereof, including liabilities for taxes, material commitments and Indebtedness, required to be shown on a balance sheet prepared in accordance with GAAP.
- (b) The unaudited Consolidated and consolidating balance sheet of the Consolidated Group and the related Consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for the month then ended (i) were prepared in accordance with GAAP consistently applied throughout the period covered thereby, except as otherwise expressly noted therein, and (ii) fairly present the financial condition of the Consolidated Group as of the date thereof and their results of operations for the period covered thereby, subject, in the case of clauses (i) and (ii), to the absence of footnotes and to normal year-end audit adjustments.
- (c) Since the date of the Audited Financial Statements there has been no event or circumstance, either individually or in the aggregate, that has had or could reasonably be expected to have a Material Adverse Effect.

- (d) After giving effect to the transactions contemplated by this Agreement and the other Loan Documents, each Borrower is Solvent and the Loan Parties and their Subsidiaries, on a Consolidated basis, are Solvent. No transfer of property has been or will be made by any Loan Party and no obligation has been or will be incurred by any Loan Party in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of any Loan Party or Subsidiary thereof.

**6.06 Litigation.** There are no actions, suits, proceedings, claims or disputes pending or, to the knowledge of any Loan Party after reasonable investigation, threatened in writing or contemplated, at law, in equity, in arbitration or before any Governmental Authority, by or against any Loan Party or any of its Subsidiaries or against any of their properties or revenues, that (a) purport to affect or pertain to this Agreement or any other Loan Document (including the grant and perfection of any Lien under any Security Instrument) or any of the Transactions or (b) except as specifically disclosed in Schedule 6.06, either individually or in the aggregate, taking into consideration the probability of an adverse determination and any potential counterclaims, could reasonably be expected to have a Material Adverse Effect. There has been no adverse change in the status, or financial effect on any Loan Party or any Subsidiary thereof, of the matters described on Schedule 6.06.

**6.07 No Default.** No Loan Party nor any Subsidiary thereof is in default under or with respect to any Contractual Obligation that could, either individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. No Default has occurred and is continuing or would result from the consummation of the Transactions or any other transactions contemplated by this Agreement or any other Loan Document.

**6.08 Ownership of Property; Liens.**

- (a) Each Loan Party and each Subsidiary thereof has good title to, or valid leasehold interests in, all its real and personal property material to its business, if any (including the Mortgaged Properties), free and clear of all Liens, claims, and interests, except for Permitted Liens.
- (b) Schedule 6.08 sets forth the address (including street address, county and state) of all Real Property that is owned or subject to a ground lease by the Loan Parties and their Subsidiaries as of the Closing Date and identifies the owner thereof. Each Loan Party and each of its Subsidiaries has good, marketable and insurable fee simple title to the Real Property owned by such Loan Party or such Subsidiary, free and clear of all Liens, other than Permitted Liens. Each ground lease of the Loan Parties is in full force and effect and the Loan Parties are not in default of any material terms thereof.

**6.09 Environmental Compliance.**

- (a) Except as disclosed in Schedule 6.09, no Loan Party or any Subsidiary thereof (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 with respect to such Loan Party's or such Subsidiary's operations, (ii) has become subject to a pending claim with respect to any Environmental Liability or (iii) has received written notice of any claim with respect to any Environmental Liability except, in each case, as could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.
- (b) Except as otherwise set forth in Schedule 6.09 or as would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, (i) none of the

properties currently owned or operated by any Loan Party or any Subsidiary thereof is listed or, to the knowledge of the Loan Parties, proposed for listing on the NPL or on the CERCLIS or any analogous foreign, state or local list or is adjacent to any such property; (ii) to the knowledge of the Loan Parties, there are no and, to the knowledge of the Loan Parties, never have been any underground or above-ground storage tanks or any surface impoundments, septic tanks, pits, sumps or lagoons in which Hazardous Materials are being or have been treated, stored or disposed on any property currently owned or operated by any Loan Party or any Subsidiary thereof; (iii) to the knowledge of the Loan Parties, there is no asbestos or asbestos-containing material on any property currently owned or operated by any Loan Party or Subsidiary thereof; and (iv) Hazardous Materials have not been released, discharged or disposed of by any Loan Party or Subsidiary thereof in violation of Environmental Laws or, to the knowledge of the Loan Parties, by any other Person in violation of Environmental Laws on any property currently owned or operated by any Loan Party or any Subsidiary thereof.

- (c) Except as otherwise set forth on Schedule 6.09 or as would not individually or in the aggregate reasonably be expected to result in a Material Adverse Effect, (i) no Loan Party nor any Subsidiary thereof is undertaking, and no Loan Party nor any Subsidiary thereof has completed, either individually or together with other potentially responsible parties, any investigation or assessment or remedial or response action relating to any actual or threatened release, discharge or disposal of Hazardous Materials at any site, location or operation, either voluntarily or pursuant to the order of any Governmental Authority or the requirements of any Environmental Law, and (ii) all Hazardous Materials generated, used, treated, handled or stored by any Loan Party or any Subsidiary thereof at, or transported to or from by or on behalf of any Loan Party or any Subsidiary thereof, any property currently owned or operated by any Loan Party or any Subsidiary thereof have, to the knowledge of the Loan Parties, been disposed of in a manner not reasonably expected to result in material liability to any Loan Party or any Subsidiary thereof.

- (d) [Reserved].

#### **6.10 Insurance.**

The properties of the Loan Parties and their Subsidiaries are insured with financially sound and reputable insurance companies which are not Affiliates of the Loan Parties, in such amounts, with such deductibles and covering such risks (including, without limitation, workmen's compensation, public liability, business interruption, property damage, cargo and environmental insurance) as are customarily carried by companies engaged in similar businesses and owning similar properties in localities where the Loan Parties or the applicable Subsidiary operates. Schedule 6.10 sets forth a description of all insurance maintained by or on behalf of the Loan Parties as of the Closing Date. Each insurance policy listed on Schedule 6.10 is in full force and effect and all premiums in respect thereof that are due and payable have been paid.

#### **6.11 Taxes.**

Each Loan Party and its Subsidiaries have filed all federal, state and other material tax returns and reports required to be filed, and have paid all federal, state and other material taxes, assessments, fees and other governmental charges levied or imposed upon them or their properties, income or assets otherwise due and payable, except those which are being Properly Contested and except where the failure to file such returns or reports could not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. There is no proposed tax assessment against any Loan Party or Subsidiary thereof that would, if made, have a Material Adverse Effect.

## 6.12 ERISA Compliance.

- (a) Each Plan is in compliance in all material respects with the applicable provisions of ERISA, the Code and other federal or state Laws. Each Plan that is intended to be a qualified plan under Section 401(a) of the Code has received a favorable determination letter from the Internal Revenue Service to the effect that the form of such Plan is qualified under Section 401(a) of the Code and the trust related thereto has been determined by the Internal Revenue Service to be exempt from federal income tax under Section 501(a) of the Code, or an application for such a letter is currently being processed by the Internal Revenue Service. To the best knowledge of each Loan Party, nothing has occurred that would prevent or cause the loss of such tax-qualified status.
- (b) There are no pending or, to the knowledge of any Loan Party, threatened claims, actions or lawsuits, or action by any Governmental Authority, with respect to any Plan that could reasonably be expected to have a Material Adverse Effect. There has been no prohibited transaction or violation of the fiduciary responsibility rules with respect to any Plan that has resulted or could reasonably be expected to result in a Material Adverse Effect.
- (c) (i) No ERISA Event has occurred, and no Loan Party nor any ERISA Affiliate is aware of any fact, event or circumstance that could reasonably be expected to constitute or result in an ERISA Event with respect to any Pension Plan; (ii) each Loan Party and each ERISA Affiliate has met all applicable requirements under the Pension Funding Rules in respect of each Pension Plan, and no waiver of the minimum funding standards under the Pension Funding Rules has been applied for or obtained; (iii) as of the most recent valuation date for any Pension Plan, the funding target attainment percentage (as defined in Section 430(d)(2) of the Code) is 60% or higher and no Loan Party nor any ERISA Affiliate knows of any facts or circumstances that could reasonably be expected to cause the funding target attainment percentage for any such plan to drop below 60% as of the most recent valuation date; (iv) no Loan Party nor any ERISA Affiliate has incurred any liability to the PBGC other than for the payment of premiums, and there are no premium payments which have become due that are unpaid; (v) no Loan Party nor any ERISA Affiliate has engaged in a transaction that could be subject to Section 4069 or Section 4212(c) of ERISA; and (vi) no Pension Plan has been terminated by the plan administrator thereof nor by the PBGC, and no event or circumstance has occurred or exists that could reasonably be expected to cause the PBGC to institute proceedings under Title IV of ERISA to terminate any Pension Plan.
- (d) No Loan Party 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 (A) on the Closing Date, those listed on Schedule 6.12 hereto and (B) thereafter, Pension Plans not otherwise prohibited by this Agreement.
- (e) With respect to each scheme or arrangement mandated by a government other than the United States (a “Foreign Government Scheme or Arrangement”) and with respect to each employee benefit plan maintained or contributed to by any Loan Party or any Subsidiary thereof that is not subject to United States law (a “Foreign Plan”):
  - (i) any employer and employee contributions required by law or by the terms of any Foreign Government Scheme or Arrangement or any Foreign Plan have been made, or, if applicable, accrued, in accordance with normal accounting practices;
  - (ii) the Fair Market Value of the assets of each funded Foreign Plan, the liability of each insurer for any Foreign Plan funded through insurance or the book reserve established for any Foreign Plan, together with any accrued contributions, is sufficient

to procure or provide for the accrued benefit obligations, as of the date hereof, with respect to all current and former participants in such Foreign Plan according to the actuarial assumptions and valuations most recently used to account for such obligations in accordance with applicable generally accepted accounting principles; and

- (iii) each Foreign Plan required to be registered has been registered and has been maintained in good standing with applicable regulatory authorities.

#### **6.13 Subsidiaries and Equity Interests.**

No Loan Party (a) has any Subsidiaries other than those specifically disclosed in part (a) of Schedule 4.05 or created or acquired after the Closing Date in compliance with Section 7.12, and (b) owns any Equity Interests in any other Person other than those specifically disclosed on Schedule 6.13, except, in each case, Subsidiaries acquired or created and equity investments made on or after the Closing Date in compliance with this Agreement and the other Loan Documents. All of the outstanding Equity Interests in such Subsidiaries have been validly issued, are fully paid and non-assessable and are owned by a Loan Party (or a Subsidiary of a Loan Party) in the amounts specified on Schedule 6.13 free and clear of all Liens except for those created under the Security Instruments. All of the outstanding Equity Interests in the Loan Parties and their Subsidiaries have been validly issued, are fully paid and non-assessable, and are owned in the amounts specified on Schedule 6.13 free and clear of all Liens except for those created under the Security Instruments.

#### **6.14 Margin Regulations; Investment Company Act.**

No Loan Party nor Subsidiary thereof is engaged nor will engage, principally or as one of its important activities, in the business of purchasing or carrying margin stock (within the meaning of Regulation U issued by the FRB), or extending credit for the purpose of purchasing or carrying margin stock. None of the Loan Parties, any Person Controlling any Loan Party, nor any Subsidiary of any Loan Party or such Person is or is required to be registered as an “investment company” under the Investment Company Act of 1940.

#### **6.15 Disclosure.**

Each Loan Party has disclosed or caused the Borrower Agent to disclose to the Administrative Agent and the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No report, financial statement, certificate (including the Borrowing Base Certificates) or other information furnished (whether in writing or orally) by or on behalf of any Loan Party or any Subsidiary thereof to the Administrative Agent or any Lender in connection with the transactions contemplated hereby and the negotiation of this Agreement or delivered hereunder or under any other Loan Document (in each case, as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, each Loan Party represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time. As of the Closing Date, the information included in the Beneficial Ownership Certification is true and correct in all respects. Notwithstanding the foregoing, to the extent a Loan Party has made a disclosure in its publicly available SEC filings, that disclosure shall be deemed made to the Administrative Agent and the Lenders for purposes of this Section 6.15.

#### **6.16 Compliance with Laws.**



Each Loan Party and each Subsidiary thereof is in compliance in all material respects with the requirements of all Laws and all orders, writs, injunctions and decrees applicable to it or to its properties, except in such instances in which (a) such requirement of Law or order, writ, injunction or decree is being contested in good faith by appropriate proceedings diligently conducted or (b) the failure to comply therewith, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### **6.17 Intellectual Property; Licenses, Etc.**

Each Loan Party and its Subsidiaries own, or possess the right to use, all of the Intellectual Property (including IP Rights) that are reasonably necessary for the operation of their respective businesses, without known conflict with the IP Rights of any other Person, except to the extent any failure so to own or possess the right to use could not reasonably be expected to have a Material Adverse Effect. To the knowledge of each Loan Party, the operation by each Loan Party and its Subsidiaries of their respective businesses does not infringe upon any IP Rights held by any other Person.

#### **6.18 Labor Matters.**

Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect or as set forth on Schedule 6.18, there are no strikes, lockouts, slowdowns or other material labor disputes against any Loan Party or any Subsidiary thereof pending or, to the knowledge of any Loan Party, threatened. Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, the hours worked by and payments made to employees of the Loan Parties comply with the FLSA and any other applicable federal, state, local or foreign Law dealing with such matters. No Loan Party nor any of its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Act or similar state Law. All payments due from any Loan Party and its Subsidiaries, or for which any claim may be made against any Loan Party, on account of wages and employee health and welfare insurance and other benefits, have been paid or properly accrued in accordance with GAAP as a liability on the books of such Loan Party. Except as set forth on Schedule 6.18 no Loan Party nor any Subsidiary is a party to or bound by any collective bargaining agreement, management agreement, employment agreement, bonus, restricted stock, stock option, or stock appreciation plan or agreement or any similar plan, agreement or arrangement. There are no representation proceedings pending or, to any Loan Party's knowledge, threatened to be filed with the National Labor Relations Board, and no labor organization or group of employees of any Loan Party or any Subsidiary has made a pending demand for recognition. Except as would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect, there are no complaints, unfair labor practice charges, grievances, arbitrations, unfair employment practices charges or any other claims or complaints against any Loan Party or any Subsidiary pending or, to the knowledge of any Loan Party, threatened to be filed with any Governmental Authority or arbitrator based on, arising out of, in connection with, or otherwise relating to the employment or termination of employment of any employee of any Loan Party or any of its Subsidiaries. The consummation of the transactions contemplated by the Loan Documents will not give rise to any right of termination or right of renegotiation on the part of any union under any collective bargaining agreement to which any Loan Party or any of its Subsidiaries is bound.

#### **6.19 Deposit Accounts and Securities Accounts.**

- (a) Part (a) of Schedule 6.19 sets forth a list of all Deposit Accounts (including Excluded Deposit Accounts) maintained by the Loan Parties and their Subsidiaries as of the Closing Date, which Schedule includes, with respect to each Deposit Account (i) the name of the depository and (ii) the name and account number of such Deposit Account.

- (b) Part (b) of Schedule 6.19 sets forth a list of all Securities Accounts and Commodity Accounts maintained by the Loan Parties and their Subsidiaries as of the Closing Date, if any, which Schedule includes with respect to each Securities Account and Commodity Account (i) the name and address of the securities intermediary or institution holding such account, (ii) the name and account number of such account, (iii) a contact person at such securities intermediary or institution and (iv) the average value of assets held in such account over the prior twelve month period.

#### **6.20 Accounts.**

The Administrative Agent may rely, in determining which Accounts are Eligible Accounts, on all statements and representations made by the Loan Parties with respect thereto. Each Borrower warrants, with respect to each Account at the time it is shown as an Eligible Account in a Borrowing Base Certificate, that:

- (a) it is genuine and in all respects what it purports to be, and is not evidenced by a judgment;
- (b) it arises out of a completed, *bona fide* sale and delivery of goods in the Ordinary Course of Business, and substantially in accordance with any purchase order, contract or other document relating thereto;
- (c) it is for a sum certain, maturing as stated in the invoice covering such sale, a copy of which has been furnished or is available to the Administrative Agent on request;
- (d) it is not subject to any offset, Lien (other than the Administrative Agent's Lien), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the Ordinary Course of Business and disclosed to the Administrative Agent; and it is absolutely owing by the Account Debtor, without contingency in any respect;
- (e) no purchase order, agreement, document or applicable Laws restricts assignment of the Account to the Administrative Agent (regardless of whether, under the UCC, the restriction is ineffective), and the applicable Borrower is the sole payee or remittance party shown on the invoice;
- (f) no extension, compromise, settlement, modification, credit, deduction or return has been authorized with respect to the Account, except discounts or allowances granted in the Ordinary Course of Business for prompt payment that are reflected on the face of the invoice related thereto and in the reports submitted to Administrative Agent hereunder; and
- (g) to each Borrower's knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectability of such Account; (ii) the Account Debtor had the capacity to contract when the Account arose, continues to meet the applicable Borrower's customary credit standards, is Solvent, is not contemplating or subject to any proceeding under any Debtor Relief Laws, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

#### **6.21 Sanctions; Anti-Money Laundering Laws and Anti-Corruption Laws.**

- (a) None of the Loan Parties nor any of their Controlled Entities nor, to the knowledge of Borrower, any agent, affiliate or representative of any Loan Party or any of their

Subsidiaries, is, or is controlled by a Person that is, a Sanctioned Person or currently the subject or target of any Sanctions.

- (b) The Loan Parties and each of their Subsidiaries and, to the knowledge of Borrower, each of the Loan Parties' and their Subsidiaries' respective agents, affiliates and representatives, is in compliance with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.
- (c) The Loan Parties and their Subsidiaries have instituted and maintain in effect policies and procedures reasonably designed to ensure compliance by the Loan Parties, their Subsidiaries, and their Controlled Entities with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.
- (d) As of the Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all respects.

#### **6.22 Brokers.**

No broker or finder brought about the obtaining, making or closing of the Loans or transactions contemplated by the Loan Documents, and no Loan Party or Affiliate thereof has any obligation to any Person in respect of any finder's or brokerage fees in connection therewith.

#### **6.23 Customer and Trade Relations.**

There exists no actual or, to the knowledge of any Loan Party, threatened, termination or cancellation of, or any modification or change in the business relationship of any Loan Party or Subsidiary thereof with any customers or suppliers which are, individually or in the aggregate, material to its operations, to the extent that such cancellation, modification or change would reasonably be expected to result in a Material Adverse Effect.

#### **6.24 Material Contracts.**

Schedule 6.24 sets forth all Material Contracts to which any Loan Party or Subsidiary thereof is a party or is bound as of the Closing Date. The Loan Parties have delivered true, correct and complete copies of such Material Contracts to the Administrative Agent on or before the date hereof.

#### **6.25 Casualty.**

Neither the businesses nor the properties of any Loan Party or any of its Subsidiaries are affected by any fire, explosion, accident, strike, lockout or other labor dispute, drought, storm, hail, earthquake, embargo, act of God or of the public enemy or other casualty (whether or not covered by insurance) that, either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

#### **6.26 Senior Indebtedness.**

All Obligations including those to pay principal of and interest (including post-petition interest, whether or not allowed as a claim under Debtor Relief Laws) on the Loans and other Obligations, and fees and expenses in connection therewith, are entitled to the benefits of any Subordination Provisions applicable to all Indebtedness (including, without limitation, any contained in any Master Intercompany Note). Each Loan Party acknowledges that the Administrative Agent and each Lender is entering into this Agreement and each Lender is

extending its Commitments in reliance upon the Subordination Provisions (including, without limitation, any contained in the Master Intercompany Note).

