

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re:

KEY ENERGY SERVICES, INC., et al.¹

Debtors.

Chapter 11

Case No. 16-12306 (BLS)

(Jointly Administered)

Re: Docket Nos. 18, 196, & 239

**NOTICE OF FILING OF SECOND AMENDMENT TO PLAN SUPPLEMENT FOR THE
JOINT PREPACKAGED PLAN OF REORGANIZATION OF KEY ENERGY
SERVICES, INC. AND ITS DEBTOR AFFILIATES**

PLEASE TAKE NOTICE that on October 24, 2016, Key Energy Services, Inc. and its affiliated debtors and debtors in possession in the above-captioned cases (collectively, the “Debtors”) filed with the Court (as defined below) the *Joint Prepackaged Plan of Reorganization of Key Energy Services, Inc. and its Debtor Affiliates pursuant to Chapter 11 of the Bankruptcy Code* [Docket No. 18] (as amended, modified, or supplemented from time to time, the “Plan”).²

PLEASE TAKE FURTHER NOTICE THAT on November 21, 2016, the Debtors filed with the Court the *Notice of Filing of Plan Supplement to the Joint Prepackaged Plan of Reorganization of Key Energy Services, Inc. and Its Debtor Affiliates* [Docket No. 196] (as amended, modified, or supplemented from time to time, the “Plan Supplement”).

PLEASE TAKE FURTHER NOTICE THAT on December 5, 2016, the Debtors filed with the Court the *Notice of Filing of First Amendment to Plan Supplement for the Joint Prepackaged Plan of Reorganization of Key Energy Services, Inc. and its Debtor Affiliates* [Docket No. 239] (the “First Amendment to Plan Supplement”).

PLEASE TAKE FURTHER NOTICE THAT on December 6, 2016, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order confirming the Plan (the “Confirmation Order”) [Docket No. 245].

PLEASE TAKE FURTHER NOTICE THAT all documents included in the Plan Supplement are integral to, part of, and incorporated by reference into the Plan. In addition, pursuant to paragraph J of the Confirmation Order, subject to the terms of the Plan, the Debtors’

¹ The Debtors in these chapter 11 cases, together with the last four digits of each Debtor’s federal tax identification number, are as follows: Misr Key Energy Investments, LLC (4528), Key Energy Services, Inc. (8081), Key Energy Services, LLC (5567), and Misr Key Energy Services, LLC (7527). The mailing address for each Debtor is 1301 McKinney Street, Suite 1800, Houston, Texas 77010.

² Capitalized terms not otherwise defined herein shall have the meaning set forth in the Plan.

right to alter, amend, update, or modify the Plan Supplement, as well as the documents set forth therein, before the Effective Date is reserved.

PLEASE TAKE FURTHER NOTICE THAT the Plan Supplement is hereby further amended and/or supplemented (the “Second Amendment to Plan Supplement”) with respect to the following exhibits:

- **Exhibit A** — Amended and Restated Certificate of Incorporation of Reorganized Key Energy Services, Inc.
- **Exhibit B** — Amended and Restated Bylaws of Reorganized Key Energy Services, Inc.
- **Exhibit C** — Amended and Restated Certificate of Formation of Reorganized Key Energy Services, LLC
- **Exhibit D** — Amended and Restated Limited Liability Company Agreement of Reorganized Key Energy Services, LLC
- **Exhibit I** — New Warrant Agreement
- **Exhibit J** — List of Reorganized Debtors’ Board Members and Officers
- **Exhibit M-3** — New ABL Credit Agreement
- **Exhibit N** — New Term Loan Credit Agreement

PLEASE TAKE FURTHER NOTICE THAT the Debtors reserve the right, subject to the terms and conditions set forth in the Plan and the Plan Support Agreement, to add additional documents to the Plan Supplement or to alter, amend, modify, or supplement any document in the Plan Supplement; *provided* that if any document in the Plan Supplement is altered, amended, modified, or supplemented in any material respect, the Debtors will file a blackline of such document with the Court.

PLEASE TAKE FURTHER NOTICE THAT the Plan, Disclosure Statement, the initial Plan Supplement, the First Amendment to Plan Supplement, and this Second Amendment to Plan Supplement are available for inspection on the Court’s website at www.deb.uscourts.gov or free of charge on the Debtors’ restructuring website at <http://dm.epiq11.com/KeyEnergy>. Copies of the Plan, Disclosure Statement, and Plan Supplement may also be obtained by contacting Epiq Bankruptcy Solutions, LLC (“Epiq”), the administrative advisor retained by the Debtors in the Chapter 11 Cases, by (a) emailing Epiq at epiqteambblue@epiqsystems.com and referencing “Key Energy” in the subject line; (b) writing to Epiq Bankruptcy Solutions, LLC, Re: Key Energy Services, Inc., 777 Third Avenue, 12th floor, New York, NY 10017; or (c) calling Epiq at 1-646-282-2500.

[Signature Page Follows]

Dated: December 14, 2016
Wilmington, Delaware

SIDLEY AUSTIN LLP
James F. Conlan
Larry J. Nyhan
Andrew F. O'Neill
One South Dearborn Street
Chicago, Illinois 60603
Telephone: (312) 853-7000
Facsimile: (312) 853-7036

Jeffrey E. Bjork
Christina M. Craige
555 West Fifth Street, Suite 4000
Los Angeles, California 90013
Telephone: (213) 896-6000
Facsimile: (213) 896-6600

-and-

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Ryan M. Bartley

Robert S. Brady (No. 2847)
Edwin J. Harron (No. 3396)
Ryan M. Bartley (No. 4985)
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

ATTORNEYS FOR THE DEBTORS AND
DEBTORS IN POSSESSION

Blackline for Amended Exhibit A to Plan Supplement

**Amended and Restated Certificate of Incorporation of
Reorganized Key Energy Services, Inc.**

CERTIFICATE OF INCORPORATION

OF

KEY ENERGY SERVICES, INC.

It is hereby certified that:

1: The name of the corporation (hereinafter called the “Corporation”) is Key Energy Services, Inc.

2: The Articles of Conversion of the Corporation were filed with the Department of Assessments and Taxation of the State of Maryland on [●], 201[●], and the Certificate of Conversion of the Corporation was filed with the Secretary of State of the State of Delaware on [●], 201[●].

3: The original Articles of Incorporation of the Corporation were filed with the State Department of Assessments and Taxation of the State of Maryland on April 22, 1977.