## ARTICLE VII AFFIRMATIVE COVENANTS

So long as any Lender shall have any Commitment hereunder or any Obligation hereunder shall remain unpaid or unsatisfied, each Loan Party shall, and shall cause each of its Subsidiaries to, or with respect to Sections 7.01, 7.02 and 7.03, the Borrower Agent shall:

**7.01 Financial Statements.** Deliver to the Administrative Agent for distribution to each Lender:

- (a) as soon as available, but in any event within 120 days after the end of each Fiscal Year of the Consolidated Group or, if earlier, 15 days after the date required to be filed with the SEC, a Consolidated and consolidating balance sheet of the Consolidated Group as at the end of such Fiscal Year, and the related Consolidated and consolidating statements of income or operations, shareholders' equity and cash flows for such Fiscal Year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all in reasonable detail and prepared in accordance with GAAP, (i) such Consolidated statements to be audited and accompanied by a report and opinion of a Registered Public Accounting Firm of nationally recognized standing reasonably acceptable to the Administrative Agent (the "Auditor"), which report and opinion shall be prepared in accordance with audit standards of the Public Company Accounting Oversight Board and applicable Securities Laws and shall not be subject to any "going concern" or like qualification or exception or any qualification or exception as to the scope of such audit and shall include a certificate of the Auditor stating that in making the examination necessary with respect to such audit it has not become aware of any Default in respect of any term, covenant, condition of Section 8.12 or other provision in so far as they relate to accounting matters or, if any such Default shall exist, stating the nature and status of such event, and (ii) such consolidating statements to be certified by the chief executive officer, chief financial officer, treasurer or controller of the Consolidated Group to the effect that such statements are fairly stated in all material respects when considered in relation to the Consolidated financial statements of Consolidated Group.
- (b) monthly, as soon as available, but in any event within 30 days after the end of each calendar month, unaudited Consolidated and consolidating balance sheets of the Consolidated Group as of the end of such month and the related statements of income and cash flow for such month and for the portion of the Fiscal Year then elapsed, on a Consolidated basis for the Consolidated Group, setting forth in comparative form corresponding figures for the preceding Fiscal Year and certified by a Responsible Officer of Borrower Agent as prepared in accordance with GAAP and fairly presenting the financial condition, results of operations, shareholders equity and cash flows for such month and period, subject to normal year-end adjustments and the absence of footnotes; and
- (c) as soon as available but not later than prior to the end of each Fiscal Year, annual financial projections of Consolidated Group on a Consolidated basis, in form satisfactory to the Administrative Agent, consisting of (i) Consolidated balance sheets and statements of income or operations and cash flows (in each case, on a monthly basis), and (ii) monthly Availability for Borrowers, in the case of clauses (i) and (ii) for such Fiscal Year.

**7.02 Borrowing Base Certificate; Other Information.** Deliver to the Administrative Agent for distribution to each Lender, in form and detail satisfactory to the Administrative Agent:

- (a) on or before the 20th day of each calendar month from and after the date hereof, Borrower Agent shall deliver to the Administrative Agent, in form acceptable to the Administrative Agent in its Credit Judgment, a Borrowing Base Certificate as of the last day of the immediately preceding calendar month, with such supporting materials as the Administrative Agent shall reasonably request (including weekly reporting of rolling forward accounts receivable data by reporting weekly sales, cash collections and credits and monthly reporting of gross inventory, inventory ineligible and accounts receivable ineligible). If a Reporting Trigger Period exists, Borrower Agent shall execute and deliver to Administrative Agent Borrowing Base Certificates and all such supporting materials weekly within three (3) Business Days of each week then ended and current as of the close of the prior week; for the avoidance of doubt, such Borrowing Base Certificates and supporting materials shall include, without limitation, an updated calculation of the Borrowing Base. All calculations of Availability in any Borrowing Base Certificate shall originally be made by Borrowers and certified by a Responsible Officer, provided that the Administrative Agent may from time to time review and adjust any such calculation (a) to reflect its reasonable estimate of declines in value of any Collateral, due to collections received in the Concentration Account or otherwise; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting the Collateral; and (c) to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Availability Reserve, the Line Reserve, other Reserves, or the Borrowing Base (and the Administrative Agent shall notify the Borrowers of any such adjustment and its effective date);
- (b) on or before the 20th day of each calendar month from and after the date hereof, Borrower Agent shall deliver to the Administrative Agent, in the form reasonably acceptable to the Administrative Agent, detailed trial balances generated by Borrowers' enterprise resource planning system of the following: (i) reconciliations of all Borrowers' Accounts as shown on the month-end Borrowing Base Certificate for the immediately preceding month to Borrowers' accounts receivable agings, to Borrowers' general ledger and to Borrowers' most recent financial statements, (ii) a detailed aged trial balance of all Accounts as of the end of the preceding calendar month, together with such other information as the Administrative Agent may reasonably request, (iii) accounts payable agings, (iv) accounts receivable agings, (v) reconciliations of Borrowers' Inventory as shown on Borrowers' inventory systems, to Borrowers' general ledger and to Borrowers' financial statements, and (vi) a perpetual Inventory report, in the case of clauses (i) through (v) with supporting materials as the Administrative Agent shall reasonably request;
- (c) a Compliance Certificate executed by the chief financial officer of Borrower Agent which certifies compliance with Section 8.12 and provides a reasonably detailed calculation of the Fixed Charge Coverage Ratio delivered (i) concurrently with delivery of financial statements under Sections 7.01(a) and 7.01(b) above, whether or not a Financial Covenant Trigger Period then exists, (ii) on the first day of any Financial Covenant Trigger Period (certifying compliance as of the last day of the Measurement Period most recently ended prior to the start of such Financial Covenant Trigger Period) and (iii) as requested by the Administrative Agent while a Default or Event of Default exists;
- (d) promptly after the same are available, copies of each annual report, proxy or financial statement sent to the stockholders of any Loan Party or Subsidiary thereof and copies of all annual, regular, periodic and special reports and registration statements which any Loan Party or Subsidiary thereof may file or be required to file with the SEC under

Section 13 or 15(d) of the Exchange Act, and not otherwise required to be delivered to the Administrative Agent pursuant hereto;

- (e) at the Administrative Agent's request (but not more frequently than monthly unless a Default or an Event of Default has occurred and is continuing), a detailed trade payable aging, all in form and scope reasonably satisfactory to the Administrative Agent, together with such other information as the Administrative Agent may reasonably request;
- (f) promptly following any request therefor, provide information and documentation reasonably requested by Administrative Agent for purposes of compliance with applicable "know your customer" requirements under the PATRIOT Act, the Beneficial Ownership Regulation or other applicable Anti-Money Laundering Laws; and
- (g) promptly, such additional information regarding the business, financial or corporate affairs of any Loan Party or any Subsidiary thereof, or compliance with the terms of the Loan Documents, as the Administrative Agent or any Lender may from time to time reasonably request, all in form and scope reasonably acceptable to the Administrative Agent (provided that, at the request of any Lender, any such information regarding the monthly performance of the Consolidated Group shall be delivered in a conference call to be conducted promptly following the delivery of the financial statements required to be delivered under Section 7.01(b) for such month).

Documents required to be delivered pursuant to Section 7.01(a) or 7.01(b) (to the extent any such documents are included in materials otherwise filed with the SEC) or Section 7.02(c) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Borrower Agent posts such documents, or provides a link thereto on the Borrower Agent's website on the Internet at the website address listed on Schedule 11.02; or (ii) on which such documents are posted on the Borrower Agent's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (x) the Borrower Agent shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Borrower Agent to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (y) the Borrower Agent shall notify (which may be by facsimile or electronic mail) the Administrative Agent and each Lender of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions (i.e., soft copies) of such documents. 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 Borrowers 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.

Each Loan Party hereby acknowledges that (a) the Administrative Agent and/or the Arrangers will make available to the Lenders and the Letter of Credit Issuer materials and/or information provided by or on behalf of the Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on SyndTrak 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 Loan Parties or their 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, so long as any Borrower 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, (w) all Borrower Materials that are to be made available to Public Lenders 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”, each Loan Party shall be deemed to have authorized the Administrative Agent, the Arrangers, the Letter of Credit Issuer and the Lenders to treat such Borrower Materials as not containing any material non-public information with respect to any Loan Party or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information, they shall be treated as set forth in Section 11.07); (y) all Borrower Materials marked “PUBLIC” are permitted to be made available through a portion of the Platform designated “Public Investor”; and (z) the Administrative Agent and the Arrangers shall be entitled to treat any Borrower Materials that are not marked “PUBLIC” as being suitable only for posting on a portion of the Platform not designated “Public Investor”. Notwithstanding the foregoing, the Borrowers shall be under no obligation to mark any Borrower Materials “PUBLIC.”

**7.03 Notices.** Promptly, and in any event within five (5) Business Days after any Responsible Officer obtains knowledge thereof, notify the Administrative Agent of:

- (a) the occurrence of any Default or Event of Default;
- (b) any matter that has resulted or could reasonably be expected to result in a Material Adverse Effect, including (i) breach or non-performance of, or any default under, a Contractual Obligation of any Loan Party or any Subsidiary; (ii) any dispute, litigation, investigation, proceeding or suspension between any Loan Party or any Subsidiary and any Governmental Authority; (iii) the commencement of, or any material development in, any litigation or proceeding affecting any Loan Party or any Subsidiary, including pursuant to any applicable Environmental Laws; violation or asserted violation of any applicable Law;
- (c) the occurrence of any ERISA Event;
- (d) the occurrence of a Change of Control;
- (e) the creation (by Division or otherwise) or acquisition of any Subsidiary;
- (f) any material change in accounting policies or financial reporting practices by any Loan Party or any Subsidiary thereof;
- (g) any change in the senior executive officers of any Loan Party or Subsidiary thereof;
- (h) the discharge by any Loan Party or Subsidiary thereof of its present Auditors or any withdrawal or resignation by such Auditors;
- (i) any collective bargaining agreement or other labor contract to which a Loan Party becomes a party, or the application for the certification of a collective bargaining agent;
- (j) the filing of any Lien for unpaid Taxes against any Loan Party in excess of \$500,000;
- (k) any casualty or other insured damage to any material portion of the Collateral or the commencement of any action or proceeding for the taking of any interest in a material portion of the Collateral under power of eminent domain or by condemnation or similar proceeding or if any material portion of the Collateral is damaged or destroyed;
- (l) promptly following receipt, copies of any material notices (including notices of default or acceleration) received with respect to any Subordinated Debt;

- (m) (i) Accounts in an aggregate face amount of \$500,000 or more ceasing to be Eligible Accounts and (ii) Inventory in an aggregate face amount of \$500,000 or more ceasing to be Eligible Inventory;
- (n) as soon as practicable following receipt thereof, notify the Administrative Agent and each Lender of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified in such certification;
- (o) any material notice received with respect to any Collateral that adversely and materially affects the interests of the Secured Parties; and
- (p) any failure by any Loan Party or Subsidiary thereof to pay rent at any of such Loan Party's or Subsidiary's locations if such failure continues for more than fifteen (15) days following the day on which such rent first came due.

Each notice pursuant to this Section 7.03 shall be accompanied by a statement of a Responsible Officer of the Borrower Agent setting forth details of the occurrence referred to therein and stating what action the Borrowers have taken and proposes to take with respect thereto. Each notice pursuant to Section 7.03(a) shall describe with particularity any and all provisions of this Agreement and any other Loan Document that have been breached.

**7.04 Payment of Obligations.** Pay and discharge as the same shall become due and payable, all its obligations and liabilities, including (a) all tax liabilities, assessments and governmental charges or levies upon it or its properties or assets, unless the same are being Properly Contested, (b) all lawful claims which, if unpaid, would by law become a Lien upon its property, except to the extent that any such Lien would otherwise be permitted by Section 8.02, (c) any Subordinated Debt and (d) all Indebtedness having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$500,000 as and when due and payable, but subject to any Subordination Agreement (or any Subordination Provisions contained in any instrument or agreement evidencing such Indebtedness).

**7.05 Preservation of Existence, Etc.** (a) Preserve, renew and maintain in full force and effect its legal existence and good standing under the Laws of the jurisdiction of its organization or formation except in a transaction permitted by Section 8.04 or 8.05; (b) take all reasonable action to maintain all rights, privileges, permits, licenses and franchises necessary or desirable in the normal conduct of its business, except to the extent that failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) preserve or renew all of its registered Intellectual Property, the non-preservation of which could reasonably be expected to have a Material Adverse Effect.

**7.06 Maintenance of Properties.** (a) Maintain, preserve and protect all of its properties (other than insignificant properties) and equipment necessary in the operation of its business in reasonably good working order and condition, ordinary wear and tear excepted except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; (b) make all reasonably necessary repairs thereto and renewals and replacements thereof except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; and (c) use the standard of care typical in the industry in the operation and maintenance of its facilities.

**7.07 Maintenance of Insurance; Condemnation Proceeds.**

- (a) Maintain with (i) companies having an A.M. Best Rating of at least "A" or (ii) financially sound and reputable insurance companies reasonably acceptable to the Administrative



Agent and not Affiliates of the Loan Parties, insurance with respect to its properties and business against loss or damage of the kinds customarily insured against by Persons engaged in the same or similar business and operating in the same or similar locations or as is required by applicable Law, of such types and in such amounts as are customarily carried under similar circumstances by such other Persons and as are reasonably acceptable to the Administrative Agent;

- (b) Maintain flood insurance with respect to any Mortgaged Property located in any area identified by FEMA (or any successor agency) as a Special Flood Zone with such providers, on such terms and in such amounts as required pursuant to the Flood Disaster Protection Act and the National Flood Insurance Act of 1968, and all applicable rules and regulations promulgated thereunder, or as otherwise required by the Administrative Agent or any Lender (but no less coverage than required by applicable flood laws and regulations).
- (c) Cause all casualty policies, including fire and extended coverage policies, maintained with respect to any Collateral to be endorsed or otherwise amended to include (i) a non-contributing mortgagee clause (regarding improvements to Real Property) and lenders' loss payable clause (regarding personal property), in form and substance satisfactory to the Administrative Agent in its discretion, which endorsements or amendments shall provide that the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Administrative Agent, (ii) a provision to the effect that none of the Loan Parties, Secured Parties or any other Person shall be a co-insurer and (iii) such other provisions as the Administrative Agent may reasonably require from time to time to protect the interests of the Secured Parties.
- (d) Cause commercial general liability policies to be endorsed to name the Administrative Agent as an additional insured; and cause business interruption policies to name the Administrative Agent as a loss payee and to be endorsed or amended to include (i) a provision that, from and after the Closing Date, the insurer shall pay all proceeds otherwise payable to the Loan Parties under the policies directly to the Administrative Agent, (ii) a provision to the effect that none of the Loan Parties, the Administrative Agent or any other party shall be a co-insurer and (iii) such other provisions as the Administrative Agent may reasonably require from time to time to protect the interests of the Secured Parties.
- (e) Cause each such policy referred to in this Section 7.07 to also provide that it shall not be canceled, modified or not renewed (i) by reason of nonpayment of premium except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Administrative Agent (giving the Administrative Agent the right to cure defaults in the payment of premiums) or (ii) for any other reason except upon not less than thirty (30) days' prior written notice thereof by the insurer to the Administrative Agent.
- (f) Deliver to the Administrative Agent, prior to the cancellation, modification or non-renewal of any such policy of insurance, a copy of a renewal or replacement policy or insurance certificate (or other evidence of renewal of a policy previously delivered to the Administrative Agent, including an insurance binder) together with evidence reasonably satisfactory to the Administrative Agent of payment of the premium therefor.
- (g) Permit any representatives that are designated by the Administrative Agent to inspect the insurance policies maintained by or on behalf of the Loan Parties and to inspect books and records related thereto and any properties covered thereby. The Loan Parties shall pay the reasonable fees and expenses of any representatives retained by the Administrative Agent to conduct any such inspection, in an aggregate amount not to

exceed \$5,000 during the term of this Agreement; provided, however, that if an insurance review is initiated during a Default or Event of Default, all charges, costs and expenses therefor shall be reimbursed by the Loan Parties without regard to such limit.

- (h) None of the Secured Parties, or their agents or employees shall be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 7.07. Each Loan Party shall look solely to its insurance companies or any other parties other than the Secured Parties for the recovery of such loss or damage and such insurance companies shall have no rights of subrogation against any Secured Party or its agents or employees. If, however, the insurance policies do not provide waiver of subrogation rights against such parties, as required above, then the Loan Parties hereby agree, to the extent permitted by law, to waive their right of recovery, if any, against the Secured Parties and their agents and employees. The designation of any form, type or amount of insurance coverage by any Secured Party under this Section 7.07 shall in no event be deemed a representation, warranty or advice by such Secured Party that such insurance is adequate for the purposes of the business of the Loan Parties or the protection of their properties.
- (i) Notwithstanding anything to the contrary contained herein, if any Loan Party or any Subsidiary thereof at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required above or to pay all premiums relating thereto, Administrative Agent may at any time or times thereafter obtain and maintain such policies of insurance and pay such premiums and take any other action with respect thereto that Administrative Agent deems advisable. Administrative Agent shall have no obligation to obtain insurance for any Loan Party or any such Subsidiary or pay any premiums therefor. By doing so, Administrative Agent shall not be deemed to have waived any Default or Event of Default arising from the failure of such Loan Party or Subsidiary to maintain such insurance or pay any premiums therefor. All sums so disbursed, including reasonable attorneys' fees, court costs and other charges related thereto, shall be payable on demand by Borrower to Administrative Agent and shall be additional Obligations hereunder secured by the Collateral.

#### **7.08 Compliance with Laws; Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions.**

- (a) Comply in all material respects with the requirements of all Laws (including without limitation all applicable Environmental Laws) and all orders, writs, injunctions and decrees applicable to it or to its business or property, except in such instances in which (i) such requirement of Law or order, writ, injunction or decree is being Properly Contested; or (ii) the failure to comply therewith could not reasonably be expected to have a Material Adverse Effect.
- (b) Notwithstanding the general applicability of Section 7.08(a) above, comply with the requirements of all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to the Borrowers and shall cause each other Loan Party and each of its and their respective Subsidiaries to comply with the requirements of all Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions applicable to such Persons.
- (c) Provide Administrative Agent, the Letter of Credit Issuer, and the Lenders (i) any information regarding Borrower, each other Loan Party, and each of their respective owners, Affiliates, and Subsidiaries necessary for Administrative Agent, the Letter of Credit Issuer, and the Lenders to comply with all applicable Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions; subject however, in the case of Affiliates, to the Borrowers' ability to provide information applicable to them and (ii) without limiting the

foregoing, notification of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein.

- (d) The Borrowers will maintain in effect and enforce policies and procedures reasonably designed to ensure compliance by the Loan Parties and each of their Subsidiaries with applicable Anti-Corruption Laws, Anti Money-Laundering Laws and Sanctions.

**7.09 Books and Records.** (a) Maintain proper books of record and account, in which full, true and correct entries in conformity with GAAP consistently applied shall be made of all financial transactions and matters involving the assets and business of the Loan Parties or such Subsidiary thereof, as the case may be; and (b) maintain such books of record and account in material conformity with all applicable requirements of any Governmental Authority having regulatory jurisdiction over any Loan Party or such Subsidiary thereof, as the case may be.