4: The provision for making this Certificate of Incorporation is contained in the Joint Prepackaged Plan of Reorganization of Key Energy Services, Inc. and Its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code (the “Plan”), as filed with the United States Bankruptcy Court for the District of Delaware on October 24, 2016, the [Findings of Fact, Conclusions of Law and Order Confirming] the Plan, as entered by the United States Bankruptcy Court for the District of Delaware on December [6], 2016, and the Plan having become effective on [●], 201[●] (the “Effective Date”).

5: Pursuant to the General Corporation Law of the State of Delaware (as from time to time amended, the “DGCL”), the Certificate of Incorporation of the Corporation hereby reads as follows:

SECTION 1. The name of the Corporation is Key Energy Services, Inc.

SECTION 2. The address of the Corporation’s registered office in the State of Delaware is The Corporation Trust Company, 1209 Orange Street, Corporation Trust Center, Wilmington, Delaware 19801. The name of its registered agent at such address is The Corporation Trust Company.

SECTION 3. The purpose of the Corporation is to engage in any lawful act or activity for which corporations may be organized under the DGCL.

SECTION 4. The total number of shares of all classes of stock which the Corporation shall have authority to issue is 110,000,000 shares, of which 100,000,000 shares of the par value of \$0.01 per share shall be designated as shares of Common Stock (“Common Stock”) and 10,000,000 shares of the par value of \$0.01 per share shall be designated as shares of Preferred Stock (“Preferred Stock”). The Corporation shall not issue any non-voting equity securities.

Shares of Preferred Stock may be issued in one or more series from time to time by the board of directors, and the board of directors is expressly authorized to fix by resolution or resolutions the designations and the powers, preferences and rights, and the qualifications, limitations and restrictions thereof, of the shares of each series of Preferred Stock, including without limitation the following:

(a) the distinctive serial designation of such series which shall distinguish it from other series;

(b) the number of shares included in such series;

(c) the dividend rate (or method of determining such rate) payable to the holders of the shares of such series, any conditions upon which such dividends shall be paid and the date or dates upon which such dividends shall be payable;

(d) whether dividends on the shares of such series shall be cumulative and, in the case of shares of any series having cumulative dividend rights, the date or dates or method of determining the date or dates from which dividends on the shares of such series shall be cumulative;

(e) the amount or amounts which shall be payable out of the assets of the Corporation to the holders of the shares of such series upon voluntary or involuntary liquidation, dissolution or winding up the Corporation, and the relative rights of priority, if any, of payment of the shares of such series;

(f) the price or prices at which, the period or periods within which and the terms and conditions upon which the shares of such series may be redeemed, in whole or in part, at the option of the Corporation or at the option of the holder or holders thereof or upon the happening of a specified event or events;

(g) the obligation, if any, of the Corporation to purchase or redeem shares of such series pursuant to a sinking fund or otherwise and the price or prices at which, the period or periods within which and the terms and conditions upon which the shares of such series shall be redeemed or purchased, in whole or in part, pursuant to such obligation;

(h) whether or not the shares of such series shall be convertible or exchangeable, at any time or times at the option of the holder or holders thereof or at the option of the Corporation or upon the happening of a specified event or events,

into shares of any other class or classes or any other series of the same or any other class or classes of stock of the Corporation, and the price or prices or rate or rates of exchange or conversion and any adjustments applicable thereto;

(i) whether or not the holders of the shares of such series shall have voting rights, in addition to the voting rights provided by law, and if so the terms of such voting rights; and

(j) any other powers, preferences and rights and qualifications, limitations and restrictions not inconsistent with the DGCL.

Unless otherwise provided in the certificate of designations or the resolution or resolutions of the board of directors or a duly authorized committee thereof establishing the terms of a series of Preferred Stock, no holder of any share of Preferred Stock shall be entitled as of right to vote on any amendment or alteration of the Certificate of Incorporation to authorize or create, or increase the authorized amount of, any other class or series of Preferred Stock or any alteration, amendment or repeal of any provision of any other series of Preferred Stock.

Except as otherwise required by the DGCL or provided in the resolution or resolutions of the board of directors or a duly authorized committee thereof or other document establishing the terms of a series of Preferred Stock (including this Certificate of Incorporation or any certificate of designation relating to any series of Preferred Stock), no holder of Common Stock, as such, shall be entitled to vote on any amendment or alteration of the Certificate of Incorporation that alters, amends or changes the powers, preferences, rights or other terms of one or more outstanding series of Preferred Stock.

Subject to the rights of the holders of any series of Preferred Stock, the number of authorized shares of any class or series of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of such class or series, voting together as a single class, irrespective of the provisions of Section 242(b)(2) of the DGCL or

any corresponding provision hereafter enacted, and no vote of the holders of any of the Common Stock or the Preferred Stock voting separately as a class shall be required therefor, unless a vote of any such holder is required pursuant to this Certificate of Incorporation (including any certificate of designation relating to any series of Preferred Stock).

SECTION 5. The Corporation hereby authorizes and designates a series of Preferred Stock, which shall have the voting powers and other rights, and qualifications, limitations and restrictions thereof, as follows:

(a) Designation. The distinctive serial designation of such series is “Series A Preferred Stock” (the “Series A Preferred Stock”).

(b) Number of Shares. The number of shares of Series A Preferred Stock shall be one. If such share of Series A Preferred Stock is redeemed or otherwise acquired by the Corporation, it shall be cancelled and revert to authorized but unissued shares of Preferred Stock undesignated as to series.

(c) Dividends. Series A Preferred Stock shall not accrue any dividends.

(d) Redemption. Series A Preferred Stock shall be redeemed and cancelled automatically at no cost without any action by the Corporation upon the earliest to occur of any of the following:

(i) Platinum (as defined below) beneficially owns less than any of the following: (i) ~~91.578~~91.803% of the number of shares of Common Stock of the Corporation that were held by Platinum on the Effective Date (it being understood that such number was 9,800,630 shares), solely as a result of Platinum selling such shares, (ii) 42.5% of the issued and outstanding shares of Common Stock (excluding shares issued pursuant to the 2016 Equity and Cash Incentive Plan adopted by the Corporation on , 201) at any time, provided that such percentage shall be adjusted downward to no less than 40% to the extent the Corporation issues shares of Common Stock for the purpose of satisfying the market capitalization

requirements of the New York Stock Exchange (the “NYSE”) or NASDAQ Global Select Market (“NASDAQ”) in order to obtain a listing thereon, or (iii) 38.5% of the issued and outstanding shares of Common Stock at any time;

(ii) the second anniversary of the Effective Date, if the Common Stock of the Corporation has not been Listed prior thereto; or

(iii) there occurs any voluntary or involuntary liquidation, dissolution or winding up of the affairs of the Corporation, including a sale of all or substantially all of the assets of the Corporation.