**7.10 Inspection Rights and Appraisals; Meetings with the Administrative Agent.**

- (a) Permit the Administrative Agent or its designees or representatives from time to time, subject to reasonable notice and normal business hours (except, in each case, when a Default or Event of Default exists), to conduct Field Exams up to once during any twelve (12) month period and/or appraisals of Inventory up to once during any twelve (12) month period and to examine its corporate, financial and operating records, and make copies thereof or abstracts therefrom up to once during any twelve (12) month period, and to discuss its affairs, finances and accounts with its directors, officers and Auditors; provided that representatives of the Borrower Agent shall be given the opportunity to participate in any discussions with the Auditors. The Administrative Agent shall not have any duty to any Loan Party to share any results of any Field Exam with any Loan Party, but shall, in its reasonable discretion, share excerpts of such Field Exam with the Borrower Agent upon request. Appraisals may be shared with the Borrower Agent upon request. The Loan Parties acknowledge that all Field Exams, appraisals and reports are prepared by or for the Administrative Agent and Lenders for their purposes, and Loan Parties shall not be entitled to rely upon them.
- (b) Reimburse the Administrative Agent for all reasonable and documented out-of-pocket charges, costs and expenses of the Administrative Agent in connection with (i) up to one appraisal and one Field Exam during any twelve (12) month period; provided, however, that if a Field Exam or appraisal is initiated during a Default or Event of Default, all charges, costs and expenses therefor shall be reimbursed by the Loan Parties without regard to such limits.
- (c) Without limiting the foregoing, participate and will cause their key management personnel to participate in meetings with the Administrative Agent and Lenders periodically during each year, which meetings shall be held at such times and such places as may be reasonably requested by the Administrative Agent.

**7.11 Use of Proceeds.**

Use the proceeds of (i) the Revolving Credit Facility (including, without limitation, any Incremental Facility incurred pursuant to Section 2.18) (a) to repay the Existing Agreement, (b) to pay fees and expenses in connection with the Transactions, and (c) for working capital, Permitted Acquisitions, capital expenditures, Restricted Payments, Investments and other general corporate purposes not in contravention of any Law or of any Loan Document, and (ii) the Term Loan Facility to reimburse the Loan Parties for certain purchases of Equipment. None of the proceeds of the Credit Extensions will be used, directly or indirectly, (x) to finance or refinance

dealings or transactions by or with any Person that is described or designated in the Specially Designated Nationals and Blocked Persons List (the “SDN List”) of the Office of Foreign Assets Control, United States Department of the Treasury (“OFAC”) or is otherwise a Person officially sanctioned by the United States of America pursuant to the OFAC Sanctions Program or (y) for any purpose that is otherwise in violation of the Trading with the Enemy Act, the OFAC Sanctions Program, the PATRIOT Act or CISADA (collectively, the “Foreign Activities Laws”).

## **7.12 New Subsidiaries.**

As soon as practicable but in any event within 30 Business Days (or such longer period as the Administrative Agent shall agree, in its discretion) following the acquisition or creation (by Division or otherwise) of any Subsidiary (including, for avoidance of doubt, any Foreign Subsidiary), cause to be delivered to the Administrative Agent each of the following, as applicable:

- (a) a joinder agreement acceptable to the Administrative Agent duly executed by such Subsidiary sufficient to cause such Subsidiary to become a Borrower (or, at Administrative Agent’s discretion, a Guarantor), together with executed counterparts of each other Loan Document reasonably requested by the Administrative Agent, including all Security Instruments and other documents reasonably requested to establish and preserve the Lien of the Administrative Agent in all Collateral of such Subsidiary;
- (b) (i) Uniform Commercial Code financing statements naming such Person as “Debtor” and naming the Administrative Agent for the benefit of the Secured Parties as “Secured Party,” in form, substance and number sufficient in the reasonable opinion of the Administrative Agent and its special counsel to be filed in all Uniform Commercial Code filing offices and in all jurisdictions in which filing is necessary to perfect in favor of the Administrative Agent for the benefit of the Secured Parties the Lien on the Collateral conferred under such Security Instrument to the extent such Lien may be perfected by Uniform Commercial Code filing, and (ii) pledge agreements, control agreements, Documents and original collateral (including pledged Equity Interests, Securities and Instruments) and such other documents and agreements as may be reasonably required by the Administrative Agent, all as necessary to establish and maintain a valid, perfected security interest in all Collateral in which such Subsidiary has an interest consistent with the terms of the Loan Documents;
- (c) upon the request of the Administrative Agent, an opinion of counsel to the Loan Parties and their Subsidiaries (including, without limitation, such Subsidiary) and addressed to the Administrative Agent and the Lenders, in form and substance reasonably acceptable to the Administrative Agent, each of which opinions may be in form and substance, including assumptions and qualifications contained therein, substantially similar to those opinions of counsel delivered pursuant to Section 5.01(a);
- (d) current copies of the Organization Documents of each such Subsidiary, together with minutes of duly called and conducted meetings (or duly effected consent actions) of the Board of Directors, partners, or appropriate committees thereof (and, if required by such Organization Documents or applicable law, of the shareholders, members or partners) of such Person authorizing the actions and the execution and delivery of documents described in this Section 7.12, all certified by the applicable Governmental Authority or appropriate officer, as applicable; and
- (e) with respect to any Subsidiary to become a Borrower or Guarantor hereunder, within three (3) Business Days prior to becoming a Borrower or Guarantor, all “know-your-customer” and customer due diligence documentation satisfactory to the Lenders to the extent such information is requested by the Administrative Agent or the Lenders

reasonably promptly after written notice to the Administrative Agent of the proposed joinder of a Borrower or Guarantor.

#### **7.13 Compliance with ERISA.**

Do, and cause each of its ERISA Affiliates to do, each of the following: (a) maintain each Plan in compliance in all material respects with the applicable provisions of ERISA, the Code and other applicable Laws, including Foreign Benefit Laws; (b) cause each Plan which is qualified under Section 401(a) of the Code to maintain such qualification; (c) cause each Plan subject to any Foreign Benefit Law to maintain any required approvals by any Governmental Authority regulating such Plan, and (d) make all required contributions to any Plan subject to the Pension Funding Rules, and (e) make all required contributions and payments to any Foreign Plans. At no time shall the accumulated benefit obligations under any Plan subject to Title IV of ERISA that is not a Multiemployer Plan exceed the Fair Market Value of the assets of such Plan allocable to such benefits by more than \$500,000. The Loan Parties and each of their respective Subsidiaries shall not withdraw, and shall cause each ERISA Affiliate not to withdraw, in whole or in part, from any Multiemployer Plan so as to give rise to withdrawal liability exceeding \$500,000 in the aggregate. At no time shall the actuarial present value of unfunded liabilities for post-employment health care benefits, whether or not provided under a Plan, calculated in a manner consistent with Statement No. 106 of the Financial Accounting Standards Board, exceed \$500,000.

#### **7.14 Further Assurances.**

At the Borrowers' cost and expense, upon request of the Administrative Agent, duly execute and deliver or cause to be duly executed and delivered, to the Administrative Agent such further information, instruments, documents, certificates, financing and continuation statements, and do and cause to be done such further acts that may be reasonably necessary or advisable in the reasonable opinion of the Administrative Agent to carry out more effectively the provisions and purposes of this Agreement, the Security Instruments and the other Loan Document, including, to create, continue or preserve the liens and security interests in Collateral (and the perfection and priority thereof) of the Administrative Agent contemplated hereby and by the other Loan Documents and specifically including all Collateral acquired by the Borrowers after the Closing Date.

#### **7.15 Licenses.**

(a) Keep in full force and effect each License (i) the expiration or termination of which could reasonably be expected to materially adversely affect the realizable value in the use or sale of a material amount of Inventory or (ii) the expiration or termination of which could reasonably be expected to have a Material Adverse Effect (each a "Material License"); (b) promptly notify the Administrative Agent of (i) any material modification to any such Material License that could reasonably be expected to be materially adverse to any Loan Party or the Administrative Agent or any Lender and (ii) entering into any new Material License; (c) pay all Royalties (other than immaterial Royalties or Royalties being Properly Contested) arising under such Material Licenses when due (subject to any cure or grace period applicable thereto); and (d) notify the Administrative Agent of any material default or material breach asserted in writing by any Person to have occurred under any such Material License.

#### **7.16 Environmental Laws.**

(a) Conduct its operations and keep and maintain its Real Property in material compliance with all Environmental Laws, other than any such non-compliance which would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; (b) obtain and

renew all environmental permits necessary for its operations and properties, other than any environmental permits the failure of which to obtain would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; and (c) implement any and all investigation, remediation, removal and response actions that are required to comply with Environmental Laws pertaining to the presence, generation, treatment, storage, use, disposal, transportation or release of any Hazardous Materials on, at, in, under or about any of its Real Property other than any such non-compliance which would not reasonably be expected to result, individually or in the aggregate, in a Material Adverse Effect; provided, however, that, neither a Loan Party nor any of its Subsidiaries shall be required to undertake any such cleanup, removal, remedial or other action to the extent that its obligation to do so is being contested in good faith and by proper proceedings and adequate reserves have been set aside and are being maintained by the Loan Parties with respect to such circumstances in accordance with GAAP.

#### **7.17 Leases, Mortgages and Third-Party Agreements.**

- (a) Upon request, provide Administrative Agent with copies of all existing and future agreements (including any mortgage, deed of trust or similar security document) entered into between a Loan Party and any landlord, warehouseman, processor, shipper, bailee or other Person that owns, or has a mortgage or similar lien on, any premises at which any Collateral with an aggregate value of \$500,000 or greater may be kept or that otherwise may possess any Collateral with an aggregate value of \$500,000 or greater (each a “Material Third-Party Agreement”).
- (b) Except as otherwise expressly permitted hereunder, (i) make all payments and otherwise perform all obligations in respect of all leases and all mortgages, deeds of trust or similar security documents constituting Material Third Party Agreements and not allow such leases to lapse or be terminated (or any rights to renew such leases to be forfeited or cancelled), (ii) notify the Administrative Agent of any default by the applicable Loan Party or Subsidiary thereof with respect to such leases or mortgages, deeds of trust or similar security documents, and (iii) promptly cure any such default by the applicable Loan Party or Subsidiary thereof. If any such default is not so cured, each Loan Party hereby authorizes the Administrative Agent (as its non-fiduciary agent and on its behalf) to, if elected by the Administrative Agent in its sole discretion, make such payments and/or take such other actions as the Administrative Agent may elect in order to cure any such default (whether or not an Event of Default under this Agreement exists at such time). Any payment made by the Administrative Agent pursuant to this Section 7.17(b) shall be deemed a Protective Advance hereunder. Each Loan Party agrees that the Administrative Agent shall have no obligation to exercise any right to cure hereunder, whether or not such right is exercised on any one or more occasions.

#### **7.18 Material Contracts.**

Perform and observe all the payment terms and other material terms and provisions of each Material Contract to be performed or observed by it, maintain each such Material Contract in full force and effect, enforce each such Material Contract in accordance with its terms, take all such action to such end as may be from time to time reasonably requested by the Administrative Agent and, upon reasonable request of the Administrative Agent, make to each other party to each such Material Contract such demands and requests for information and reports or for action as any Loan Party or any of its Subsidiaries is entitled to make under such Material Contract, and cause each of its Subsidiaries to do so, except, in any case, where the failure to do any of the foregoing, either individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

#### **7.19 Treasury Management Services.**

Commencing with the date which is 120 days after the Closing Date (or such later date as the Administrative Agent may agree), each Loan Party shall maintain all of its lockbox deposit accounts and Deposit Accounts exclusively with BMO Bank N.A. and shall utilize BMO Bank N.A. for its primary disbursement account and other Treasury Management and Other Services.

**7.20 No Cash Hoarding.**

If, at the end of any Business Day, Total Revolving Credit Outstandings are greater than zero and the Consolidated Cash Balance exceeds the greater of (a) \$7,500,000 and (b) 12.5% of the Borrowing Base in effect on such Business Day, then the Borrowers shall, no later than the Business Day thereafter, (i) prepay Revolving Credit Borrowings outstanding on such Business Day in an aggregate principal amount equal to the lesser of (A) such excess and (B) the amount of Revolving Credit Borrowings then outstanding and (ii) if a Default then exists, if Total Revolving Credit Outstandings remain after prepaying all Revolving Credit Borrowings because of Letter of Credit Obligations, Cash Collateralize such Letter of Credit Obligations, in each case to the extent any such excess remains on the date such prepayment is required to be made.

**ARTICLE VIII  
NEGATIVE COVENANTS**

So long as any Lender shall have any Commitment hereunder or any Obligation hereunder shall remain unpaid or unsatisfied, no Loan Party shall, nor shall it permit any Subsidiary thereof to, directly or indirectly:

**8.01 Indebtedness.** Create, incur, assume or suffer to exist any Indebtedness or issue any Disqualified Equity Interest, except:

- (a) Indebtedness under the Loan Documents (including, for avoidance of doubt, Indebtedness arising pursuant to Section 2.18 of this Agreement);
- (b) any other Indebtedness outstanding on the Second Amendment Effective Date and listed on Schedule 8.01;
- (c) any Subordinated Debt, so long as such Subordinated Debt is (i) unsecured and subject to a Subordination Agreement, and (ii) not owed to any Loan Party or Subsidiary or Affiliate thereof;
- (d) Guarantees of any Loan Party in respect of Indebtedness otherwise permitted hereunder of any other Loan Party; provided that any Guarantee of Indebtedness permitted hereunder that is subordinated to the Obligations shall be subordinated to the Obligations on substantially the same terms as such guaranteed Indebtedness;
- (e) Credit Product Obligations consisting of obligations (contingent or otherwise) existing or arising under any Swap Contract, provided that (i) such obligations are (or were) entered into by such Person in the Ordinary Course of Business for the purpose of directly mitigating risks reasonably anticipated by such Person associated with liabilities, commitments, investments, assets, cash flows of or property held by, or changes in the value of securities issued by, such Person, and not for purposes of speculation or taking a “market view”, and (ii) such Swap Contract does not contain any provision exonerating the non-defaulting party from its obligation to make payments on outstanding transactions to the defaulting party; provided further that the Swap Termination Value of all Swap Contracts permitted under this clause (d) shall not exceed \$250,000;

- (f) Indebtedness arising in the Ordinary Course of Business in connection with treasury management and commercial credit card, merchant card and purchase or procurement card services including Treasury Management and Other Services;
- (g) Indebtedness in respect of Capital Leases, Synthetic Lease Obligations and purchase money obligations for Real Property and fixed or capital assets within the limitations set forth in Section 8.02(h); provided, however, that the aggregate amount of all such Indebtedness of all Loan Parties and their Subsidiaries at any one time outstanding shall not exceed \$1,000,000;
- (h) unsecured Assumed Indebtedness; provided, however, that the aggregate amount of all such Indebtedness of all Loan Parties and their Subsidiaries at any one time outstanding shall not exceed \$1,000,000;
- (i) Indebtedness incurred to finance or as part of the consideration for any Permitted Acquisition; provided, that, (i) no Event of Default exists at the time of or would be caused by the incurrence of such Indebtedness and (ii) such Indebtedness (A) does not exceed, in the aggregate for all Loan Parties and their Subsidiaries, for all Permitted Acquisitions on or after the Closing Date, \$1,000,000, (B) is unsecured, (C) bears interest (and provided for fees) at a rate (or amount) no greater than the then current arm's length market rate (or amount) for similar Indebtedness, (D) does not require the payment in cash of principal (other than in respect of working capital adjustments) prior to the Maturity Date, (E) has a maturity at least 91 days after the Maturity Date, and (F) is subordinated to the Obligations pursuant to a Subordination Agreement;
- (j) the endorsement of negotiable instruments for deposit or collection or similar transactions in the Ordinary Course of Business;
- (k) Indebtedness in respect of any bankers' acceptance, bank guarantees, letters of credit, warehouse receipt or similar facilities entered into in the ordinary course of business in respect of workers' compensation and other casualty 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 and other casualty claims);
- (l) Indebtedness incurred or arising in the Ordinary Course of Business (and not in connection with the borrowing of money) in respect of (i) obligations to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms; (ii) performance bonds, bid bonds, appeal bonds, surety bonds, performance and completion guarantees and similar instruments or obligations; and (iii) obligations to pay insurance premiums;
- (m) Indebtedness representing deferred compensation to employees, consultants or independent contractors incurred in the ordinary course of business;
- (n) surety bonds, deposits and similar obligations permitted under Section 8.02(e) or (f);
- (o) unsecured Indebtedness of any Loan Party owing to any other Loan Party, so long as such Indebtedness is subordinated pursuant to, and otherwise subject to, the Master Intercompany Note; and
- (p) Refinancing Indebtedness, so long as the Refinancing Conditions are met with respect thereto.



**8.02 Liens.** Create, incur, assume or suffer to exist any Lien upon any of its property, assets or revenues, whether now owned or hereafter acquired, other than the following (the “Permitted Liens”):

- (a) Liens in favor of the Administrative Agent pursuant to any Loan Document;
- (b) Liens existing on the date hereof as described on Schedule 8.02 (setting forth, as of the Second Amendment Effective Date, the lienholder thereof, the principal amount of the obligations secured thereby and the property or assets of such Loan Party or such Subsidiary subject thereto) and any renewals or extensions thereof, provided that (i) the Lien does not extend to any additional property, and (ii) the obligations secured or benefited thereby constitutes Refinancing Indebtedness;
- (c) Liens for taxes, assessments or other governmental charges, not yet due or which are being Properly Contested;
- (d) Liens of carriers, warehousemen, mechanics, materialmen, repairmen, landlords or other like Liens imposed by Law or arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested;
- (e) Liens, pledges or deposits in the Ordinary Course of Business in connection with (i) insurance, workers compensation, unemployment insurance and social security legislation, (ii) contracts, bids, government contracts, and surety, appeal, customs, performance and return-of-money bonds and (iii) other similar obligations (exclusive of obligations in respect of the payment for borrowed money), whether pursuant to contracts, statutory requirements, common law or consensual arrangements, other than any Lien imposed by ERISA or a Foreign Benefit Law;
- (f) Liens securing Indebtedness permitted under Section 8.01(g); provided that (i) such Liens do not at any time encumber any property other than the property financed by such Indebtedness and (ii) the Indebtedness secured thereby does not exceed the cost or Fair Market Value, whichever is lower, of the property being acquired on the date of acquisition;
- (g) Liens with respect to minor imperfections of title and easements, rights-of-way, covenants, consents, reservations, encroachments, variations and zoning and other similar restrictions, charges, encumbrances or title defects affecting Real Property which, in the aggregate, are not substantial in amount, and which do not in any case materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the applicable Person and do not materially detract from the value of or materially impair the use by the Loan Parties in the Ordinary Course of Business of the property subject to or to be subject to such encumbrance;
- (h) Liens securing judgments for the payment of money not constituting an Event of Default under Section 9.01 or securing appeal or other surety bonds related to such judgments, and which in all cases are junior to the Lien of the Administrative Agent;
- (i) operating leases or subleases granted by the Loan Parties to any other Person in the Ordinary Course of Business;
- (j) Liens (i) of a collection bank arising under Section 4-210 of the UCC or any comparable or successor provision on items in the course of collection, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business and (iii) in favor of banking institutions accepting deposits in the ordinary

course of business, in the case of clauses (i) through (iii) to the extent such Liens (x) arise as a matter of law encumbering deposits (including the right of set-off) and (y) are within the general parameters customary in the banking industry; and

- (k) Liens in favor of customs and revenue authorities imposed by Law to secure payment of customs duties in connection with the importation of goods and arising in the Ordinary Course of Business which are not overdue for a period of more than 30 days or which are being Properly Contested.