“Control”, when used with respect to any specified Person, means the power to direct or cause the direction of the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and “Controlled” has a correlative meaning.

“Controlled Affiliate” means an affiliate (as such term is used in Rule 12b-2 under the Securities Exchange Act of 1934, as amended) Controlled, directly or indirectly, by Platinum.

“Listed” means registered under Section 12(b) of the Securities Exchange Act of 1934, as amended, and listed on either the NYSE or the NASDAQ.

“Person” means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

“Platinum” means Platinum Equity Advisors, LLC and its Controlled Affiliates, managed funds and/or accounts.

(e) Voting Rights.

(i) Following the Initial Board Term (as defined below), the holder of the share of Series A Preferred Stock, voting as a separate class, shall be entitled to nominate and elect between five (5) and seven (7) directors, as provided in Section 2.3(a) of the by-laws of the Corporation (as in effect from time to time, the “By-laws”), at each meeting or for purposes of each consent of the Corporation’s stockholders for the election of directors.

(ii) The Corporation shall not amend or repeal any provision of this Certificate of Incorporation so as to adversely affect the rights, preferences or privileges of the Series A Preferred Stock without the written consent or affirmative vote of the holder of the share of Series A Preferred Stock.

(f) Economic Rights; Liquidation Preference. The Series A Preferred Stock shall not be entitled to any economic rights in the Corporation and shall not be entitled to any liquidation preference or to participate in any dividends paid by the Corporation.

(g) Transfers. Series A Preferred Stock may not be sold, transferred, assigned or otherwise disposed of except to a Person set forth in the definition of “Platinum”. Any attempted sale, transfer, assignment or other disposition in violation of this provision shall be void.

SECTION 6. The name and mailing address of the incorporator is ~~James L. Wigginton, 1888 Century Park East, Los Angeles, California 90067~~ Katherine I. Hargis, 1301 McKinney, Suite 1800, Houston, Texas 77010. The powers of the incorporator shall terminate upon the filing of this Certificate of Incorporation.

SECTION 7. The persons serving as the initial directors of the Corporation (the “Initial Directors”), their position and the party designating such Initial Director are as set forth below:

<u>Name</u>	<u>Position</u>	<u>Designation</u>	<u>Designating Party</u>	<u>Initial Number of Votes</u>
Robert Drummond	CEO Director	Designated Platinum Director	Platinum	1
Jacob Kotzubei	Super Voting Director	Designated Platinum Director	Platinum	2
Philip Norment	Super Voting Director	Designated Platinum Director	Platinum	2
Bryan Kelln	Super Voting Director	Designated Platinum Director	Platinum	2
Mary Ann Sigler	Director	Designated Platinum Director	Platinum	1
Scott D. Vogel	Director	Designated Other Director	Other Backstop Parties	1
Sherman K. Edmiston III	Director	Designated Other Director	Other Backstop Parties	1
H.H. Tripp Wommack, III	Independent Director	NA	Platinum	1
Steven H. Pruett	Independent Director	NA	Other Backstop Parties	1
C. Christopher Gaut	Independent Director	NA	Mutually Agreed by Platinum and the Other Backstop Parties	1

“Other Backstop Parties” means the parties (other than Platinum and the Corporation) to the Backstop Commitment Agreement, dated September 21, 2016.

The mailing address of the Initial Directors is c/o Key Energy Services, Inc., 1301 McKinney, Suite 1800, Houston, Texas 77010.

SECTION 8. The Initial Directors shall serve a term commencing on the Effective Date and concluding upon the election and qualification of such Initial Directors’ successors at the first annual meeting of stockholders occurring not earlier than the second anniversary of the Effective Date to be held in accordance with Section 1.1 of the By-laws (the “Initial Board Term”).

SECTION 9. Stockholders of the Corporation are not permitted to call a special meeting or to require that the Board call a special meeting of stockholders.

SECTION 10.

(a) At each meeting of the board of directors or any committee thereof, on each matter submitted to the board of directors or such committee, except as provided in Section 10(b), Section 10(c) or Section 10(d) of this Certificate of Incorporation, (i) during the Initial Board Term until the Series A Preferred Stock is no longer outstanding, three (3) of the directors designated by Platinum as the holder of the Series A Preferred Stock may be designated by it as Super Voting Directors, and (ii) following the Initial Board Term until the Series A Preferred Stock is no longer outstanding, two (2) of the directors designated by Platinum as the holder of Series A Preferred Stock may be designated by it as Super Voting Directors. “Super Voting Director” shall mean a director who has two (2) votes, rather than one (1) vote.

(b) Notwithstanding Section 10(a) of this Certificate of Incorporation, so long as the Series A Preferred Stock is outstanding and has not been redeemed pursuant to Section 5(d) of this Certificate of Incorporation, at the election of the holder of the Series A Preferred Stock, the Board size may be increased by up to a number of additional directors equal to the number of Platinum Directors (as defined below) that may then be designated as Super Voting Directors by the holder of the Series A Preferred Stock pursuant to Section 10(a) of this Certificate of Incorporation, with such resulting vacancies filled by the holder of the Series A Preferred Stock. Each additional Platinum Director filling such vacancies shall serve until the expiration of the then-current term of the other directors, or until his or her earlier resignation or removal. Each additional Platinum Director appointed pursuant to this Section 10(b) shall have one (1) vote, and for each additional Platinum Director appointed pursuant to this Section 10(b), the voting power of one (1) Super Voting Director (designated by the holder of the Series A Preferred Stock) shall decrease to one (1) vote. Concurrently with the appointment of any such additional Platinum Director pursuant to this Section 10(b), and as a condition to such additional Platinum Director being qualified and taking office as a director, the holder of the Series A Preferred Stock shall irrevocably designate which Super Voting Director will cease to be a Super Voting Director and instead have one (1) vote. As used in this Certificate of Incorporation, “Platinum Director” means any director who is

designated or nominated for election to the Board solely by Platinum, including as holder of the Series A Preferred Stock, pursuant to the By-laws.

(c) Notwithstanding Section 10(a) of this Certificate of Incorporation, during the Initial Board Term, if there is no CEO Director (as defined below) for any reason, including due to a removal, the Board size shall decrease by one (1) director and until a CEO Director is appointed to the Board, the voting power of one (1) of the Super Voting Directors (as promptly designated by the holder of the Series A Preferred Stock, or if the holder of the Series A Preferred Stock fails to promptly designate, the Super Voting Director designated by the Designated Other Directors or their successors) shall decrease to one (1) vote; provided, however, that if there is no Super Voting Director at such time pursuant to Section 10(b), the Board size shall further decrease by one (1) director, and accordingly one (1) Platinum Director who is not an Independent Director (as designated by the holder of the Series A Preferred Stock, or if the holder of the Series A Preferred Stock fails to promptly designate, the Platinum Director designated by the Designated Other Directors or their successors) will resign from the Board. In the event that any such Platinum Director fails to resign as required by the immediately preceding sentence, the voting power of such additional Platinum Director shall decrease to zero (0) votes. As used in this Certificate of Incorporation, “CEO Director” means a director of the Corporation who is also the Chief Executive Officer.

(d) Notwithstanding Section 10(a) of this Certificate of Incorporation, after the Initial Board Term, effective upon the automatic redemption and cancellation of the Series A Preferred Stock pursuant to Section 5(d)(i), 5(d)(ii) or 5(d)(iii) of this Certificate of Incorporation, the voting power of the Super Voting Directors shall decrease to one (1) vote each and any additional Platinum Directors previously appointed by the holder of the Series A Preferred Stock pursuant to Section 10(b) shall immediately resign from the Board, with such resignation to be effective immediately. In the event that any such Platinum Director fails to resign as

required by the immediately preceding sentence, the voting power of each such additional Platinum Director shall decrease to zero (0) votes.

SECTION 11.

(a) Except as set forth in Section 4.1(c)(7) of the By-laws or this Section 11, the board of directors shall have power without the consent or vote of the stockholders to alter, amend, or repeal the By-laws of the Corporation.

(b) Until the later of the end of the Initial Board Term and the time the Common Stock is Listed, in addition to any other vote required by applicable law, this Certificate of Incorporation or the By-laws, (i) Section 5, Section 8, Section 10 and this Section 11 of this Certificate of Incorporation may not be amended, including by merger, consolidation or otherwise (except pursuant to the terms of a Permitted Transaction (as defined below)), (ii) Section 1.11, Sections 2.1-2.9, Section 2.12, Article III and Article IV of the By-laws may not be amended, including by merger, consolidation or otherwise (except pursuant to the terms of a Permitted Transaction), and (iii) neither this Certificate of Incorporation nor the By-laws may be amended, including by merger, consolidation or otherwise (except pursuant to the terms of a Permitted Transaction), to include any provision inconsistent with the sections referred to in clause (i) or (ii), in the case of each of clause (i), (ii) and (iii), to the extent such amendment would be (x) disproportionately favorable to Platinum, its rights under such sections or the rights of any Platinum Director or (y) adverse in any way to the stockholders of the Corporation other than Platinum (the “Non-Platinum Holders”), their rights under such sections or the rights of any directors (or their successors) initially designated by the Other Backstop Parties, without the affirmative vote of a majority of all outstanding shares of Common Stock held by the Non-Platinum Holders. As used in this Certificate of Incorporation, “Permitted Transaction” means any fundamental transaction involving a sale of the Corporation (including any consolidation, reorganization, merger or sale of all or substantially all of the assets of the Corporation) that (i) is effected pursuant to the United States Bankruptcy Code, 11 U.S.C. §§ 101 et seq., (ii) reflects an implied equity value of the

Corporation of greater than \$700 million or (iii) is approved by the Board in accordance with Section 4.1(c)(1) of the By-laws.

(c) From and after the later of the end of the Initial Board Term and the date the Common Stock is Listed, and until the first annual meeting of stockholders to occur after (x) Platinum beneficially owns less than 12.5% of the issued and outstanding shares of Common Stock and (y) such time that no more than two (2) Platinum Directors are on the Board, in addition to any other vote required by applicable law, this Certificate of Incorporation or the By-laws, (i) Section 5, Section 8, Section 10 and this Section 11 of this Certificate of Incorporation may not be amended, including by merger, consolidation or otherwise (except pursuant to the terms of a Permitted Transaction), (ii) Sections 2.1-2.9 and Section 2.12, Section 4.1(a), Section 4.1(b)(i)-(iii), Section 4.2, and Section 4.3 of the By-laws may not be amended, including by merger, consolidation or otherwise (except pursuant to the terms of a Permitted Transaction), and (iii) neither this Certificate of Incorporation nor the By-laws may be amended, including by merger, consolidation or otherwise (except pursuant to the terms of a Permitted Transaction), to include any provision inconsistent with the sections referred to in clause (i) or (ii), in the case of each of clause (i), (ii) and (iii), to the extent such amendment would be (x) disproportionately favorable to Platinum, its rights under such sections or the rights of any Platinum Director or (y) adverse in any way to the Non-Platinum Holders, their rights under such sections or the rights of any directors (or their successors) initially designated by the Other Backstop Parties, without the affirmative vote of a majority of all outstanding shares of Common Stock held by the Non-Platinum Holders; provided, however, that any such amendment to the By-laws will not require such vote of the Non-Platinum Holders if such amendment is approved by the Board in accordance with Section 4.1 of the By-laws.

SECTION 12. The Corporation shall indemnify each director to the fullest extent permitted by Delaware law (as it presently exists or may hereafter be amended but, in the case of any such amendment, only to the extent that such amendment permits the

Corporation to provide broader indemnification rights than permitted prior to such amendment). Expenses reasonably incurred by a director in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized by law.

A director of the Corporation shall not be personally liable to the Corporation or its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) under Section 174 of the DGCL, or (iv) for any transaction for which the director derived any improper personal benefit.

If the DGCL is amended after the filing of this Certificate of Incorporation of which this Section 12 is a part to authorize corporate action further eliminating or limiting the personal liability of directors, then the liability of a director of the Corporation shall be eliminated or limited to the fullest extent permitted by the DGCL, as so amended.

Any repeal or modification of this Section 12 by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification.

[signature page follows]

IN WITNESS WHEREOF, said Corporation has caused this Certificate of Incorporation to be executed by its duly authorized officer this [●] day of [●], 20[●].