**8.03 Investments.** Make or maintain any Investments, other than the following:

- (a) Investments held by the Loan Parties in the form of Cash Equivalents that are in a Controlled Deposit Account;
- (b) loans and advances to officers, directors and employees of the Loan Parties and their Subsidiaries made in the Ordinary Course of Business in an aggregate amount at any one time outstanding not to exceed \$250,000;
- (c) (i) Investments in Subsidiaries outstanding on the date hereof, (ii) Investments in Loan Parties and (iii) Investments by Subsidiaries that are not Loan Parties in other Subsidiaries that are not Loan Parties;
- (d) Investments consisting of extensions of credit in the nature of accounts receivable or notes receivable arising from the grant of trade credit in the Ordinary Course of Business, and Investments received in satisfaction or partial satisfaction thereof from financially troubled Account Debtors to the extent reasonably necessary in order to prevent or limit loss;
- (e) Guarantees permitted by Section 8.01;
- (f) Investments existing as of the date hereof as described in Schedule 8.03 (setting forth, as of the Second Amendment Effective Date, the amount, obligor or issuer and maturity, if any, thereof) and extensions or renewals thereof, provided that no such extension or renewal shall be permitted if it would (i) increase the amount of such Investment at the time of such extension or renewal, or (ii) result in a Default or Event of Default hereunder;
- (g) Permitted Acquisitions; and
- (h) any other Investments (other than any Investments described in clause (g)), solely if, as of the date of any such Investment and after giving Pro Forma Effect thereto, the Payment Conditions are satisfied with respect thereto.

Notwithstanding the terms of this Section 8.03 or Sections 8.04 or 8.05, in no event shall any Loan Party or any Subsidiary sell, lease, convey, assign, transfer or otherwise dispose of Intellectual Property of the Loan Parties or any Subsidiary to any person who is, (a) in the case of a disposition by any Loan Party, not a Loan Party, or (b) in the case of a non-Loan Party, not Synalloy or a Subsidiary, in each case of (a) and (b).

**8.04 Fundamental Changes.** Merge, Divide, dissolve, liquidate, consolidate with or into another Person, except that, so long as no Default exists or would result therefrom:

- (a) any Subsidiary of a Borrower may merge or consolidate with or liquidate or dissolve into such Borrower; provided, that the Borrower shall be the continuing or surviving Person;

- (b) in connection with a Permitted Acquisition, any Subsidiary of a Borrower may merge with or into or consolidate with any other Person or permit any other Person to merge with or into or consolidate with it; provided, that the Person surviving such merger shall be a Borrower; and
- (c) any Subsidiary that is not a Loan Party may merge into any other Subsidiary that is not a Loan Party; provided that, when any wholly-owned Subsidiary is merging with another Subsidiary that is not wholly-owned, the wholly-owned Subsidiary shall be the continuing or surviving Person.

**8.05 Dispositions.** Make any Disposition or enter into any agreement to make any Disposition, except:

- (a) (i) Dispositions of Inventory to non-Affiliates and (ii) so long as no Event of Default exists or is created thereby, Dispositions of Cash Equivalents to non-Affiliates, in the case of clauses (i) and (ii) in the Ordinary Course of Business;
- (b) Dispositions in the Ordinary Course of Business of Equipment or fixed assets that are obsolete, worn out or no longer useful to the Core Business of the Loan Parties and their Subsidiaries, so long as (i) no Event of Default has occurred and is continuing at the time of such Disposition, (ii) the aggregate Fair Market Value or a book value, whichever is more, of such Equipment and fixed assets does not exceed \$2,500,000 in any twelve-month period and (iii) all the Net Cash Proceeds thereof are applied in accordance with Section 2.06(c);
- (c) Dispositions that constitute (i) an Investment permitted under Section 8.03, (ii) a Lien permitted under Section 8.02, (iii) a merger, dissolution, consolidation or liquidation permitted under Section 8.04(a), or (iv) a Restricted Payment permitted under Section 8.06;
- (d) Dispositions that result from a casualty or condemnation in respect of such property or assets and is not otherwise an Event of Default so long as all proceeds thereof are applied in accordance with Section 2.06(c);
- (e) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other Intellectual Property rights in the Ordinary Course of Business,
- (f) (i) the lapse of immaterial registered patents, trademarks, copyrights and other Intellectual Property to the extent maintaining such registered Intellectual Property is not economically desirable in the conduct of its business or (ii) the abandonment of patents, trademarks, copyrights, or other intellectual property rights in the Ordinary Course of Business so long as in each case under clauses (i) and (ii), such lapse or abandonment is not materially adverse to the interests of the Secured Parties;
- (g) the leasing or subleasing of assets (other than sale and leaseback transactions prohibited under Section 8.15) in the Ordinary Course of Business;
- (h) Dispositions that consist of the sale or discount in the Ordinary Course of Business of overdue accounts receivable or accounts receivable sold, in each case that are not Eligible Accounts and in connection with the compromise or collection thereof, provided that the Net Cash Proceeds from such Disposition shall be deposited in the Concentration Account;
- (i) Dispositions among the Borrowers or by any Subsidiary to a Borrower; and

(j) the Specialty Disposition.

**8.06 Restricted Payments.** Declare or make, directly or indirectly, any Restricted Payment, or incur any obligation (contingent or otherwise) to do so, except that, in each case:

- (a) each Subsidiary of a Borrower may make Restricted Payments, directly or indirectly, to such Borrower;
- (b) Synalloy may declare and make dividend payments or other distributions payable solely in the common stock or other common Equity Interests of Synalloy;
- (c) Synalloy may purchase, redeem or otherwise acquire shares of its common stock or other common Equity Interests or warrants or options to acquire any such shares in connection with customary employee or management agreements, plans or arrangements, all in an aggregate amount not to exceed \$10,000,000 during the term of this Agreement;
- (d) any Borrower or Subsidiary thereof may make Permitted Tax Distributions to Synalloy;
- (e) any Borrower or Subsidiary thereof may make Permitted Earn-out Payments; and
- (f) any Borrower or Subsidiary thereof may make other Restricted Payments (other than (x) the types of Restricted Payments described in clauses (a) through (e) above and (y) in connection with the Specialty Disposition), solely if, as of the date of any such Restricted Payment and after giving Pro Forma Effect thereto, the Payment Conditions are satisfied with respect thereto.

**8.07 Change in Nature of Business.** Engage in any material line of business, other than the Core Business.

**8.08 Transactions with Affiliates.** Enter into any transaction of any kind with any Affiliate of any Loan Party, whether or not in the Ordinary Course of Business, other than:

- (a) transactions on fair and reasonable terms substantially as favorable to such Loan Party or Subsidiary thereof as would be obtainable by such Loan Party or such Subsidiary thereof at the time in a comparable arm's length transaction with a non-Affiliate;
- (b) transactions between or among the Borrowers;
- (c) transactions pursuant to agreements in existence or contemplated on the Closing Date as set forth on Schedule 8.08; and
- (d) (i) Restricted Payments permitted by Section 8.06, (ii) Investments permitted by Sections 8.03(b), 8.03(c), 8.03(f) and 8.03(h) and (iii) Permitted Earn-out Payments.

**8.09 Burdensome Agreements.** Enter into any Contractual Obligation (other than this Agreement or any other Loan Document) that:

- (a) requires the grant of a Lien to secure an obligation of such Person if a Lien is granted to secure another obligation of such Person; or
- (b) limits the ability (i) of any Subsidiary to make Restricted Payments to any Loan Party or to otherwise transfer property to any Loan Party, (ii) of any Subsidiary of a Loan Party to Guarantee the Indebtedness of the Borrowers or become a direct Borrower hereunder, or (iii) of any Borrower or any Subsidiary thereof to create, incur, assume or suffer to exist

Liens on property of such Person; provided, however, that this clause (iii) shall not prohibit any negative pledge incurred or provided in favor of any holder of Indebtedness permitted under Section 8.01(g) solely to the extent any such negative pledge relates to the property financed by or the subject of such Indebtedness.

**8.10 Use of Proceeds.** Use the proceeds of any Credit Extension, whether directly or indirectly, including through or by any Controlled Entity, and whether immediately, incidentally or ultimately, (a) in any manner that might cause the Credit Extension or the application of such proceeds to violate Regulations T, U or X of the FRB, in each case as in effect on the date or dates of such Credit Extension and such use of proceeds, or (b) (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) to fund, finance or facilitate any activities, business or transaction of or with any Sanctioned Person or in any Designated Jurisdiction, or (iii) in any other manner that would result in the violation of any Sanctions, Anti-Corruption Laws or Anti-Money Laundering Laws applicable to any party hereto.

#### **8.11 Prepayment of Indebtedness; Amendment to Material Agreements**

- (a) Make or pay, directly or indirectly, any payment or other distribution (whether in cash, securities or other property) of or in respect of principal of or interest on any Indebtedness or any payment or other distribution (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Indebtedness), except:
  - (i) payments when due of regularly scheduled interest and principal payments on any Indebtedness, other than (x) payments in respect of any Subordinated Debt, and (y) any Indebtedness owed to any Loan Party or Subsidiary or Affiliate thereof;
  - (ii) (A) payments when due of regularly scheduled interest and principal payments on any Subordinated Debt, solely to the extent permitted by the Subordination Agreement entered into with respect thereto, (B) Permitted Earn-out Payments, and (C) solely if, as of the date of any such payment and after giving Pro Forma Effect thereto no Event of Default has occurred and is continuing, prepayments in respect of any Indebtedness due to any Borrower evidenced by the Master Intercompany Note (but only to the extent any such prepayment is in accordance with the terms of the Master Intercompany Note);
  - (iii) Refinancing Indebtedness;
  - (iv) payments of secured Indebtedness that becomes due as a result of a voluntary sale or transfer permitted hereunder of the property securing such Indebtedness;
  - (v) payments made solely from and substantially contemporaneously with the proceeds of the issuance of Equity Interests by Holdings (other than Disqualified Equity Interests); and
  - (vi) solely if, as of the date of any such prepayment and after giving Pro Forma Effect thereto, the Payment Conditions are satisfied with respect thereto, mandatory or optional prepayments on any Indebtedness, other than (A) any Indebtedness consisting of (x) Subordinated Debt (other than obligations owing to any Borrower under any Master Intercompany Note, but only to the extent any such prepayment is made in accordance with the terms of such Master Intercompany Note), or (y) owed to any Loan Party or Subsidiary or Affiliate thereof (other than obligations owing to any Borrower under the Master Intercompany Note, but only to the extent any such prepayment is in

accordance with the terms of the Master Intercompany Note) or (B) in connection with the Specialty Disposition.

- (b) Amend, modify or change in any manner any term or condition of any Subordinated Debt Documents, except to the extent permitted by the applicable Subordination Agreement.
- (c) Amend, modify or change in any manner any term or condition of (i) any Material Contract or (ii) any Indebtedness permitted under Section 8.01(b), (c), (e), (g), (h), (l), or (n) outstanding on the Closing Date, in each case so that the terms and conditions thereof are less favorable in any material respect to the Administrative Agent and the Lenders than the terms of such Indebtedness as of the Closing Date.

#### **8.12 Financial Covenants.**

- (a) Consolidated Fixed Charge Coverage Ratio. Permit the Consolidated Fixed Charge Coverage Ratio, determined on a Pro Forma Basis as of (i) the last day of the Measurement Period most recently ended before the commencement of a Financial Covenant Trigger Period and (ii) the last day of each Measurement Period thereafter ending during any Financial Covenant Trigger Period to be less than 1.00 to 1.00 for such Measurement Period.

**8.13 Creation of New Subsidiaries.** Create or acquire any new Subsidiary after the Closing Date, other than Subsidiaries thereof created or acquired in accordance with Section 7.12.

**8.14 Securities of Subsidiaries.** Permit any Subsidiary thereof to issue any Equity Interests (whether for value or otherwise) to any Person other than a Loan Party.

**8.15 Sale and Leaseback.** Except for Borrowers' Capital Leases as of the Closing Date, enter into any agreement or arrangement with any other Person providing for the leasing by any Loan Party or any Subsidiary thereof of real or personal property which has been or is to be sold or transferred by any Loan Party or any Subsidiary thereof to such other Person or to any other Person to whom funds have been or are to be advanced by such Person on the security of such property or rental obligations of a Loan Party or any Subsidiary thereof.

**8.16 Organization Documents; Fiscal Year .** (a) Amend, modify or otherwise change any of its Organization Documents in any manner that could have a material adverse effect on the interests of the Secured Parties, or (b) change its Fiscal Year.

**8.17 Economic Sanctions Laws and Regulations.** Permit any Loan Party, Subsidiary thereof, or other Controlled Entities or any authorized agent of such Loan Party or their respective Subsidiaries or any other Controlled Entities to conduct, transact, engage in, or facilitate, any business or activity on behalf of such Loan Party or its Subsidiaries in violation of the Foreign Activities Laws.

### **ARTICLE IX EVENTS OF DEFAULT AND REMEDIES**

**9.01 Events of Default.** Any of the following shall constitute an Event of Default:

- (a) Non-Payment. Any Borrower fails to pay (i) when and as required to be paid herein, any amount of principal of any Loan or any Letter of Credit Obligation, or (ii) within three (3) days after the same becomes due, any interest on any Loan or on any Letter of Credit Obligation, or any commitment or other fee due hereunder, or (iii) within five days after

the same becomes due, any other amount payable hereunder or under any other Loan Document; or

- (b) Specific Covenants. Any Loan Party fails to perform or observe any term, covenant or agreement contained (i) in any of Sections 7.01(a), 7.01(b), 7.03, 7.05, 7.07, 7.10, 7.11, 7.12, or 7.19 or Article VIII, or (ii) in any of Sections 4.04, 7.02(a), 7.02(b), 7.02(c), or 7.04 and such failure continues for three (3) or more Business Days; or
- (c) Other Defaults. Any Loan Party fails to perform or observe any other covenant or agreement (not specified in subsection (a) or (b) above) contained in any Loan Document on its part to be performed or observed and such failure continues for 30 days after the earlier of (x) receipt of notice of such default by a Responsible Officer of the Borrower Agent from the Administrative Agent, or (y) any Responsible Officer of any Loan Party becomes aware of such default; or
- (d) Representations and Warranties. Any representation, warranty, certification or statement of fact made or deemed made by or on behalf of any Loan Party or its Subsidiaries herein, in any other Loan Document, or in any document delivered in connection herewith or therewith shall be incorrect or misleading when made or deemed made in any material respect; or
- (e) Cross-Default. (i) With respect to (x) any Subordinated Debt, or (y) any Indebtedness or guarantee (other than Indebtedness hereunder and Indebtedness under Swap Contracts) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$250,000, in the case of (x) or (y) any Loan Party or Subsidiary thereof (A) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise, and after passage of any grace period) in respect of any such Indebtedness or guarantee, or (B) fails to observe or perform any other agreement or condition relating to any such Indebtedness or guarantee or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, and such default continues for more than the grace or cure period, if any, therein specified, the effect of which default or other event is to cause, or to permit the holder of such Indebtedness or beneficiary of such guarantee (or a trustee or agent on behalf of such holder or beneficiary) to cause, with the giving of notice if required, such Indebtedness to be demanded or to become due or to be repurchased, prepaid, defeased or redeemed (automatically or otherwise), or an offer to repurchase, prepay, defease or redeem such Indebtedness to be made, prior to its stated maturity, or such guarantee to become payable or Cash Collateral in respect thereof to be demanded; or (ii) there occurs under any Swap Contract an Early Termination Date (as defined in such Swap Contract) resulting from (A) any event of default under such Swap Contract as to which any Loan Party or any Subsidiary is the Defaulting Party (as defined in such Swap Contract) or (B) any Termination Event (as defined in such Swap Contract) as to which any Loan Party or any Subsidiary is an Affected Party (as defined in such Swap Contract) and, in either event, the Swap Termination Value owed by a Loan Party or any Subsidiary as a result thereof is greater than \$250,000; or
- (f) Insolvency Events. Any Insolvency Event shall occur with respect to any Loan Party; or
- (g) Inability to Pay Debts; Attachment. (i) Any Loan Party becomes unable or admits in writing its inability or fails generally to pay its debts as they become due, (ii) any writ or warrant of attachment or execution or similar process is issued or levied against all or any material part of the property of any Loan Party and is not released, vacated or fully bonded within 30 days after its issue or levy; (iii) any Loan Party is enjoined, restrained

or in any way prevented by any Governmental Authority from conducting any material part of its business; (iv) any Loan Party suffers the loss, revocation or termination of any material license, permit, lease or agreement necessary to its business; (v) there is a cessation of any material part of any Loan Party's business for a material period of time; or (vi) any material Collateral or property or assets of a Loan Party is taken or impaired through condemnation; or

- (h) Judgments. There is entered against any Loan Party (i) one or more final judgments or orders for the payment of money in an aggregate amount exceeding the Threshold Amount (to the extent not covered by insurance as to which the insurer does not dispute coverage), or (ii) any one or more non-monetary final judgments or orders (including for injunctive relief) that have, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and, in either case, such judgment or order remains unvacated and unpaid and either (A) enforcement proceedings are commenced by any creditor upon such judgment or order, or (B) there is a period of 30 consecutive days during which a stay of enforcement of such judgment, by reason of a pending appeal or otherwise, is not in effect; or
- (i) ERISA. (i) An ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan which has resulted or could reasonably be expected to result in liability of any Loan Party under Title IV of ERISA to the Pension Plan, Multiemployer Plan or the PBGC in an aggregate amount in excess of the Threshold Amount, or (ii) a Loan Party or any ERISA Affiliate fails to pay when due, after the expiration of any applicable grace period, any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan in an aggregate amount in excess of the Threshold Amount, or (iii) the benefit liabilities of all Plans governed by Foreign Benefit Laws, or the funding of which are regulated by any Foreign Benefit Laws, at any time exceed all such Plans' assets, as computed in accordance with applicable Law as of the most recent valuation date for such Plans, by more than the Threshold Amount; or
- (j) Invalidity of Loan Documents. Any Loan Document, or any Lien granted thereunder, at any time after its execution and delivery and for any reason, other than as expressly permitted hereunder or upon Payment in Full, ceases to be in full force and effect (except with respect to immaterial assets); or any Borrower or any other Person contests in any manner the validity or enforceability of any Loan Document or any Lien granted to the Administrative Agent pursuant to the Security Instruments; or any Borrower denies that it has any or further liability or obligation under any Loan Document, or purports to revoke, terminate or rescind any Loan Document; or any party to any Subordination Agreement or Subordination Provisions contests in any manner the validity or enforceability of such Subordination Agreement or Subordination Provisions or denies that it has any liability or obligation thereunder or purports to revoke, terminate or rescind such Subordination Agreement or Subordination Provisions; or
- (k) Breach of Contractual Obligation. Any Loan Party or any Subsidiary thereof fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any contract to which it is party or fails to observe or perform any other agreement or condition relating to any such contract to which it is party or contained in any instrument or agreement evidencing, securing or relating thereto, or any other event occurs, the effect of which default or other event is to cause, or to permit the counterparty to such contract to terminate such contract, and such failure continues for 30 days after the earlier of (x) receipt of notice of such default by a Responsible Officer of the Borrower Agent from the Administrative Agent, or (y) any Responsible Officer of any Loan Party becomes aware of such default, and in each case



(i) if such contract is a Material Contract or (ii) which would, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect; or

(l) [Intentionally Omitted]; or

(m) Subordinated Provisions. (i) Any Subordination Provisions or any Subordination Agreement shall fail to be enforceable by the Lenders (which have not effectively waived the benefits thereof) in accordance with the terms thereof; or (ii) the principal or interest on any Loan, any Letter of Credit Obligation or other Loan Obligations shall fail to constitute “designated senior debt” (or any other similar term) under any document, instrument or agreement evidencing any Subordinated Debt; or (iii) any Loan Party or any of its Subsidiaries shall, directly or indirectly, disavow or contest in any manner (A) the effectiveness, validity or enforceability of any Subordination Agreement or Subordination Provisions, or (B) that any Subordination Agreement or Subordination Provisions exist for the benefit of any Secured Party; or (iv) any Loan Party or any Subsidiary thereof or any other Person fails to observe or perform any provision of any Subordination Agreement or any Subordination Provisions; or

(n) Uninsured Loss. A loss, theft, damage or destruction occurs with respect to any Collateral if the amount not covered by insurance exceeds the Threshold Amount; or

(o) Change of Control. There occurs any Change of Control.