KEY ENERGY SERVICES, INC.

By: _____
Name: []
Title: []

Blackline for Amended Exhibit B to Plan Supplement

Amended and Restated Bylaws of Reorganized Key Energy Services, Inc.

BY-LAWS
OF
KEY ENERGY SERVICES, INC.

ARTICLE I

Stockholders

Section 1.1. Annual Meetings. An annual meeting of stockholders shall be held for the election of directors to succeed any then current directors whose terms are set to expire. An annual meeting of stockholders shall be held at such date, time and place either within or without the State of Delaware, or may not be held at any place, but may instead be held solely by means of remote communication, as may be designated by the board of directors of the Corporation (the "Board") from time to time. Any other business as may be properly brought before such annual meeting may also be transacted at such meeting.

Section 1.2. Special Meetings. Except as required by law, special meetings of stockholders may be called only by the Board pursuant to a resolution approved by directors holding a majority of the total votes. As set forth in the certificate of incorporation of the Corporation (as in effect from time to time, and including any certificates of designation then in effect, the "Certificate of Incorporation"), stockholders of the Corporation are not permitted to call a special meeting or to require that the Board call a special meeting of stockholders. The business permitted at any special meeting of stockholders shall be limited to the business brought before the meeting by or at the direction of the Board.

Section 1.3. Notice of Meetings. Whenever stockholders are required or permitted to take any action at a meeting, a written notice of the meeting shall be given which shall state the place, if any, date and hour of the meeting, the means of remote communications, if any, by which stockholders and proxyholders may be deemed to be present in person and vote at such meeting, the record date for determining the stockholders entitled to vote at the meeting, if such date is different from the record date for determining stockholders entitled to notice of the meeting, and, in the case of a special meeting, the purpose or purposes for which the meeting is called. Unless otherwise provided by law, the written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to vote at such meeting as of the record date for determining the stockholders entitled to notice of the meeting. If mailed, such notice shall be deemed to be given when deposited in the United States mail, postage prepaid, directed to the stockholder at such stockholder's address as it appears on the records of the Corporation. In addition, if stockholders have consented to receive notices by a form of electronic transmission, then such notice, by facsimile telecommunication, or by electronic mail, shall be deemed to be given when directed to a number or an electronic mail address, respectively, at which the

stockholder has consented to receive notice. If such notice is transmitted by a posting on an electronic network together with separate notice to the stockholder of such specific posting, such notice shall be deemed to be given upon the later of (i) such posting, and (ii) the giving of such separate notice. If such notice is transmitted by any other form of electronic transmission, such notice shall be deemed to be given when directed to the stockholder. Notice shall be deemed to have been given to all stockholders of record who share an address if notice is given in accordance with the “householding” rules set forth in the rules of the Securities and Exchange Commission under the Securities Exchange Act of 1934 (the “Exchange Act”) and Section 233 of the Delaware General Corporation Law. For purposes of these by-laws, “electronic transmission” means any form of communication, not directly involving the physical transmission of paper, that creates a record that may be retained, retrieved and reviewed by a recipient thereof, and that may be directly reproduced in paper form by a recipient through an automated process.

Section 1.4. Postponements; Adjournments. The Board of Directors may postpone, reschedule or adjourn any previously scheduled meeting of the stockholders. When a meeting is adjourned to another time or place, unless these by-laws otherwise require, notice need not be given of any such adjourned meeting if the time, place, if any, thereof, and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present in person and vote at such adjourned meeting are announced at the meeting at which the adjournment is taken. At the adjourned meeting the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, a notice of the adjourned meeting shall be given to each stockholder of record entitled to vote at the meeting. If after the adjournment a new record date for stockholders entitled to vote is fixed for the adjourned meeting, the Board shall fix a new record date for notice of such adjourned meeting in accordance with Section 1.9 and shall give notice of the adjourned meeting to each stockholder of record entitled to vote at such adjourned meeting as of the record date fixed for notice of such adjourned meeting.

Section 1.5. Quorum. At each meeting of stockholders, except where otherwise provided by law or the Certificate of Incorporation or these by-laws, the holders of a majority of the shares entitled to vote, present in person or represented by proxy, shall constitute a quorum. Where a separate vote is required to be taken by a class or series of stock or by a class or category of stockholders (including the Other Holders), a majority of the outstanding shares of such class or series or of shares held by such class or category of stockholders, present in person or represented by proxy, shall constitute a quorum to take action with respect to that vote on that matter. Two (2) or more classes or series of stock or classes or groups of stockholders shall be considered a single class or group if the holders thereof are entitled to vote together as a single class at the meeting. In the absence of a quorum of the holders of any class or series of stock or class or category of stockholders entitled to vote on a matter, either (i) the stockholders of such class or stockholders in such group so present or represented may, by majority vote of the shares held by such stockholders, adjourn the meeting of such class from time to time in the manner provided by Section 1.4 of these by-laws until a quorum of such class shall be so present or represented or (ii) the Chairperson of the meeting may on his or her own motion, without the approval of the stockholders who are present in person or represented

by proxy and entitled to vote, adjourn the meeting from time to time in the manner provided by Section 1.4 of these by-laws until a quorum of such class shall be so present and represented, without notice other than announcement at the meeting. Shares of its own capital stock belonging to the Corporation or to another corporation, if a majority of the shares entitled to vote in the election of directors of such other corporation is held, directly or indirectly, by the Corporation, shall neither be entitled to vote nor be counted for quorum purposes. Nothing in this Section 1.5 shall be construed as limiting the right of the Corporation to vote stock, including but not limited to its own stock, held by it in a fiduciary capacity.

Section 1.6. Organization. Meetings of stockholders shall be presided over by the Chairperson of the Board, if any, or in the absence of the Chairperson of the Board by the Vice Chairperson of the Board, if any, or in the absence of the Vice Chairperson of the Board by the President, or in the absence of the President by a Vice President, or in the absence of the foregoing persons by a chairperson designated by the Board, or in the absence of such designation by a chairperson chosen at the meeting. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the chairperson of the meeting may appoint any person to act as secretary of the meeting.

The order of business at each such meeting shall be as determined by the chairperson of the meeting. The chairperson of the meeting shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts and things as are necessary or desirable for the proper conduct of the meeting, including, without limitation, the establishment of procedures for the maintenance of order and safety, limitations on the time allotted to questions or comments on the affairs of the Corporation, restrictions on entry to such meeting after the time prescribed for the commencement thereof and the opening and closing of the voting polls, for each item on which a vote is to be taken.

Section 1.7. Inspectors. The Corporation shall, in advance of any meeting of stockholders, appoint one or more inspectors to act at the meeting and make a written report thereof. The Corporation may designate one or more persons as alternate inspectors to replace any inspector who fails to act. If no inspector or alternate is able to act at a meeting of stockholders, the person presiding at the meeting shall appoint one or more inspectors to act at the meeting. Each inspector, before entering upon the discharge of his duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of such inspector's ability. Every vote taken by ballots shall be conducted by an inspector or inspectors appointed by the Chairperson of the meeting.

Section 1.8. Voting; Proxies. Unless otherwise provided in the Certificate of Incorporation and subject to Section 1.9, each stockholder entitled to vote at any meeting of stockholders shall be entitled to one (1) vote for each share of stock held by such stockholder which has voting power upon the matter in question. Each stockholder entitled to vote at a meeting of stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for

such stockholder by proxy, but no such proxy shall be voted or acted upon after three (3) years from its date, unless the proxy provides for a longer period. A duly executed proxy shall be irrevocable if it states that it is irrevocable and if, and only as long as, it is coupled with an interest sufficient in law to support an irrevocable power. A proxy may be made irrevocable regardless of whether the interest with which it is coupled is an interest in the stock itself or an interest in the Corporation generally. A stockholder may revoke any proxy which is not irrevocable by attending the meeting and voting in person or by filing an instrument in writing revoking the proxy or another duly executed proxy bearing a later date with the Secretary of the Corporation. Voting at meetings of stockholders need not be by written ballot and need not be conducted by inspectors unless the holders of a majority of the outstanding shares of all classes of stock entitled to vote thereon present in person or represented by proxy at such meeting shall so determine. Except as otherwise provided in the Certificate of Incorporation or Article II, directors shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors. In all other matters, unless otherwise provided by law or by the Certificate of Incorporation or these by-laws, the affirmative vote of the holders of a majority of the shares present in person or represented by proxy at the meeting and entitled to vote on the subject matter shall be the act of the stockholders. Any approval or action required or permitted in these by-laws to be taken by the Other Holders shall be valid if consented to or approved by the Other Holders holding a majority of shares of common stock of the Corporation, par value \$0.01 per share ("Common Stock"), held by all Other Holders. Where a separate vote by class or series of stock or class or category of stockholders is required, the affirmative vote of the majority of the shares of such class or series or of the shares held by stockholders in such class or group present in person or represented by proxy at the meeting shall be the act of such class or series or classes or series, except as otherwise provided by law or by the Certificate of Incorporation or these by-laws. For purposes of this Section 1.8, votes cast "for" or "against" and "abstentions" with respect to such matter shall be counted as shares of stock of the Corporation entitled to vote on such matter, while "broker non-votes" (or other shares of stock of the Corporation similarly not entitled to vote) shall not be counted as shares present and entitled to vote on such matter.

Section 1.9. Fixing Date for Determination of Stockholders of Record. In order that the Corporation may determine the stockholders entitled to notice of any meeting of stockholders or any adjournment thereof, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If the Board so fixes a date, such date shall also be the record date for determining the stockholders entitled to vote at such meeting unless the Board determines, at the time it fixes such record date, that a later date on or before the date of the meeting shall be the date for making such determination. If no record date is fixed by the Board, the record date for determining stockholders entitled to notice of and to vote at a meeting of stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of

stockholders shall apply to any adjournment of such meeting; provided, however, that the Board may fix a new record date for determination of stockholders entitled to vote at the adjourned meeting, and in such case shall also fix the record date for stockholders entitled to notice of such adjourned meeting the same or an earlier date as that fixed for determination of stockholders entitled to vote at such adjourned meeting in accordance with the foregoing provisions of this Section 1.9.

In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board, and which date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board. If no record date has been fixed by the Board, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board and prior action by the Board is required by law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board adopts the resolution taking such prior action.

In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty days (60) prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board adopts the resolution relating thereto.

Section 1.10. List of Stockholders Entitled to Vote. The Secretary shall prepare and make, at least ten (10) days before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting; provided, however, if the record date for determining the stockholders entitled to vote is less than ten (10) days before the meeting date, the list shall reflect the stockholders entitled to vote as of the tenth (10th) day before the meeting date, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Nothing in this Section 1.10 shall require the Corporation to include electronic mail addresses or other electronic content information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten (10) days prior to the meeting: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided

with the notice of the meeting, or (ii) during ordinary business hours, at the principal place of business of the Corporation. In the event that the Corporation determines to make the list available on an electronic network, the Corporation may take reasonable steps to ensure that such information is available only to stockholders of the Corporation. If the meeting is to be held at a place, then a list of stockholders entitled to vote at the meeting shall be produced and kept at the time and place of the meeting during the whole time thereof and may be examined by any stockholder who is present. If the meeting is to be held solely by means of remote communication, then such list shall also be open to the examination of any stockholder during the whole time of the meeting on a reasonably accessible electronic network, and the information required to access such list shall be provided with the notice of the meeting.

Section 1.11. Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the certificate of incorporation or these by-laws, any action required by law to be taken at any annual or special meeting of stockholders of the Corporation, or any action which may be taken at any annual or special meeting of such stockholders, may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth such action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted, and shall be delivered to the Corporation by delivery to (a) its registered office in the State of Delaware, (b) its principal place of business, or (c) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded; provided that if the Common Stock has not been Listed and Platinum executed any action by written consent pursuant to this Section 1.11, then such action shall not be valid unless and until the date that is 20 business days after Platinum provides a copy of the written consent to all Other Holders and any other information required by applicable law. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this by-law to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to (a) its registered office in the State of Delaware, (b) its principal place of business, or (c) an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded.

Section 1.12. Advance Notice of Stockholder Nominees for Director and Other Stockholder Proposals.

(a) The matters to be considered and brought before any annual or special meeting of stockholders of the Corporation shall be limited to only such matters, including the nomination and election of directors, as shall be brought properly before such meeting in compliance with the procedures set forth in this Section 1.12.