**9.02 Remedies Upon Event of Default.** If any Event of Default occurs and is continuing, the Administrative Agent may, and at the direction of the Required Lenders shall, take any or all of the following actions:

(a) declare the commitment of each Lender to make Loans and any obligation of the Letter of Credit Issuer to make Letter of Credit Extensions to be terminated, whereupon such commitments and obligation shall be terminated;

(b) declare the unpaid principal amount of all outstanding Loans, all interest accrued and unpaid thereon, and all other Loan Obligations 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 Borrowers;

(c) require that the Borrowers Cash Collateralize the Letter of Credit Obligations (in an amount equal to the then Outstanding Amount thereof) or any other Loan Obligations that are contingent or not yet due and payable in amount determined by the Administrative Agent in accordance with this Agreement; and

(d) exercise on behalf of itself and the Lenders all rights and remedies available to it and the Lenders under the Loan Documents or applicable Law;

provided, however, that upon the occurrence of an Event of Default under Section 9.01(f), the obligation of each Lender to make Loans and any obligation of the Letter of Credit Issuer to make Letter of Credit Extensions shall automatically terminate, the unpaid principal amount of all outstanding Loans and all interest and other amounts as aforesaid shall automatically become due and payable, and the obligation of the Borrowers to Cash Collateralize the Letter of Credit Obligations as aforesaid shall automatically become effective, in each case without further act of the Administrative Agent or any Lender.

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 Law.

### **9.03 Application of Funds.**

- (a) Subject to Section 9.03(b) below, all payments made by Loan Parties in respect of the Obligations shall be applied (a) first, as specifically required in the Loan Documents; (b) second, to Obligations then due and owing; (b) third, to other Obligations specified by Borrower Agent; and (c) fourth, as determined by the Administrative Agent in its discretion.
- (b) Notwithstanding any provision to the contrary contained herein, after the exercise of remedies provided for in Section 9.02 (or after the Loans have automatically become immediately due and payable and the Letter of Credit Obligations have automatically been required to be Cash Collateralized as set forth in the proviso to Section 9.02), any amounts received on account of the Obligations shall, subject to the provisions of Sections 2.16 and 2.17, be applied by the Administrative Agent in the following order:

First, to all fees, indemnities, expenses and other amounts (including reasonable fees, charges and disbursements of counsel to the Administrative Agent and amounts payable under Article IV) due to the Administrative Agent in its capacity as such, until paid in full;

Second, to all Protective Advances and unreimbursed Overadvances payable to the Administrative Agent until paid in full;

Third, to all amounts owing to the Swing Line Lender for outstanding Swing Line Loans until paid in full;

Fourth, to that portion of the Loan Obligations constituting fees, indemnities and other amounts (other than principal, interest, Letter of Credit Fees and other Obligations expressly described in clauses Fifth through Eighth below) payable to the Lenders and the Letter of Credit Issuer (including reasonable fees, charges and disbursements of counsel to the respective Lenders and the Letter of Credit Issuer and amounts payable under Article III), ratably among them in proportion to the respective amounts described in this clause Fourth payable to them until paid in full;

Fifth, to that portion of the Loan Obligations constituting accrued and unpaid Letter of Credit Fees and interest on the Loans, Letter of Credit Borrowings and other Loan Obligations, ratably among the Lenders and the Letter of Credit Issuer in proportion to the respective amounts described in this clause Fifth payable to them until paid in full;

Sixth, to (i) that portion of the Obligations constituting unpaid principal of the Loans and Letter of Credit Borrowings and to Cash Collateralize that portion of Letter of Credit Obligations comprising the aggregate undrawn amount of Letters of Credit to the extent not otherwise Cash Collateralized by the Borrowers and (ii) the payment of Priority Swap Obligations to the extent a Credit Product Reserve has been established therefor, ratably among the Lenders, Letter of Credit Issuer and the applicable Credit Product Providers in proportion to the respective amounts described in this clause Sixth payable to them until paid in full;

Seventh, to payment of Conforming Credit Product Obligations (other than Priority Swap Obligations to the extent paid under clause Sixth above) ratably to the Credit Product Providers in proportion to the respective amounts described in this clause Seventh payable to them until paid in full;

Eighth, to all other Obligations (including Credit Product Obligations to the extent not paid under clauses Sixth or Seventh above) that are due and payable to the Administrative Agent and the other Secured Parties, or any of them, on such date, ratably based on the respective aggregate amounts of all such Obligations owing to the Administrative Agent and the other Secured Parties on such date until paid in full; and

Last, the balance, if any, after Payment in Full, to the Borrowers or as otherwise required by Law.

- (c) Subject to Sections 2.03(c) and 2.17, amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Sixth above shall be applied to satisfy drawings under such Letters of Credit as they occur. Amounts distributed with respect to any Credit Product Obligations shall be the lesser of (i) the maximum Credit Product Obligations last reported to the Administrative Agent or (ii) the actual Credit Product Obligations as calculated by the methodology reported to the Administrative Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Credit Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Credit Product Provider. The allocations set forth in this Section are solely to determine the rights and priorities of Administrative Agent and Secured Parties as among themselves, and may be changed by agreement among them without the consent of any Borrower. This Section is not for the benefit of or enforceable by any Loan Party.
- (d) For purposes of Section 9.03(b), “paid in full” of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Event, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any proceeding under Debtor Relief Laws.
- (e) Administrative Agent shall not be liable for any application of amounts made by it in good faith under this Section 9.03, notwithstanding the fact that any such application is subsequently determined to have been made in error.

## ARTICLE X ADMINISTRATIVE AGENT

**10.01 Appointment and Authority.** Each of the Lenders and the Letter of Credit Issuer hereby irrevocably appoints BMO to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Letter of Credit Issuer, and no Loan Party shall have rights as a third party beneficiary of any of such provisions. The Administrative Agent alone shall be authorized to determine whether any Accounts or Inventory constitute Eligible Accounts or Eligible Inventory, or whether to impose or release any Reserve, or whether any conditions to funding any Loan or to issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate Administrative Agent from liability to any Lender or other Person for any error in judgment or mistake.

**10.02 Rights as a Lender.** The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term “Lender” or

“Lenders” shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Loan Parties or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

**10.03 Exculpatory Provisions.** The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

- (a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;
- (b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents), provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable Law; and
- (c) 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 any Loan Party or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

The Administrative Agent shall not be liable to any other Secured Party for any action taken or not taken by it under or in connection with the Loan Documents, except for direct (as opposed to consequential) losses directly and solely caused by the Administrative Agent’s gross negligence or willful misconduct. The Administrative Agent shall not be liable for any action taken or not taken by it with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Sections 11.01 and 9.02). The Administrative Agent shall not be liable for, and shall be fully justified in, failing or refusing to take any action under any Loan Document unless it shall first receive such advice or concurrence 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 Loan Documents) as it reasonably deems appropriate. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given to the Administrative Agent by the Borrower Agent, a Lender or the Letter of Credit Issuer.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document or (v) the satisfaction of any condition set forth in Article V or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

**10.04 Reliance by the Administrative Agent.** The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance of a Letter of Credit that by its terms must be fulfilled to the satisfaction of a Lender or the Letter of Credit Issuer, the Administrative Agent may presume that such condition is satisfactory to such Lender or the Letter of Credit Issuer unless the Administrative Agent shall have received notice to the contrary from such Lender or the Letter of Credit Issuer prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), 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.

**10.05 Delegation of Duties.** The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as the Administrative Agent.

**10.06 Resignation of the Administrative Agent.** The Administrative Agent may at any time give notice of its resignation to the Lenders, the Letter of Credit Issuer and the Borrower Agent. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrower Agent, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation, then the retiring Administrative Agent may on behalf of the Lenders and the Letter of Credit Issuer, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrower Agent and the Lenders that no qualifying Person has accepted such appointment, then such resignation shall nonetheless become effective in accordance with such notice and (1) the retiring Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any Collateral held by the Administrative Agent on behalf of the Lenders or the Letter of Credit Issuer under any of the Loan Documents, the retiring Administrative Agent shall continue to hold such Collateral until such time as a successor Administrative Agent is appointed) and (2) all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and the Letter of Credit Issuer directly, until such time as the Required Lenders appoint a successor Administrative Agent as provided for above in this Section. Upon the acceptance of a successor's appointment as the Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or retired) Administrative Agent, and the retiring Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring Administrative Agent's resignation hereunder and under the other Loan Documents, the

provisions of this Article and Section 11.04 shall continue in effect for the benefit of such retiring Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring Administrative Agent was acting as the Administrative Agent.

Any resignation by BMO as the Administrative Agent pursuant to this Section shall also constitute its resignation as Letter of Credit Issuer and Swing Line Lender. Upon the acceptance of a successor's appointment as the Administrative Agent hereunder, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Letter of Credit Issuer and Swing Line Lender, (b) the retiring Letter of Credit Issuer and Swing Line Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (c) the successor Letter of Credit Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Letter of Credit Issuer to effectively assume the obligations of the retiring Letter of Credit Issuer with respect to such Letters of Credit.

**10.07 Non-Reliance on the Administrative Agent and Other Lenders .** Each Lender and the Letter of Credit Issuer acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and the Letter of Credit Issuer also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

**10.08 No Other Duties, Etc.** Anything herein to the contrary notwithstanding, none of the bookrunners, arrangers, or syndication or documentation agents listed on the cover page hereof (if any) shall have any rights, powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or the Letter of Credit Issuer hereunder.

**10.09 The Administrative Agent May File Proofs of Claim; Credit Bidding.** In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or Letter of Credit Obligation shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise

- (a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, 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 Letter of Credit Issuer and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Letter of Credit Issuer and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Letter of Credit Issuer and the Administrative Agent under Sections 2.03(h), 2.09 and 11.04) allowed in such judicial proceeding; and
- (b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and the Letter of Credit Issuer to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Letter of Credit Issuer, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.09 and 10.04.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or the Letter of Credit Issuer any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or the Letter of Credit Issuer to authorize the Administrative Agent to vote in respect of the claim of any Lender or the Letter of Credit Issuer in any such proceeding.

The Loan Parties and the Secured Parties hereby irrevocably authorize the Administrative Agent, based upon the instruction of the Required Lenders, to (a) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Section 363 of the Bankruptcy Code of the United States or any similar Laws in any other jurisdictions to which a Loan Party is subject, or (b) credit bid and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable Law. In connection with any such credit bid and purchase, the Obligations owed to the Secured Parties shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of the Administrative Agent to credit bid and purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of the Administrative Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Secured Parties whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase). Upon request by the Administrative Agent or the Borrower Agent at any time, the Secured Parties will confirm in writing the Administrative Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 10.09.

**10.10 Collateral Matters.** The Secured Parties irrevocably authorize the Administrative Agent, at its option and in its discretion:

- (a) to release any Lien on any Collateral (i) upon the occurrence of the Facility Termination Date, (ii) that is Disposed or to be Disposed as part of or in connection with any Disposition permitted hereunder or under any other Loan Document, or (iii) subject to Section 11.01, if approved, authorized or ratified in writing by the Required Lenders;
- (b) to release or subordinate any Lien (and any Indebtedness secured thereby) 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 8.02(f), so long as the Borrower Agent shall have delivered to the Administrative Agent on or prior to the date of release or subordination, as the case may be, a certificate of a Responsible Officer certifying that such Lien (and the Indebtedness secured thereby) is permitted by

Section 8.02(f) (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry); and

- (c) to release any Subsidiary from its obligations under the Loan Documents, and release any Lien granted by such Subsidiary thereunder, if such Person ceases to be a Subsidiary as a result of a transaction permitted hereunder, so long as the Borrower Agent shall have delivered to the Administrative Agent on or prior to the date of release a certificate of a Responsible Officer certifying that such transaction is permitted by this Agreement (and the Administrative Agent may rely conclusively on any such certificate, without further inquiry).

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Loan Party from its obligations under the Loan Documents pursuant to this Section 10.11.

#### **10.11 Other Collateral Matters.**

- (a) Care of Collateral. The Administrative Agent shall have no obligation to assure that any Collateral exists or is owned by a Borrower, or is cared for, protected or insured, nor to assure that the Administrative Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.
- (b) Lenders as Agent For Perfection by Possession or Control. The Administrative Agent and Secured Parties appoint each Lender as agent (for the benefit of Secured Parties) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify the Administrative Agent thereof and, promptly upon the Administrative Agent's request, deliver such Collateral to the Administrative Agent or otherwise deal with it in accordance with the Administrative Agent's instructions.
- (c) Reports. The Administrative Agent shall promptly forward to each Lender, when complete, copies of any Field Exam or appraisal report prepared by or for the Administrative Agent with respect to any Borrower or Collateral ("Report"). Each Lender agrees (a) that neither BMO nor the Administrative Agent makes any representation or warranty as to the accuracy or completeness of any Report, and shall not be liable for any information contained in or omitted from any Report; (b) that the Reports are not intended to be comprehensive audits or examinations, and that the Administrative Agent or any other Person performing any audit or examination will inspect only specific information regarding Obligations or the Collateral and will rely significantly upon Borrowers' books and records as well as upon representations of Borrowers' officers and employees; and (c) to keep all Reports confidential in accordance with Section 11.07, and strictly for such Lender's internal use, and not to distribute any Report (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants) or use any Report in any manner other than administration of the Loans and other Obligations. Each Lender shall indemnify and hold harmless the Administrative Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Report, as well as from any claims arising as a direct or indirect result of the Administrative Agent furnishing a Report to such Lender.

#### **10.12 Credit Product Arrangement Provisions.**



- (a) No Credit Product Provider that is party to any Credit Product Arrangement permitted hereunder that obtains the benefits of Section 9.03 or any Collateral by virtue of the provisions hereof or of any Security Instrument shall have (i) any right to notice of any action, (ii) any right to consent to, direct or object to any action or inaction hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral), or (iii) any right to require or receive any financial information or Borrowing Base Certificates or reports or similar certificates or information under the Loan Documents, other than in its capacity as a Lender, if applicable, and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article X to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Credit Product Obligations unless the Administrative Agent has received written notice of such Credit Product Obligations, together with such supporting documentation as the Administrative Agent may reasonably request, from the applicable Credit Product Provider. The Lenders irrevocably authorize the Administrative Agent to secure all Credit Product Obligations with the Collateral to the same extent as other Obligations, all to the extent contemplated hereunder as determined by the Administrative Agent in its Credit Judgment.
- (b) By delivery of a Credit Product Notice, each Credit Product Provider that is not a Lender (a “Non-Lender Credit Product Provider”) shall be deemed to have joined this Agreement and be bound by Section 9.03, this Article X and Section 11.04(c) as if it were a Lender hereunder holding a “Loan” in the amount of its applicable Credit Product Obligations. No Non-Lender Credit Product Provider shall have any right or claim against any Loan Party under the Loan Documents other than as a Secured Party under the Security Instruments, nor shall any of them be a third party beneficiary of any provisions of this Agreement by which the Loan Parties are bound other than provisions relating to the granting of the Lien of the Administrative Agent on the Collateral and the application of proceeds thereof pursuant to Section 9.03.

### **10.13 ERISA Related Provisions.**

- (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that at least one of the following is and will be true:
- (i) such Lender is not using “plan assets” (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Commitments,
- (ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

- (iii) (A) such Lender is an investment fund managed by a “Qualified Professional Asset Manager” (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender’s entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or
- (iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.
- (b) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Borrowers or any other Loan Party, that:
- (i) none of the Administrative Agent, the Arranger or any of their respective Affiliates is a fiduciary with respect to the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto),
- (ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least \$50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E),
- (iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Obligations),
- (iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and
- (v) no fee or other compensation is being paid directly to the Administrative Agent, the Arranger or any their respective Affiliates for investment advice (as opposed to

other services) in connection with the Loans, the Letters of Credit, the Commitments or this Agreement.

- (c) Each of the Administrative Agent and the Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

## ARTICLE XI MISCELLANEOUS

### 11.01 Amendments, Etc.

- (a) Subject to Section 3.08, No amendment or waiver of any provision of this Agreement or any other Loan Document, and no consent to any departure by the Borrowers or any Borrower therefrom, shall be effective unless in writing signed by the Required Lenders and the Borrowers or the applicable Borrower, as the case may be, and acknowledged by the Administrative Agent, and each such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided, however, that no such amendment, waiver or consent shall:
- (i) waive any condition set forth in Section 5.01(a) with respect to any funding under the Revolving Credit Facility without the written consent of the Required Lenders;
  - (ii) extend or increase the Commitment of any Lender (or reinstate any Commitment terminated pursuant to Section 9.02) without the written consent of such Lender;
  - (iii) postpone any date fixed by this Agreement or any other Loan Document for any payment (but excluding the delay or waiver of any mandatory prepayment) of principal, interest, fees or other amounts due to the Lenders (or any of them), including the Maturity Date, or any scheduled reduction of the Commitments hereunder or under any other Loan Document, in each case without the written consent of each Lender directly affected thereby;
  - (iv) reduce the principal of, or the rate of interest specified herein on, any Loan or Letter of Credit Borrowing, or reduce any fees or other amounts payable hereunder or under any other Loan Document, without the written consent of each Lender directly affected thereby; provided, however, that only the consent of the Required Lenders shall be necessary (A) to amend the definition of "Default Rate" (so long as such amendment does not result in the Default Rate being lower than the interest rate then applicable to Base Rate Loans or SOFR Loans, as applicable) or to waive any obligation of the Borrowers to pay interest or Letter of Credit Fees at the Default Rate or (B) to amend any financial covenant hereunder (or any defined term used therein);

- (v) change Section 2.13 or Section 9.03 in a manner that would alter the order, priority, or *pro rata* sharing of payments required thereby without the written consent of each Lender directly affected thereby;
  - (vi) change (i) any provision of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to amend, waive or otherwise modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, (ii) the definition of “Required Lenders” without the written consent of each Lender, in each case without the written consent of each Lender or (iii) the provisions of Section 4.01 or 4.03(c) with respect to Flood Documentation.
  - (vii) except as provided in Section 2.18, increase the Aggregate Revolving Credit Commitments without the written consent of each Revolving Credit Lender;
  - (viii) release any material Borrower from this Agreement or any material Security Instrument to which it is a party without the written consent of each Lender, except to the extent such Borrower is the subject of a Disposition permitted by Section 8.05 (in which case such release may be made by the Administrative Agent acting alone);
  - (ix) release all or a material part of the Collateral without the written consent of each Lender except with respect to Dispositions and releases of Collateral permitted or required hereunder (including pursuant to Section 8.05) or under the Security Agreement (in which case such release may be made by the Administrative Agent acting alone);
  - (x) subordinate any Lien of the Administrative Agent on all or any material part of the Collateral to the holder of any other Lien on such property without the written consent of each Lender, except with respect to (A) subordination of such Liens to Liens permitted pursuant to Section 8.02(f) and (B) subordination of such Liens to other Liens on Collateral (other than Accounts and Inventory) with an aggregate book value not to exceed \$250,000;
  - (xi) without the prior written consent of the Required Lenders, amend the definition of “Borrowing Base” or any defined term used therein in a manner that would increase availability; provided, that the foregoing shall not limit the discretion of the Administrative Agent to change, establish or eliminate any Reserves or to determine eligibility of Accounts or Inventory or other assets of the type available to be included in the Borrowing Bases in accordance with such terms; or
  - (xii) without the prior written consent of each Lender, impose any materially greater restriction on the ability of any Lender to assign any of its rights or obligations hereunder.
- (b) In addition to the foregoing, (i) no amendment, waiver or consent shall, unless in writing and signed by the Letter of Credit Issuer in addition to the Lenders required above, affect the rights or duties of the Letter of Credit Issuer under this Agreement or any Issuer Document relating to any Letter of Credit issued or to be issued by it; (ii) no amendment, waiver or consent shall, unless in writing and signed by the Swing Line Lender in addition to the Lenders required above, affect the rights or duties of the Swing Line Lender under this Agreement; (iii) no amendment, waiver or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above, affect the rights or duties of the Administrative Agent under this Agreement or any other Loan Document; (iv) the Fee Letter may be amended, or rights or privileges

thereunder waived, in a writing executed only by the respective parties thereto; (v) no amendment, waiver or consent which has the effect of enabling the Borrowers to satisfy any condition to a Borrowing contained in Section 5.02 hereof which, but for such amendment, waiver or consent would not be satisfied, shall be effective to require the Revolving Credit Lenders, the Swing Line Lender or the Letter of Credit Issuer to make any additional Revolving Credit Loan or Swing Line Loan, or to issue any additional or renew any existing Letter of Credit, unless and until the Required Lenders (or, if applicable, all Revolving Credit Lenders) shall have approved such amendment, waiver or consent and (vi) the Administrative Agent and the Borrowers shall be permitted to amend any provision of the Loan Documents (and such amendment shall become effective without any further action or consent of any other party to any Loan Document) if the Administrative Agent and the Borrower shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature in any such provision. Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the Revolving Credit Commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender more adversely than other affected Lenders shall require the consent of such Defaulting Lender.