(b) For any matter to be brought properly before the annual meeting of stockholders, the matter must be (i) specified in the notice of the annual meeting given by

or at the direction of the Board, (ii) otherwise brought before the annual meeting by or at the direction of the Board or (iii) brought before the annual meeting by a stockholder who is a stockholder of record of the Corporation on the date the notice provided for in this Section 1.12 is delivered to the Secretary of the Corporation, who is entitled to vote at the annual meeting and who complies with the procedures set forth in this Section 1.12. In addition to any other requirements under applicable law, the Certificate of Incorporation and by-laws of the Corporation, written notice (the "Stockholder Notice") of any nomination or other proposal must be timely and any proposal, other than a nomination, must constitute a proper matter for stockholder action. To be timely, the Stockholder Notice must be delivered to the Secretary of the Corporation at the principal executive office of the Corporation not less than ninety (90) nor more than one hundred twenty (120) days prior to the first anniversary date of the annual meeting for the preceding year; provided, however, that if (and only if) the annual meeting is not scheduled to be held within a period that commences thirty (30) days before such anniversary date and ends thirty (30) days after such anniversary date (an annual meeting date outside such period being referred to herein as an "Other Meeting Date"), the Stockholder Notice shall be given in the manner provided herein not earlier than the opening of business one hundred twenty (120) days prior to such Other Meeting Date and no later than the later of the close of business on (i) the date ninety (90) days prior to such Other Meeting Date or (ii) the tenth (10th) day following the date such Other Meeting Date is first publicly announced or disclosed. A Stockholder Notice must contain the following information: (i) whether the stockholder is providing the notice at the request of a beneficial holder of shares, whether the stockholder, any such beneficial holder or any nominee has any agreement, arrangement or understanding with, or has received any financial assistance, funding or other consideration from, any other person with respect to the investment by the stockholder or such beneficial holder in the Corporation or the matter the Stockholder Notice relates to, and the details thereof, including the name of such other person (the stockholder, any beneficial holder on whose behalf the notice is being delivered, any nominees listed in the notice and any persons with whom such agreement, arrangement or understanding exists or from whom such assistance has been obtained are hereinafter collectively referred to as "Interested Persons"), (ii) the name and address of all Interested Persons, (iii) a complete listing of the record and beneficial ownership positions (including number or amount) of all equity securities and debt instruments, whether held in the form of loans or capital market instruments, of the Corporation or any of its subsidiaries held by all Interested Persons, (iv) whether and the extent to which any hedging, derivative or other transaction is in place or has been entered into within the prior six (6) months preceding the date of delivery of the Stockholder Notice by or for the benefit of any Interested Person with respect to the Corporation or its subsidiaries or any of their respective securities, debt instruments or credit ratings, the effect or intent of which transaction is to give rise to gain or loss as a result of changes in the trading price of such securities or debt instruments or changes in the credit ratings for the Corporation, its subsidiaries or any of their respective securities or debt instruments (or, more generally, changes in the perceived creditworthiness of the Corporation or its subsidiaries), or to increase or decrease the voting power of such Interested Person, and if so, a summary of the material terms thereof, and (v) a representation that the stockholder is a holder of record of stock of the Corporation that would be entitled to vote at the

meeting and intends to appear in person or by proxy at the meeting to propose the matter set forth in the Stockholder Notice. As used herein, “beneficially owned” has the meaning provided in Rules 13d-3 and 13d-5 under the Exchange Act. The Stockholder Notice shall be updated not later than ten (10) days after the record date for the determination of stockholders entitled to vote at the meeting to provide any material changes in the foregoing information as of the record date. Any Stockholder Notice relating to the nomination of directors must also contain (i) the information regarding each nominee required by paragraphs (a), (e) and (f) of Item 401 of Regulation S-K adopted by the Securities and Exchange Commission (or the corresponding provisions of any successor regulation), (ii) each nominee’s signed consent to serve as a director of the Corporation if elected and such nominee’s representation that he or she currently intends to serve as a director, if elected, for the term for which he or she is standing for election, and (iii) whether each nominee is eligible for consideration as an independent director under the relevant standards contemplated by Item 407(a) of Regulation S-K (or the corresponding provisions of any successor regulation). The Corporation may also require any proposed nominee to furnish such other information, including completion of the Corporation’s directors questionnaire, as it may reasonably require to determine whether the nominee would be considered “independent” as a director or as a member of the audit committee of the Board under the various rules and standards applicable to the Corporation. Any Stockholder Notice with respect to a matter other than the nomination of directors must contain (i) the text of the proposal to be presented, including the text of any resolutions to be proposed for consideration by stockholders and (ii) a brief written statement of the reasons why such stockholder favors the proposal.

Notwithstanding anything in this Section 1.12(b) to the contrary, in the event that the number of directors to be elected to the Board of the Corporation is increased and either all of the nominees for director or the size of the increased Board is not publicly announced or disclosed by the Corporation at least one hundred (100) days prior to the first anniversary of the preceding year’s annual meeting, a Stockholder Notice shall also be considered timely hereunder, but only with respect to nominees for any new positions created by such increase, if it shall be delivered to the Secretary of the Corporation at the principal executive office of the Corporation not later than the close of business on the tenth (10th) day following the first date all of such nominees or the size of the increased Board shall have been publicly announced or disclosed.

(c) For any matter to be brought properly before a special meeting of stockholders, the matter must be set forth in the Corporation’s notice of the meeting given by or at the direction of the Board. In the event that the Corporation calls a special meeting of stockholders for the purpose of electing one or more persons to the Board, not at the request of any stockholders acting pursuant to Section 1.12(b) of these by-laws, any stockholder may nominate a person or persons (as the case may be), for election to such position(s) as specified in the Corporation’s notice of the meeting, if the Stockholder Notice required by Section 1.12(b) hereof shall be delivered to the Secretary of the Corporation at the principal executive office of the Corporation not later than the close of business on the tenth (10th) day following the day on which the date of the special meeting and of the nominees proposed by the Board to be elected at such meeting is publicly announced or disclosed.

(d) For purposes of this Section 1.12, a matter shall be deemed to have been “publicly announced or disclosed” if such matter is disclosed in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the Securities and Exchange Commission.

(e) Only persons who are nominated in accordance with the procedures set forth in this Section 1.12 shall be eligible for election as directors of the Corporation. In no event shall the postponement or adjournment of an annual meeting already publicly noticed, or any announcement of such postponement or adjournment, commence a new period (or extend any time period) for the giving of notice as provided in this Section 1.12. This Section 1.12 shall not apply to stockholders proposals made pursuant to Rule 14a-8 under the Exchange Act.