(c) [Intentionally Omitted].

(d) If any Lender does not consent (a “Non-Consenting Lender”) to a proposed amendment, waiver, consent or release with respect to any Loan Document that requires the consent of each Lender and that has been approved by the Required Lenders, the Borrowers may replace such Non-Consenting Lender in accordance with Section 11.13; provided that such amendment, waiver, consent or release can be effected as a result of the assignment contemplated by such Section (together with all other such assignments required by the Borrowers to be made pursuant to this paragraph).

(e) No Loan Party will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender or its Affiliates as consideration for agreement by such Lender to any amendment, waiver, consent or release with respect to any Loan Document, unless such remuneration or value is concurrently paid, on the same terms, on a ratable basis to all Lenders providing their agreement. Notwithstanding the terms of this Agreement or any amendment, waiver, consent or release with respect to any Loan Document, Non-Consenting Lenders shall not be entitled to receive any fees or other compensation paid to the Lenders in connection with any amendment, waiver, consent or release approved in accordance with the terms of this Agreement by the Required Lenders.

(f) IN NO EVENT SHALL THE REQUIRED LENDERS, WITHOUT THE PRIOR WRITTEN CONSENT OF EACH LENDER, DIRECT THE ADMINISTRATIVE AGENT TO ACCELERATE AND DEMAND PAYMENT OF THE LOANS HELD BY ONE LENDER WITHOUT ACCELERATING AND DEMANDING PAYMENT OF ALL OTHER LOANS OR TO TERMINATE THE COMMITMENTS OF ONE OR MORE LENDERS WITHOUT TERMINATING THE COMMITMENTS OF ALL LENDERS. EACH LENDER AGREES THAT, EXCEPT AS OTHERWISE PROVIDED IN ANY OF THE LOAN DOCUMENTS AND WITHOUT THE PRIOR WRITTEN CONSENT OF THE REQUIRED LENDERS, IT WILL NOT TAKE ANY LEGAL ACTION OR INSTITUTE ANY ACTION OR PROCEEDING AGAINST

ANY LOAN PARTY WITH RESPECT TO ANY OF THE OBLIGATIONS OR COLLATERAL, OR ACCELERATE OR OTHERWISE ENFORCE ITS PORTION OF THE OBLIGATIONS. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NO LENDER MAY EXERCISE ANY RIGHT THAT IT MIGHT OTHERWISE HAVE UNDER APPLICABLE LAW TO CREDIT BID AT FORECLOSURE SALES, UNIFORM COMMERCIAL CODE SALES OR OTHER SIMILAR SALES OR DISPOSITIONS OF ANY OF THE COLLATERAL EXCEPT AS AUTHORIZED BY THE REQUIRED LENDERS. NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH IN THIS SECTION OR ELSEWHERE HEREIN, EACH LENDER SHALL BE AUTHORIZED TO TAKE SUCH ACTION TO PRESERVE OR ENFORCE ITS RIGHTS AGAINST ANY LOAN PARTY WHERE A DEADLINE OR LIMITATION PERIOD IS OTHERWISE APPLICABLE AND WOULD, ABSENT THE TAKING OF SPECIFIED ACTION, BAR THE ENFORCEMENT OF OBLIGATIONS HELD BY SUCH LENDER AGAINST SUCH LOAN PARTY, INCLUDING THE FILING OF PROOFS OF CLAIM IN ANY INSOLVENCY PROCEEDING.

**11.02 Notices; Effectiveness; Electronic Communication.**

- (a) Notices Generally. Except in the case of notices and other communications expressly permitted to be given by telephone or in the case of notices otherwise expressly provided herein (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 or electronic mail as follows, and all notices and other communications expressly permitted hereunder to be given by telephone shall be made to the applicable telephone number, as follows:
  - (i) if to a Loan Party, the Administrative Agent, the Letter of Credit Issuer or the Swing Line Lender, to the address, telecopier number, electronic mail address or

telephone number specified for such Person below, as changed pursuant to subsection (d) below:

- (A) If to Administrative Agent, Swing Line Lender or Letter of Credit Issuer:  
With a copy to:
- BMO Bank N.A.  
320 S. Canal Street, 16th Floor  
Chicago, Illinois 60606  
Attention: Ryan Gray  
E-Mail Address: [Ryan.Gray@bmo.com](mailto:Ryan.Gray@bmo.com)
- Sidley Austin LLP  
1 South Dearborn St.  
Chicago, IL, 60603  
Attention: Andrew R. Cardonick  
Facsimile No.: (312) 853-7036  
E-Mail Address: [acardonick@sidley.com](mailto:acardonick@sidley.com)
- Ascent Industries Co.  
as Borrower Agent  
4510 Cox Road, Suite 201  
Glen Allen, VA 23060  
Attention: Robert A. Peay, General Counsel  
Facsimile No.: (804) 822-3270  
Email: [rpeay@syalloy.com](mailto:rpeay@syalloy.com)
- (B) If to a Loan Party:  
With a copy to:
- Whiteford Taylor Preston LLP  
Two James Center  
1021 E. Cary Street, Suite 1700  
Richmond, VA 23219  
Attention: John C. Selbach  
Facsimile No.: (804) 799-7861  
Email: [jselbach@wtplaw.com](mailto:jselbach@wtplaw.com)

- (ii) if to any other Lender, to the address, telecopier number, electronic mail address or telephone number specified in its Administrative Questionnaire, as changed pursuant to subsection (d) below (including, as appropriate, notices delivered solely to the Person designated by a Lender on its Administrative Questionnaire then in effect for the delivery of notices that may contain material non-public information relating to the Borrowers).

Notices sent by hand or overnight courier service, or mailed by certified or registered mail, shall be deemed to have been given when received; notices 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 delivered through electronic communications to the extent provided in subsection (b) below, shall be effective as provided in such subsection (b).

- (b) Electronic Communications. Notices and other communications to the Lenders and the Letter of Credit Issuer hereunder may be delivered or furnished by electronic communication (including e-mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent, provided that the foregoing shall not apply to notices to any Lender or the Letter of Credit Issuer pursuant to Article II if such Lender or the Letter of Credit Issuer, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Article by electronic communication. The Administrative Agent or the Borrowers may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to

procedures approved by it, provided that approval of such procedures may be limited to particular notices or communications.

Unless the Administrative Agent otherwise prescribes, (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), provided that if such notice or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient, and (ii) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient at its e-mail address as described in the foregoing clause (i) of notification that such notice or communication is available and identifying the website address therefor.

- (c) The Platform. THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM, AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to any Borrower, any Lender, the Letter of Credit Issuer or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of a Borrower's 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 non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Agent Party; provided, however, that in no event shall any Agent Party have any liability to any Borrower, any Lender, the Letter of Credit Issuer or any other Person for indirect, special, incidental, consequential or punitive damages (as opposed to direct or actual damages).
- (d) Change of Address, Etc. Each of the Borrowers, the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender 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 Agent, the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender. In addition, each Lender agrees to notify the Administrative Agent from time to time to ensure that the Administrative Agent has on record (i) an effective address, contact name, telephone number, telecopier number and electronic mail address to which notices and other communications may be sent and (ii) accurate wire instructions for such Lender.
- (e) Reliance by Administrative Agent, Letter of Credit Issuer and Lenders. The Administrative Agent, the Letter of Credit Issuer and the Lenders shall be entitled to rely and act upon any notices (including telephonic Committed Loan Notices and Swing Line Loan Notices) purportedly given by or on behalf of the Borrowers 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 Borrowers shall



indemnify the Administrative Agent, the Letter of Credit Issuer, each Lender and the Related Parties of each of them from all losses, costs, expenses and liabilities resulting from the reliance by such Person on each notice purportedly given by or on behalf of the Borrowers. All telephonic notices to and other telephonic communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

**11.03 No Waiver; Cumulative Remedies.** No failure by any Lender, the Letter of Credit Issuer or the Administrative Agent to exercise, and no delay by any such Person in exercising, any right, remedy, power or privilege hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Borrowers or any other Loan Party or any of them (including enforcement action with respect to any Collateral) shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 9.02 for the benefit of all the Secured Parties; provided, however, that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) the Letter of Credit Issuer from exercising the rights and remedies that inure to its benefit (solely in its capacity as Letter of Credit Issuer) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 11.08 (subject to the terms of Section 2.14), 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 Borrower under any Debtor Relief Law but only to the extent the Administrative Agent shall have failed to do so within a reasonable time after notice; and provided further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 9.02 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.14, 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.

#### **11.04 Expenses; Indemnity; Damage Waiver.**

- (a) Costs and Expenses. The Borrowers shall pay (i) all reasonable and documented out-of-pocket expenses (including any Extraordinary Expenses) incurred by the Administrative Agent and its Affiliates, (A) in connection with this Agreement and the other Loan Documents, including without limitation the reasonable fees, charges and disbursements of (1) outside counsel for the Administrative Agent, (2) outside consultants for the Administrative Agent, (3) appraisers, (4) Field Exams, and (5) environmental site assessments, including all such documented out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of the Obligations, and (B) in connection with (1) the syndication of the credit facilities provided for herein, (2) the preparation, negotiation, administration, management, execution and delivery of this Agreement and the other Loan Documents or any amendments, modifications or waivers of the provisions thereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (3) the enforcement or protection of their rights in connection with this Agreement or the Loan Documents or efforts to preserve, protect, collect, or enforce the Collateral, or (4) any workout, restructuring or negotiations in respect of any Obligations,

and (ii) with respect to the Letter of Credit Issuer, and its Affiliates, all reasonable and documented out-of-pocket expenses incurred in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder.

- (b) Indemnification by the Borrowers. Each Loan Party shall indemnify the Administrative Agent (and any sub-agent thereof), each other Secured Party, and each Related Party of any of the foregoing Persons (each such Person being called an “Indemnatee”) against, and hold harmless each Indemnatee from, any and all losses, claims, damages, liabilities and related expenses (including the reasonable fees, charges and disbursements of any counsel for any Indemnatee), incurred by any Indemnatee or asserted against any Indemnatee by any third party or by the Borrowers or any other Loan Party arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement, any other Loan Document or any agreement or instrument contemplated hereby or thereby, the performance by the parties hereto of their respective obligations hereunder or thereunder, the consummation of the transactions contemplated hereby or thereby or, in the case of the Administrative Agent (and any sub-agent thereof) and its Related Parties only, the administration of this Agreement and the other Loan Documents (including in respect of any matters addressed in Section 3.01), (ii) any Loan or Letter of Credit or the use or proposed use of the proceeds therefrom (including any refusal by the Letter of Credit Issuer to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Loan Party or any of its Subsidiaries, or any Environmental Liability related in any way to any Loan Party or any of its Subsidiaries, (iv) any claims of, or amounts paid by any Secured Party to, a Controlled Account Bank or other Person which has entered into a control agreement with any Secured Party hereunder or (v) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrowers or any other Loan Party, and regardless of whether any Indemnatee is a party thereto; provided that such indemnity shall not, as to any Indemnatee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnatee.
- (c) Indemnification of Administrative Agent by Lenders. To the extent that (i) the Loan Parties for any reason fail to indefeasibly pay any amount required under subsection (a) or (b) of this Section to be paid by it, or (ii) any liabilities, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever are imposed on, incurred by, or asserted against, any Agent, the Letter of Credit Issuer, or a Related Party (an “Agent Indemnatee”) in any way relating to or arising out of this Agreement or any other Loan Document or any action taken or omitted to be taken by any Agent Indemnatee in connection therewith (collectively, “Agent Indemnatee Liabilities”), then each Lender severally agrees to pay to the Administrative Agent for the benefit of such Agent Indemnatee, such Lender’s Ratable Share (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such Agent Indemnatee Liabilities, so long as the Agent Indemnatee Liabilities were incurred by or asserted against the Administrative Agent (or any such sub-agent) or the Letter of Credit Issuer in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or Letter of Credit Issuer in connection with such capacity. The obligations of the Lenders under this subsection (c) are subject to the provisions of Section 2.12(d). In no event shall any Lender have any obligation hereunder to indemnify or hold harmless an Agent

Indemnitor with respect to any Agent Indemnitor Liabilities that are determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the gross negligence or willful misconduct of such Agent Indemnitor. In the Administrative Agent's discretion, it may reserve for any Agent Indemnitor Liabilities of an Agent Indemnitor, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to the Secured Parties. If the Administrative Agent is sued by any creditor representative, debtor-in-possession or other Person for any alleged preference or fraudulent transfer, then any monies paid by the Administrative Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to the Administrative Agent by each Lender to the extent of its Ratable Share thereof.

- (d) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Law, the Loan Parties shall not assert, and hereby waives, any claim against any Indemnitor, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or Letter of Credit or the use of the proceeds thereof. No Indemnitor 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 by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby.
- (e) Payments. All amounts due under this Section shall be payable not later than ten (10) Business Days after demand therefor.
- (f) Survival. The agreements in this Section shall survive the resignation of the Administrative Agent, the Letter of Credit Issuer and the Swing Line Lender, the replacement of any Lender and the occurrence of the Facility Termination Date.

**11.05 Marshalling; Payments Set Aside.** None of the Administrative Agent or Lenders shall be under any obligation to marshal any assets in favor of any Loan Party or against any Obligations. To the extent that any payment by or on behalf of any Loan Party is made to a Secured Party, or a Secured Party exercises its right of setoff, and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by such Secured Party in its discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Law or otherwise, then (a) to the extent of such recovery, the obligation or part thereof originally intended to be satisfied shall be revived and continued in full force and effect as if such payment had not been made or such setoff had not occurred, and (b) each Lender and the Letter of Credit Issuer severally agrees to pay to the Administrative Agent upon demand its applicable share (without duplication) of any amount so recovered from or repaid by the Administrative Agent, plus interest thereon from the date of such demand to the date such payment is made at a rate per annum equal to the applicable Overnight Rate, in the applicable currency of such recovery or payment. The obligations of the Lenders and the Letter of Credit Issuer under clause (b) of the preceding sentence shall survive the occurrence of the Facility Termination Date.

#### **11.06 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 without the prior written consent of the Administrative Agent and each Lender and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an Eligible Assignee in accordance with the provisions of subsection (b) of this Section, (ii) by way of participation in accordance with the provisions of subsection (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of subsection (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in subsection (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Secured Parties) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignments by Lenders. Any Lender may at any time assign to one or more 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 (including for purposes of this Section 11.06(b), participations in Letter of Credit Obligations and in Swing Line Loans) at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts. Except in the case of (A) an assignment of the entire remaining amount of the assigning Lender's Commitment under any Facility and the Loans at the time owing to it under such Facility or (B) an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, the aggregate amount of the Commitment (which for this purpose includes Loans outstanding thereunder) or, if the Commitment is not then in effect, the aggregate principal outstanding balance of the Loans of the assigning Lender subject to each such assignment, determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment and Assumption, as of the Trade Date, shall not be less than \$5,000,000, in the case of any assignment in respect of the Revolving Credit Facility, unless each of (x) the Administrative Agent, (y) the Letter of Credit Issuer, if such assignment increases the obligations of the assignee to participate in the exposure to one or more Letters of Credit (such consent not to be unreasonably withheld or delayed), and (z) so long as no Event of Default has occurred and is continuing, the Borrower Agent otherwise consents (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 shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Loans or the Commitment assigned, except that this clause shall not apply to the Swing Line Lender's rights and obligations in respect of Swing Line Loans.

(iii) Required Consents. No consent shall be required for any assignment to an Eligible Assignee except to the extent required by subsection (b)(i)(B) of this Section; provided that the Borrower Agent shall be deemed to have given the consent required in the definition of "Eligible Assignee" to such assignment if Borrower Agent has not, on

behalf of all Borrowers, responded in writing within ten (10) Business Days of a request for consent.

- (iv) Assignment and Assumption. The parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee in the amount of \$3,500; provided, however, that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire.
- (v) No Assignment to Certain Persons. No such assignment shall be made (A) to any Loan Party or Subsidiary or Affiliate thereof, (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B), or (C) to a natural person.
- (vi) Certain Additional Payments. In connection with any assignment of rights and obligations of any Defaulting Lender hereunder, no such assignment shall be effective unless and until, in addition to the other conditions thereto set forth herein, the parties to the assignment shall make such additional payments to the Administrative Agent in an aggregate amount sufficient, upon distribution thereof as appropriate (which may be outright payment, purchases by the assignee of participations or subparticipations, or other compensating actions, including funding, with the consent of the Borrower and the Administrative Agent, the applicable pro rata share of Loans previously requested but not funded by the Defaulting Lender, to each of which the applicable assignee and assignor hereby irrevocably consent), to (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 and participations in Letters of Credit and Swing Line Loans in accordance with its Applicable Percentage. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Law without compliance with the provisions of this paragraph, then the assignee of such interest shall be deemed to be a Defaulting Lender for all purposes of this Agreement until such compliance occurs.
- (vii) Subject to acceptance and recording thereof by the Administrative Agent pursuant to subsection (c) of this Section, from and after the effective date specified in each Assignment and Assumption, the assignee thereunder shall be a party to this Agreement and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.04, 3.05 and 11.04 with respect to facts and circumstances occurring prior to the effective date of such assignment). Upon request, the Borrower (at its expense) shall execute and deliver a Note to the assignee Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this subsection shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with Section 11.06(d).
- (c) Register. The Administrative Agent, acting solely for this purpose as an agent of the Borrowers (and such agency being solely for tax purposes) (in such capacity, subject to Section 11.17), shall maintain at the Administrative Agent's Office a copy of each

Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitments of, and principal amounts (and stated interest) of the Loans and Loan Obligations owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent and the Lenders may 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. In addition, the Administrative Agent shall maintain on the Register information regarding the designation, and revocation of designation, of any Lender as a Defaulting Lender. The Register shall be available for inspection by the Borrower Agent and any Lender at any reasonable time and from time to time upon reasonable prior notice. In addition, at any time that a request for a consent for a material or substantive change to the Loan Documents is pending, any Lender may request and receive from the Administrative Agent a copy of the Register.

- (d) Participations. Any Lender may at any time, without the consent of, or notice to, any Borrower or the Administrative Agent, sell participations to any Person (other than a natural person, a Defaulting Lender, or any Loan Party or Subsidiary or Affiliate thereof) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and/or the Loans (including such Lender's participations in Letter of Credit Obligations and/or Swing Line Loans) owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (iii) the Borrowers, the Administrative Agent, the Lenders and the Letter of Credit Issuer 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 this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, waiver or other modification described in the first proviso to Section 11.01 that affects such Participant. Subject to subsection (e) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 3.01, 3.04 and 3.05 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to subsection (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 11.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.13 as though it were a Lender.

If any Lender (or any assignee thereof) sells a participation, such Lender (or such assignee) shall, acting solely for this purpose as an agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender (nor any assignee thereof) shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and such Lender (or such assignee) shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the

Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

- (e) Limitations upon Participant Rights. A Participant shall not be entitled to receive any greater payment under Section 3.01 or 3.04 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 Agent's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 3.01 unless the Borrower Agent is notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrowers, to comply with Section 3.01(e) as though it were a Lender.
- (f) Certain Pledges. Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement (including under its Note, if any) to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledge or assignee for such Lender as a party hereto.
- (g) Electronic Execution of Assignments. The words "execution," "signed," "signature," and words of like import in any Assignment and Assumption shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.
- (h) Resignation as Letter of Credit Issuer and/or Swing Line Lender after Assignment. Notwithstanding anything to the contrary contained herein, if at any time BMO assigns all of its Revolving Credit Commitment, Revolving Credit Loans, pursuant to subsection (b) above, it may, (i) upon 30 days' notice to the Borrower Agent and the Lenders, resign as Letter of Credit Issuer and/or (ii) in the case of BMO, upon 30 days' notice to the Borrower Agent, resign as Swing Line Lender. In the event of any such resignation as Letter of Credit Issuer, or Swing Line Lender, the Borrower Agent shall be entitled to appoint from among the Lenders willing to serve in such capacity a successor Letter of Credit Issuer or Swing Line Lender hereunder, as the case may be; provided, however, that no failure by the Borrower Agent to appoint any such successor shall affect the resignation of such Person as Letter of Credit Issuer or Swing Line Lender, as the case may be. If BMO resigns as Letter of Credit Issuer, it shall retain all the rights, powers, privileges and duties of the Letter of Credit Issuer hereunder with respect to all Letters of Credit outstanding as of the effective date of its resignation as Letter of Credit Issuer and all Letter of Credit Obligations with respect thereto (including the right to require the Lenders to make Base Rate Loans or fund risk participations in Unreimbursed Amounts pursuant to Section 2.03(c)). If BMO resigns as Swing Line Lender, it shall retain all the rights of the Swing Line Lender provided for hereunder with respect to Swing Line Loans made by it and outstanding as of the effective date of such resignation, including the right to require the Lenders to make Base Rate Loans or fund risk participations in outstanding Swing Line Loans pursuant to Section 2.04(c). Upon the appointment of a successor Letter of Credit Issuer and/or Swing Line Lender, (a) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Letter of Credit Issuer or Swing Line Lender, as the case may be, and (b) the successor Letter of Credit Issuer shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such successor or make other

arrangements satisfactory to the retiring Letter of Credit Issuer to effectively assume the obligations of such Letter of Credit Issuer with respect to such Letters of Credit.

**11.07 Treatment of Certain Information; Confidentiality.** Each of the Secured Parties agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its Affiliates and to its and its Affiliates' respective partners, directors, trustees, officers, employees, agents, advisors and representatives (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority purporting to have jurisdiction over it (including any self-regulatory authority, such as the National Association of Insurance Commissioners), (c) to the extent required by applicable Laws or regulations or by any subpoena or similar legal process, (d) to any other party hereto, (e) in connection with the exercise of any remedies hereunder or under any other Loan Document or any action or proceeding relating to this Agreement or any other Loan Document or the enforcement of rights hereunder or thereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrowers and their obligations, (g) with the consent of the Borrower Agent or (h) to the extent such Information (x) becomes publicly available other than as a result of a breach of this Section or (y) becomes available to the Secured Parties or any of their respective Affiliates on a nonconfidential basis from a source other than the Loan Parties.

For purposes of this Section, "Information" means all information received from any Loan Party or any Subsidiary relating to a Loan Party or any Subsidiary or any of their respective businesses, other than any such information that is available to any Secured Party on a nonconfidential basis prior to disclosure by a Loan Party or any Subsidiary, provided that, in the case of information received from a Loan Party or any Subsidiary after the date hereof, any information not marked "PUBLIC" at the time of delivery will be deemed to be confidential; provided that any information marked "PUBLIC" may also be marked "Confidential". Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

Each of the Secured Parties acknowledges that (a) the Information may include material non-public information concerning a Loan Party or a Subsidiary, as the case may be, (b) it has developed compliance procedures regarding the use of material non-public information and (c) it will handle such material non-public information in accordance with applicable Law, including federal and state securities Laws.

Each of the Loan Parties hereby authorizes the Administrative Agent to publish the name of any Loan Party and the amount of the credit facility provided hereunder in any "tombstone" or comparable advertisement which the Administrative Agent elects to publish. The Administrative Agent reserves the right to provide to industry trade organizations information necessary and customary for inclusion in league table measurements. In addition to the foregoing, the Administrative Agent shall be permitted to issue press releases and other announcements, subject to the prior review and approval of the Borrower Agent (such approval not to be unreasonably withheld or delayed).

**11.08 Right of Setoff.** If an Event of Default shall have occurred and be continuing, each Lender, the Letter of Credit Issuer and each of their respective Affiliates is hereby authorized at any time and from time to time, only after obtaining the prior written consent of the



Administrative Agent, to the fullest extent permitted by applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by such Lender, the Letter of Credit Issuer or any such Affiliate to or for the credit or the account of the Borrowers against any and all of the obligations of the Borrowers now or hereafter existing under this Agreement or any other Loan Document to such Lender or the Letter of Credit Issuer, irrespective of whether or not such Lender or the Letter of Credit Issuer shall have made any demand under this Agreement or any other Loan Document and although such obligations of the Borrowers may be contingent or unmatured or are owed to a branch or office of such Lender or the Letter of Credit Issuer different from the branch or office holding such deposit or obligated on such indebtedness; provided that in the event that any Defaulting Lender or any Affiliate thereof shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Section 2.17 and, pending such payment, shall be segregated by such Defaulting Lender or its Affiliate (as applicable) from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender or its Affiliate shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender or its Affiliates as to which such right of setoff was exercised. The rights of each Lender, the Letter of Credit Issuer and their respective Affiliates under this Section are in addition to other rights and remedies (including other rights of setoff) that such Lender, the Letter of Credit Issuer or their respective Affiliates may have. Each Lender and the Letter of Credit Issuer agrees to notify the Borrower Agent and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application.

**11.09 Interest Rate Limitation.** Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by applicable Law (the “Maximum Rate”). If the Administrative Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Loans or, if it exceeds such unpaid principal, refunded to the Borrowers. In determining whether the interest contracted for, charged, or received by the Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by applicable Law, (a) characterize any payment that is not principal as an expense, fee, or premium rather than interest, (b) exclude voluntary prepayments and the effects thereof, and (c) amortize, prorate, allocate, and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Loan Obligations hereunder.

**11.10 Counterparts; Integration; Effectiveness.** This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement and the other Loan Documents 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 5.01 and 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 that, when taken together, bear the signatures of each of the other parties hereto. Delivery of an executed counterpart of a signature page of this Agreement by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement.

**11.11 Survival.** All representations and warranties made hereunder and in any other Loan Document or other document delivered pursuant hereto or thereto or in connection herewith or therewith shall survive the execution and delivery hereof and thereof. Such representations and warranties have been or will be relied upon by the Secured Parties, regardless of any

investigation made by any Secured Party or on their behalf and notwithstanding that any Secured Party may have had notice or knowledge of any Default at the time of any Credit Extension, and shall continue in full force and effect as long as any Loan or any other Loan Obligation hereunder shall remain unpaid or unsatisfied or any Letter of Credit shall remain outstanding.

Further, the provisions of Sections 3.01, 3.04, 3.05 and 11.04 and Article X shall survive and remain in full force and effect regardless of the repayment of the Obligations, the expiration or termination of the Letters of Credit and the Commitments or the termination of this Agreement or any provision hereof. In connection with the termination of this Agreement and the release and termination of the security interests in the Collateral, the Administrative Agent may require such indemnities and collateral security as they shall reasonably deem necessary or appropriate to protect the Secured Parties against (x) loss on account of credits previously applied to the Obligations that may subsequently be reversed or revoked, and (y) any obligations that may thereafter arise with respect to Credit Product Obligations.

**11.12 Severability.** If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (a) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (b) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Section 11.12, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, the Letter of Credit Issuer or the Swing Line Lender, as applicable, then such provisions shall be deemed to be in effect only to the extent not so limited.

**11.13. Replacement of Lenders.** If any Lender requests compensation under Section 3.04, if the Borrowers are required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 3.01, if any Lender is a Defaulting Lender, or if any Lender fails to approve any amendment, waiver or consent requested by Borrower Agent pursuant to Section 11.01 that has received the written approval of not less than the Required Lenders but also requires the approval of such Lender, then in each such case the Borrower Agent may, at its sole expense and effort, upon notice to such Lender and the Administrative Agent, require such Lender to assign and delegate, without recourse (in accordance with and subject to the restrictions contained in, and consents required by, Section 11.06), all of its interests, rights and obligations under this Agreement and the related Loan Documents to an assignee that shall assume such obligations (which assignee may be another Lender, if a Lender accepts such assignment), provided that:

- (a) the Borrower Agent shall have paid to the Administrative Agent the assignment fee specified in Section 11.06(b);
- (b) such Lender shall have received the following, as applicable:
  - (i) if such Lender is not a Defaulting Lender, both (A) payment of an amount equal to the outstanding principal of its Loans and Letter of Credit Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower Agent (in the case of all other amounts) and (B) evidence that the obligations and liabilities of each Loan Party or their Affiliates under all Credit Product Arrangements shall have been fully, finally and irrevocably paid and satisfied in full and the Credit

Product Arrangements shall have expired or been terminated, or other arrangements satisfactory to the counterparties shall have been made with respect thereto; or

- (ii) if such Lender is a Defaulting Lender, payment of an amount equal to the outstanding principal of its Loans and Letter of Credit Advances, accrued interest thereon, accrued fees and all other amounts payable to it hereunder and under the other Loan Documents (including any amounts under Section 3.05) from the assignee (to the extent of such outstanding principal and accrued interest and fees) or the Borrower Agent (in the case of all other amounts).
- (c) in the case of any such assignment resulting from a claim for compensation under Section 3.04 or payments required to be made pursuant to Section 3.01, such assignment will result in a reduction in such compensation or payments thereafter;
- (d) in the case of any such assignment resulting from the refusal of a Lender to approve a requested amendment, waiver or consent, the Person to whom such assignment is being made has agreed to approve such requested amendment, waiver or consent; and
- (e) such assignment does not conflict with applicable Laws.

A Lender shall not be required to make any such assignment or delegation if, prior thereto, as a result of a waiver by such Lender or otherwise, the circumstances entitling the Borrowers to require such assignment and delegation cease to apply.

#### **11.14 Governing Law; Jurisdiction; Etc.**

- (a) **THIS AGREEMENT SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF ILLINOIS.**
- (b) **EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY SUBMITS, FOR ITSELF AND ITS PROPERTY, TO THE EXCLUSIVE JURISDICTION OF THE COURTS OF THE STATE OF ILLINOIS SITTING IN COOK COUNTY AND OF THE UNITED STATES DISTRICT COURT OF THE NORTHERN DISTRICT OF ILLINOIS, 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 ILLINOIS 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 ADMINISTRATIVE AGENT, ANY LENDER OR THE LETTER OF CREDIT ISSUER MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST THE BORROWERS OR THEIR PROPERTIES IN THE COURTS OF ANY JURISDICTION.**

- (c) EACH LOAN PARTY IRREVOCABLY AND UNCONDITIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION THAT IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT IN ANY COURT REFERRED TO IN PARAGRAPH (B) OF THIS SECTION. EACH OF 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. EACH PARTY HERETO HEREBY WAIVES, TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, ANY RIGHT THAT IT MAY HAVE TO CLAIM OR RECOVER IN ANY LEGAL ACTION OR PROCEEDING REFERRED TO IN THIS SECTION 11.14 ANY SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.
- (d) EACH PARTY HERETO IRREVOCABLY CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 11.02. NOTHING IN THIS AGREEMENT WILL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY APPLICABLE LAW.

**11.15 Waiver of Jury Trial.** EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

**11.16 Electronic Execution of Assignments and Certain Other Documents.** The words “execution,” “signed,” “signature,” and words of like import in any Assignment and Assumption or in any amendment or other modification hereof (including waivers and consents) shall be deemed to include electronic signatures or the keeping of records in electronic form, each of which shall be of the same legal effect, validity or enforceability as a manually executed signature or the use of a paper-based recordkeeping system, as the case may be, to the extent and as provided for in any applicable law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any other similar state laws based on the Uniform Electronic Transactions Act.

**11.17. USA PATRIOT Act Notice .** Each Lender that is subject to the PATRIOT Act and the Administrative Agent (for itself and not on behalf of any Lender) hereby notifies the Borrowers that pursuant to the requirements of the PATRIOT Act, it is required to obtain, verify and record information that identifies the Borrowers, which information includes the name and address of the Borrowers and other information that will allow such Lender or the Administrative Agent, as applicable, to identify the Borrowers in accordance with the PATRIOT Act.

**11.18 No Advisory or Fiduciary Responsibility.** In connection with all aspects of each transaction contemplated hereby (including in connection with any amendment, waiver or other modification hereof or of any other Loan Document), each Loan Party acknowledges and agrees, and acknowledges its Affiliates' understanding, that: (i) (A) the arranging and other services regarding this Agreement provided by the Secured Parties are arm's-length commercial transactions between each Loan Party, on the one hand, and the Secured Parties, on the other hand, (B) each Loan Party has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate, and (C) each Loan Party is capable of evaluating, and understands and accepts, the terms, risks and conditions of the transactions contemplated hereby and by the other Loan Documents; (ii) (A) each Secured Party is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for any Loan Party or any of its Affiliates or any other Person and (B) no Secured Party 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, (iii) the Secured Parties may be engaged in a broad range of transactions that involve interests that differ from those of the Loan Parties and their Affiliates, and no Secured Party has any obligation to disclose any of such interests to any Loan Party or its Affiliates and (iv) the Secured Parties have not provided and will not provide any legal, accounting, regulatory or tax advice with respect to any of the transactions contemplated hereby (including any amendment, waiver or other modification hereof or of any other Loan Document) and each of the Loan Parties has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate. To the fullest extent permitted by law, each Loan Party hereby waives and releases any claims that it may have against any Secured Party with respect to any breach or alleged breach of agency or fiduciary duty in connection with any aspect of any transaction contemplated hereby.

**11.19 Attachments.** The exhibits, schedules and annexes attached to this Agreement are incorporated herein and shall be considered a part of this Agreement for the purposes stated herein; except, that, in the event of any conflict between any of the provisions of such exhibits and the provisions of this Agreement, the provisions of this Agreement shall prevail.

**11.20 Acknowledgement and Consent to Bail-In of EEA Financial Institutions.** Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the Write-Down and Conversion Powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

- (a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and
- (b) the effects of any Bail-In Action on any such liability, including, if applicable:
  - (i) a reduction in full or in part or cancellation of any such liability;
  - (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or
  - (iii) the variation of the terms of such liability in connection with the exercise of the Write-Down and Conversion Powers of any EEA Resolution Authority.

**11.21 Acknowledgement Regarding Any Supported QFCs.** To the extent that the Loan Documents provide support, through a guarantee or otherwise, for any Swap Obligation or any other agreement or instrument that is a QFC (such support, “QFC Credit Support”, and each such QFC, a “Supported QFC”), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the “U.S. Special Resolution Regimes”) in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a “Covered Party”) becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 11.21, the following terms have the following meanings:

“BHC Act Affiliate” of a party means an “affiliate” (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

“Covered Entity” means any of the following: (i) a “covered entity” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b); (ii) a “covered bank” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or (iii) a “covered FSI” as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

“Default Right” has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

“QFC” has the meaning assigned to the term “qualified financial contract” in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

## **ARTICLE XII CONTINUING GUARANTY**

**12.01 Guaranty.** Each Guarantor hereby absolutely and unconditionally guarantees, as a guaranty of payment and performance and not merely as a guaranty of collection, prompt

payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of any and all of the Obligations (other than Excluded Swap Obligations), whether for principal, interest, premiums, fees, indemnities, damages, costs, expenses or otherwise, of the Borrowers to the Secured Parties, arising hereunder or under any other Loan Document (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys' fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof) (the "Guarantied Obligations"). The Administrative Agent's books and records showing the amount of the Guarantied Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor, and conclusive for the purpose of establishing the amount of the Guarantied Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guarantied Obligations or any instrument or agreement evidencing any Guarantied Obligations, or by the existence, validity, enforceability, perfection, non-perfection or extent of any collateral therefor, or by any fact or circumstance relating to the Guarantied Obligations which might otherwise constitute a defense to the obligations of any Guarantor under this Guaranty, 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 foregoing.

**12.02 Rights of Lenders.** Each Guarantor consents and agrees that the Secured Parties may, at any time and from time to time, without notice or demand, and without affecting the enforceability or continuing effectiveness hereof: (a) amend, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guarantied Obligations or any part thereof; (b) take, hold, exchange, enforce, waive, release, fail to perfect, sell, or otherwise dispose of any security for the payment of this Guaranty or any Guarantied Obligations; (c) apply such security and direct the order or manner of sale thereof as the Administrative Agent, the Letter of Credit Issuer and the Lenders in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guarantied Obligations. Without limiting the generality of the foregoing, each Guarantor consents to the taking of, or failure to take, any action which might in any manner or to any extent vary the risks of any Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of any Guarantor.

**12.03 Certain Waivers.** Each Guarantor waives (a) any defense arising by reason of any disability or other defense of the Borrowers or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrowers; (b) any defense based on any claim that any Guarantor's obligations exceed or are more burdensome than those of the Borrowers; (c) the benefit of any statute of limitations affecting any Guarantor's liability hereunder; (d) any right to proceed against the Borrowers, proceed against or exhaust any security for the Guarantied Obligations, or pursue any other remedy in the power of any Secured Party whatsoever; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; and (f) to the fullest extent permitted by law, any and all other defenses or benefits that may be derived from or afforded by applicable Law limiting the liability of or exonerating guarantors or sureties. Each Guarantor expressly waives all setoffs and counterclaims and all presentments, demands for payment or performance, notices of nonpayment or nonperformance, protests, notices of protest, notices of dishonor and all other notices or demands of any kind or nature whatsoever with respect to the Guarantied Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Guarantied Obligations.

**12.04 Obligations Independent.** The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Guarantied Obligations and the obligations of any other guarantor, and a separate action may be brought against each Guarantor to enforce this Guaranty whether or not any Borrower or any other person or entity is joined as a party.

**12.05 Subrogation.** No Guarantor shall exercise any right of subrogation, contribution, indemnity, reimbursement or similar rights with respect to any payments it makes under this Guaranty until the Facility Termination Date. If any amounts are paid to any Guarantor in violation of the foregoing limitation, then such amounts shall be held in trust for the benefit of the Secured Parties and shall forthwith be paid to the Secured Parties to reduce the amount of the Obligations, whether matured or unmatured.

**12.06 Termination; Reinstatement.** This Guaranty is a continuing and irrevocable guaranty of all Guaranteed Obligations now or hereafter existing and shall remain in full force and effect until the Facility Termination Date. Notwithstanding the foregoing, this Guaranty shall continue in full force and effect or be revived, as the case may be, if any payment by or on behalf of the Borrower or any Guarantor is made, or any of the Secured Parties exercises its right of setoff, in respect of the Guaranteed Obligations and such payment or the proceeds of such setoff or any part thereof is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by any of the Secured Parties in their discretion) to be repaid to a trustee, receiver or any other party, in connection with any proceeding under any Debtor Relief Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not the Secured Parties are in possession of or have released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this paragraph shall survive termination of this Guaranty.

**12.07 Subordination.** Each Guarantor hereby subordinates the payment of all obligations and indebtedness of the Borrowers owing to each Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of the Borrowers to any Guarantor as subrogee of the Secured Parties or resulting from any Guarantor's performance under this Guaranty, to the Payment in Full. If the Secured Parties so request, any such obligation or indebtedness of the Borrowers to any Guarantor shall be enforced and performance received by any Guarantor as trustee for the Secured Parties and the proceeds thereof shall be paid over to the Secured Parties on account of the Guaranteed Obligations, but without reducing or affecting in any manner the liability of any Guarantor under this Guaranty.

**12.08 Stay of Acceleration.** If acceleration of the time for payment of any of the Guaranteed Obligations is stayed, in connection with any case commenced by or against any Guarantor or the Borrowers under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by each Guarantor immediately upon demand by the Secured Parties.

**12.09 Condition of Borrowers.** Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrowers and any other guarantor such information concerning the financial condition, business and operations of the Borrowers and any such other guarantor as each Guarantor requires, and that none of the Secured Parties has any duty, and no Guarantor is relying on the Secured Parties at any time, to disclose to any Guarantor any information relating to the business, operations or financial condition of the Borrowers or any other guarantor (each Guarantor waiving any duty on the part of the Secured Parties to disclose such information and any defense relating to the failure to provide the same).

**12.10 Keepwell.** Each Guarantor that is a Qualified ECP hereby jointly and severally absolutely, unconditionally and irrevocably undertakes to provide such funds or other support as may be needed from time to time by each other Loan Party to honor all of its obligations under this Guaranty in respect of Swap Obligations (provided, however, that each Qualified ECP shall only be liable under this [Section 12.10](#) for the maximum amount of such liability that can be hereby incurred without rendering its obligations under this [Section 12.10](#), or otherwise under this Guaranty, voidable under applicable law relating to fraudulent conveyance or fraudulent transfer, and not for any greater amount). The obligations of each Guarantor that is a Qualified



ECP under this Section shall remain in full force and effect until the Guaranteed Obligations have been paid in full in cash. Each Guarantor that is a Qualified ECP intends that this Section 12.10 constitute, and this Section 12.10 shall be deemed to constitute, a “keepwell, support, or other agreement” for the benefit of each other Loan Party for all purposes of Section 1a(18)(A)(v)(II) of the Commodity Exchange Act.

**12.11 Limitation of Guaranty.** Notwithstanding anything to the contrary herein or otherwise, the Borrowers, the Administrative Agent and the Lenders hereby irrevocably agree that the Guaranteed Obligations of each Guarantor in respect of the guarantee set forth in Article XII at any time shall be limited to the maximum amount as will result in the Guaranteed Obligations of such Guarantor not constituting a fraudulent transfer or conveyance after giving full effect to the liability under such guarantee set forth in Article XII and its related contribution rights but before taking into account any liabilities under any other guarantee by such Guarantor.

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## **Ascent Industries Announces Sale of Specialty Pipe & Tube for \$55 Million**

**Oak Brook, Illinois, December 26, 2023** – Ascent Industries Co. (Nasdaq: ACNT) (“Ascent” or the “Company”), an industrials company focused on the production and distribution of industrial tubular products and specialty chemicals, has announced the sale of the business of Specialty Pipe & Tube (“SPT”) for approximately \$55 million in an all-cash transaction. The transaction closed on December 22, 2023.

SPT is a leading master distributor for large diameter, hot finish seamless carbon steel pipe and tubing. Proceeds from the transaction will be used to pay down outstanding debt and for general corporate purposes. The sale greatly reduces the complexity associated with Ascent’s tubular operations and allows the Ascent Tubular team to focus on its core competencies that best position the company for long-term growth.

“We are proud of achieving this value-creating outcome for Ascent shareholders. While SPT is a unique and profitable business, the inherent cyclicality in its end-markets makes it a much better fit for the private markets,” said Chris Hutter, president and CEO of Ascent. “This transaction provides Ascent with the ability to dramatically reduce our debt, while providing additional available capital to pursue growth opportunities within our focused businesses under new segment leaders. We are proud of SPT’s performance under our stewardship, specifically in the past three years, and believe SPT is positioned for continued success in the future.”

Ascent’s remaining assets within the tubular segment consist of Bristol Tubular Products, the largest domestic manufacturer of welded pipe from stainless steel and other nickel alloys, and American Stainless Tubing, a producer of premium ornamental stainless steel tubing.

Angle Advisors acted as financial advisor and Sherman and Howard acted as legal advisor to Ascent.

### **About Ascent Industries Co.**

Ascent Industries Co. (Nasdaq: ACNT) is a company that engages in a number of diverse business activities including the production of stainless steel pipe and tubing and the production of specialty chemicals. For more information about Ascent, please visit its website at [www.ascentco.com](http://www.ascentco.com).

### **Forward-Looking Statements**

This press release may include "forward-looking statements" within the meaning of the Private Securities Litigation Reform Act of 1995 and other applicable federal securities laws. All statements that are not historical facts are forward-looking statements. Forward looking statements can be identified through the use of words such as "estimate," "project," "intend," "expect," "believe," "should," "anticipate," "hope," "optimistic," "plan," "outlook," "could," "may" and similar expressions. The forward-looking statements are subject to certain risks and uncertainties which could cause actual results to differ materially from historical results or those anticipated. Readers are cautioned not to place undue reliance on these forward-looking statements and to review the risks as set forth in more detail in Ascent Industries Co.’s Securities and Exchange Commission filings, including our Annual Report on Form 10-K, which filings are available from the SEC or on our website. Ascent Industries Co. assumes no obligation to update any forward-looking information included in this release.

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**Ascent Industries, Co.**  
**Unaudited Pro Forma Combined Financial Information**

**Introduction**

On December 22, 2023, Specialty Pipe & Tube, Inc. ("SPT") a Delaware corporation and wholly owned subsidiary of Ascent Industries, Co. a Delaware corporation (the "Company"), entered into an Asset Purchase Agreement ("Transaction Agreement") with Specialty Pipe & Tube Operations, LLC., a Delaware limited liability company (the "Purchaser"). Pursuant to the Transaction Agreement, the Company sold to the Purchaser substantially all the assets, and certain specified liabilities, of SPT (the "Transaction"). The total purchase price was \$55 million of cash proceeds plus certain closing adjustments.

The unaudited pro forma condensed consolidated balance sheet as of September 30, 2023, presents the Company's consolidated financial position giving pro forma effect to the Transaction as if it had occurred on September 30, 2023. The following unaudited pro forma condensed consolidated statement of income (loss) for the nine months ended September 30, 2023, and consolidated statements of income (loss) for the years ended December 31, 2022 and 2021 present the Company's consolidated results of operations giving pro forma effect to the Transaction as if it had occurred on January 1, 2021.

The unaudited pro forma condensed consolidated financial statements presented herein have been derived from the Company's historical consolidated financial statements. While the historical consolidated financial statements reflect the past financial results of the Company, the pro forma condensed consolidated financial statements are included for informational purposes only and are intended to illustrate how the Transaction might have affected the historical consolidated financial statements had it been completed at an earlier time as indicated herein. The Transaction constituted a significant disposition for purposes of Item 2.01 of Form 8-K and these unaudited pro forma condensed consolidated financial statements have been prepared in accordance with Article 11 of Regulation S-X, Pro Forma Financial Information, and include adjustments to the extent that they are directly attributable to the Transaction. The following unaudited pro forma condensed consolidated financial statements give rise to the elimination of the net assets and financial performance of the Company's SPT business in accordance with rules and regulations of the U.S. Securities and Exchange Commission (the "SEC").

These pro forma adjustments are based on currently available information, estimates and assumptions that the Company believes are reasonable in order to reflect, on a pro forma basis, the impact of the Transaction on the Company's historical information, and are not necessarily indicative of the Company's future financial position and future results of operations and do not reflect all actions that may be taken by the Company following the closing of the Transaction. The actual financial position and results of operations may differ significantly from the pro forma amounts reflected herein due to a variety of factors.

The unaudited pro forma condensed consolidated financial statements do not reflect the realization of any expected cost savings, synergies or dis-synergies as a result of the Transaction. In connection with the Transaction, the Company executed a Transition Services Agreement with the Purchaser whereby the Company agreed to continue to provide certain services for SPT free of charge for a period of up to six months. We considered the impact of the Transition Services Agreement and determined that no further pro forma adjustments were necessary as the impact of any adjustments would enhance an understanding of the pro forma effects of the Transaction as the agreement is not expected to have a material impact on the unaudited pro forma condensed consolidated balance sheet as of September 30, 2023 or the unaudited pro forma condensed consolidated statements of income (loss) for the nine months ended September 30, 2023 and the years ended December 31, 2022 and 2021.

These unaudited pro forma condensed consolidated financial statements should be read in connection with:

- the Company's historical audited consolidated financial statements, the accompanying notes and "Managements Discussion of Analysis of Financial Condition and Results of Operations" included in the Company's Annual Report on Form 10-K for the year ended December 31, 2022 filed with the SEC on March 31, 2023; and
  - the Company's unaudited interim historical consolidated financial statements, the accompanying notes and "Management's Discussion and Analysis of Financial Condition and Results of Operations" included in the Company's Quarterly Report on Form 10-Q for the quarterly period ended September 30, 2023, filed with the SEC on November 8, 2023.
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**Ascent Industries Co.**  
**(Unaudited) Pro Forma Combined Condensed Balance Sheet**  
(in thousands, except per share data)

	September 30, 2023			
	Ascent Historical	Transaction Accounting Adjustments		Pro Forma
<b>Assets</b>				
Current assets:				
Cash and cash equivalents	\$ 730	\$ 53,145 (a)		\$ 53,875
Accounts receivable, net of allowance for credit losses	32,910	(3,624) (b)		29,286
Inventories	83,044	(23,036) (b)		60,008
Prepaid expenses and other current assets	8,775	(52) (b)		8,723
Assets held for sale	8,956	—		8,956
Current assets of discontinued operations	620	—		620
Total current assets	135,035	26,433		161,468
Property, plant and equipment, net	31,981	(1,561) (b)		30,420
Right-of-use assets, operating leases, net	28,170	(45) (b)		28,125
Intangible assets, net	8,872	—		8,872
Deferred income taxes	9,217	(5,025) (e)		4,192
Deferred charges, net	128	—		128
Other non-current assets, net	1,782	—		1,782
Long-term assets of discontinued operations	6	\$ —		6
<b>Total assets</b>	<b>\$ 215,191</b>	<b>\$ 19,802</b>		<b>\$ 234,993</b>
<b>Liabilities and Shareholders' Equity</b>				
Current liabilities:				
Accounts payable	\$ 25,758	\$ (2,571) (b)		\$ 23,187
Accrued expenses and other current liabilities	5,608	677 (c)		6,285
Current portion of note payable	630	—		630
Current portion of long-term debt	2,464	—		2,464
Current portion of operating lease liabilities	1,132	(15) (b)		1,117
Current portion of finance lease liabilities	296	—		296
Current liabilities of discontinued operations	970	—		970
Total current liabilities	36,858	\$ (1,909)		34,949
Long-term debt	50,543	—		50,543
Long-term portion of operating lease liabilities	30,051	(31) (b)		30,020
Long-term portion of finance lease liabilities	1,378	—		1,378
Other long-term liabilities	59	—		59
Total non-current liabilities	82,031	(31)		82,000
<b>Total Liabilities</b>	<b>\$ 118,889</b>	<b>\$ (1,940)</b>		<b>\$ 116,949</b>
Commitments and contingencies				
Shareholders' equity:				
Common stock, par value \$1 per share; 24,000,000 shares authorized; 11,085,103 and 10,120,281 shares issued and outstanding, respectively	\$ 11,085	\$ —		\$ 11,085
Capital in excess of par value	47,189	—		47,189
Retained earnings	47,379	21,742 (d)		69,121
	105,653	21,742		127,395
Less: cost of common stock in treasury - 964,822 and 924,504 shares, respectively	(9,351)	—		(9,351)
Total shareholders' equity	96,302	21,742		118,044
<b>Total liabilities and equity</b>	<b>\$ 215,191</b>	<b>\$ 19,802</b>		<b>\$ 234,993</b>

See accompanying "Notes to Unaudited Pro Forma Combined Financial Information"

**Ascent Industries Co.**  
**(Unaudited) Pro Forma Condensed Consolidated Statements of Income (Loss)**  
(in thousands, except per share data)

	Nine Months Ended September 30, 2023			
	Ascent Historical	Transaction Accounting Adjustments		Pro Forma
Net sales	\$ 184,197	\$ (32,234)	(f)	\$ 151,963
Cost of sales	167,814	(19,695)	(f)	148,119
Gross profit	16,383	(12,539)		3,844
Selling, general and administrative	22,614	(2,183)	(f)	20,431
Acquisition costs and other	323	(46)	(f)	277
Goodwill impairment	11,389	—		11,389
Operating income (loss) from continuing operations	(17,943)	(10,310)		(28,253)
Other expense (income)				
Interest expense	3,217	—		3,217
Other, net	(344)	—	(f)	(344)
Income (loss) from continuing operations before income taxes	(20,816)	(10,310)		(31,126)
Income tax provision (benefit)	(2,350)	(2,267)	(g)	(4,617)
Income (loss) from continuing operations	\$ (18,466)	\$ (8,043)		\$ (26,509)
Net income (loss) per common share from continuing operations:				
Basic	\$ (1.82)			\$ (2.83)
Diluted	\$ (1.82)			\$ (2.83)
Weighted average shares outstanding:				
Basic	10,151			10,151
Diluted	10,151			10,151

See accompanying "Notes to Unaudited Pro Forma Combined Financial Information"

**Ascent Industries Co.**  
**(Unaudited) Pro Forma Condensed Consolidated Statements of Income (Loss)**  
(in thousands, except per share data)

	For the year ended December 31, 2022			
	Ascent Historical	Transaction Accounting Adjustments		Pro Forma
Net sales	\$ 414,147	\$ (50,435)	(f)	\$ 363,712
Cost of sales	357,614	(28,962)	(f)	328,652
Gross profit	56,533	(21,473)		35,060
Selling, general and administrative	34,952	(4,637)	(f)	30,315
Acquisition costs and other	1,200	—		1,200
Earn-out adjustments	(7)	—		(7)
Operating income (loss) from continuing operations	20,388	(16,836)		3,552
Other expense (income)				
Interest expense	2,742	—		2,742
Other, net	(209)	—		(209)
Income (loss) from continuing operations before income taxes	17,855	(16,836)		1,019
Income tax provision (benefit)	(4,211)	(3,613)	(g)	(7,824)
Income (loss) from continuing operations	\$ 22,066	\$ (13,223)		\$ 8,843
Net income (loss) per common share from continuing operations:				
Basic	\$ 2.16			\$ 0.86
Diluted	\$ 2.12			\$ 0.85
Weighted average shares outstanding:				
Basic	10,230			10,230
Diluted	10,410			10,410

See accompanying "Notes to Unaudited Pro Forma Combined Financial Information"

**Ascent Industries Co.**  
**(Unaudited) Pro Forma Condensed Consolidated Statements of Income (Loss)**  
(in thousands, except per share data)

	For the year ended December 31, 2021			
	Ascent Historical	Transaction Accounting Adjustments		Pro Forma
Net sales	\$ 334,715	\$ (40,539)	(f)	\$ 294,176
Cost of sales	273,949	(25,682)	(f)	248,267
Gross profit	60,766	(14,857)		45,909
Selling, general and administrative	30,144	(5,549)	(f)	24,595
Acquisition costs and other	1,001	—		1,001
Proxy contest costs and recoveries	168	—		168
Earn-out adjustments	1,872	—		1,872
Asset impairment	233	—		233
Operating income (loss) from continuing operations	27,348	(9,308)		18,040
Other expense (income)				
Interest expense	1,486	—		1,486
Loss on extinguishment of debt	223	—		223
Change on fair value of interest rate swaps	(2)	—		(2)
Other, net	143	187	(f)	330
Income (loss) from continuing operations before income taxes	25,498	(9,495)		16,003
Income tax provision (benefit)	5,253	(2,039)	(g)	3,214
Income (loss) from continuing operations	\$ 20,245	\$ (7,456)		\$ 12,789
Net income (loss) per common share from continuing operations:				
Basic	\$ 2.17			\$ 1.37
Diluted	\$ 2.14			\$ 1.35
Weighted average shares outstanding:				
Basic	9,340			9,340
Diluted	9,456			9,456

See accompanying "Notes to Unaudited Pro Forma Combined Financial Information"



**Ascent Industries Co.**  
**Notes to Unaudited Pro Forma Condensed Information**  
(amounts in thousands)

- a) Represents the estimated cash proceeds received from the disposition of SPT less the escrow amount, comprised of the base purchase price of \$55,000 offset by (i) the estimated working capital adjustment of \$422 based on the net working capital of SPT as of September 30, 2023, (ii) estimated indebtedness of \$274 (iii) transaction costs of \$993 and (iv) the escrow amount of \$165.
- b) Represents the elimination of the assets and liabilities associated with the disposition of SPT of \$3,789, offset by the accrual for the escrow amount of \$165.
- c) Represents the elimination of liabilities (accrued expenses) associated with the disposition of SPT of \$316, offset by the accrual for additional transaction costs of \$993 incurred subsequent to September 30, 2023, in connection with the disposition of SPT that are not reflected in the Company's historical financial statements as of September 30, 2023.
- d) Represents the impact of the estimated pro forma gain on the disposition of SPT, which is calculated as the difference between total consideration received for the disposition of SPT (including the escrow amount) of \$53,310 and the net assets of SPT presented in its historical balance sheet as of September 30, 2023 amounting to \$25,550, net of transaction costs incurred after September 30, 2023 of \$993 and taxes (refer to adjustment (e) below). The estimated pro forma gain on disposal has been adjusted within the pro forma condensed consolidated balance sheet above as this gain is not reflected within the Company's historical financial statements through September 30, 2023. The actual gain on disposal will be based on the balance sheet information as of the closing of the disposition of SPT and may differ significantly. The pro forma gain on disposal has not been reflected in the unaudited pro forma condensed consolidated statements of operations as this amount pertains to discontinued operations and does not impact income from continuing operations.
- e) Represents the estimated tax expense resulting from the gain on the disposition of SPT. The Company estimates that the federal and state tax effected gain will be offset by year-to-date net operating losses, reflected as a decrease to the net deferred tax asset.
- f) Represents the elimination of operations relating to the disposition of SPT.
- g) Represents the impact to the annual tax provision recorded in connection with the historical operations of SPT.