(f) The person presiding at any meeting of stockholders, in addition to making any other determinations that may be appropriate to the conduct of the meeting, shall have the power and duty to determine whether notice of nominees and other matters proposed to be brought before a meeting has been duly given in the manner provided in this Section 1.12 and, if not so given, shall direct and declare at the meeting that such nominees and other matters are not properly before the meeting and shall not be considered. Notwithstanding the foregoing provisions of this Section 1.12 if the stockholder or a qualified representative of the stockholder does not appear at the annual or special meeting of stockholders of the Corporation to present any such nomination, or make any such proposal, such nomination or proposal shall be disregarded, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

ARTICLE II

Board of Directors

Section 2.1. Powers; Number; Qualifications. The business and affairs of the Corporation shall be managed by or under the direction of the Board, except as may be otherwise provided by law or in the Certificate of Incorporation. The Board shall consist of such number of members as set forth in this Article II and may be increased or decreased by the Board in accordance with these by-laws. Each member shall be a natural person. Directors need not be stockholders.

Section 2.2. Initial Directors. (a) In accordance with the Joint Prepackaged Plan of Reorganization of the Corporation and certain of its debtor affiliates under Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (including all exhibits and schedules thereto, as amended, modified or supplemented) (the “Plan”), which became effective as of [_____] (the “Effective Date”), as of the Effective Date, the Board consists of the ten (10) members listed below (the “Initial Directors”) who will each serve the term set forth in Section 8 of the Certificate of Incorporation (the “Initial Board Term”). The following table sets forth, for each Initial Director, his or her status as a CEO Director, Super Voting Director or Independent Director (as each term is defined

below), the person who designated such Initial Director and, subject to the other terms and provisions of the Certificate of Incorporation and these By-Laws, the number of votes held initially by such Initial Director:

Table 1

Name	Position	Designation	Designating Party	Initial Number of Votes
Robert Drummond	CEO Director	Designated Platinum Director	Platinum	1
Jacob Kotzubei	Super Voting Director	Designated Platinum Director	Platinum	2
Philip Norment	Super Voting Director	Designated Platinum Director	Platinum	2
Bryan Kelln	Super Voting Director	Designated Platinum Director	Platinum	2
Mary Ann Sigler	Director	Designated Platinum Director	Platinum	1
Scott D. Vogel	Director	Designated Other Director	Other Backstop Parties	1
Sherman K. Edmiston III	Director	Designated Other Director	Other Backstop Parties	1
H.H. Tripp Wommack, III	Independent Director	NA	Platinum	1
Steven H. Pruett	Independent Director	NA	Other Backstop Parties	1
C. Christopher Gaut	Independent Director	NA	Mutually Agreed by Platinum and the Other Backstop Parties	1

For purposes of these by-laws:

“CEO Director” means a director of the Corporation who is also the Chief Executive Officer.

“Control”, when used with respect to any specified Person, means the power to direct or cause the direction of the management or policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and “Controlled” has a correlative meaning.

“Controlled Affiliate” means an affiliate (as defined in Rule 12b-2 under the Securities Exchange Act of 1934, as amended) Controlled, directly or indirectly, by Platinum.

“Designated Other Director” means any director designated as such in Table 1 above, and his or her successors.

“Designated Platinum Director” means any director designated as such in Table 1 above, and his or her successors.

“Independent Director” means a director who meets the independence requirements of the New York Stock Exchange (the “NYSE”) or the NASDAQ Global Select Market (“NASDAQ”), as applicable.

“Other Backstop Parties” means the parties (other than Platinum and the Corporation) to the Backstop Commitment Agreement, dated September 21, 2016.

“Other Holders” means, collectively, the stockholders of the Corporation, other than Platinum.

“Person” means an individual, a corporation, a limited liability company, an association, a partnership, a joint venture, a joint stock company, a trust, an unincorporated organization or a government or an agency or a political subdivision thereof.

“Platinum” means Platinum Equity Advisors, LLC and its Controlled Affiliates, managed funds and/or accounts.

“Platinum Director” means any director who is designated or nominated for election to the Board solely by Platinum, including as holder of the Series A Preferred Stock, pursuant to these by-laws.

“Super Voting Director” shall have the meaning set forth in Section 10 of the Certificate of Incorporation.

(b) During the Initial Board Term, at the election of the holder of the Series A Preferred Stock, the Board size shall increase from ten (10) to up to thirteen (13) directors in accordance with Section 10(b) of the Certificate of Incorporation, such that (i) if the Board size is increased to eleven (11) directors, there will be two (2) Super Voting Directors; (ii) if the Board size is increased to twelve (12) directors, there will be one (1) Super Voting Director; and (iii) if the Board size is increased to thirteen (13) directors, there will be no Super Voting Director.

(c) During the Initial Board Term, if there is no CEO Director for any reason, including due to a removal, the Board size shall decrease in accordance with Section 10(c) of the Certificate of Incorporation.

Section 2.3. Subsequent Directors. (a) After the Initial Board Term, if the Common Stock has been Listed (as such term is defined in the Certificate of Incorporation) and the Series A Preferred Stock is outstanding, the Board shall be comprised of nine (9) directors consisting of: (i) five (5) directors who shall be nominated and elected by the holder of the Series A Preferred Stock, of whom (A) two (2) shall be designated by such holder as Super Voting Directors and (B) one (1) shall be an Independent Director, and (ii) four (4) directors who shall be nominated by the Board then in place and elected by the holders of Common Stock, two (2) of whom shall be

Independent Directors; provided that the Board size shall increase at the election of the holder of the Series A Preferred Stock from nine (9) to up to eleven (11) directors in accordance with Section 10(b) of the Certificate of Incorporation such that (i) if the Board size is increased to ten (10) directors, there will be one (1) Super Voting Director; and (ii) if the Board size is increased to eleven (11) directors, there will be no Super Voting Director.

(b) After the Initial Board Term, if the Common Stock has not been Listed, then until the Common Stock is Listed, the Board shall be comprised of ten (10) directors, each of whom shall have one vote, consisting of: (i) three (3) directors who shall be nominated by the two (2) Designated Other Directors (or their successors) and elected by the holders of Common Stock, one (1) of whom shall be an Independent Director, and (ii) seven (7) directors who shall be nominated by the Initial Board or their successors and elected by the holders of Common Stock, two (2) of whom shall be Independent Directors.

(c) At any time after the Initial Board Term, upon the automatic redemption and cancellation of the Series A Preferred Stock pursuant to Section 5(d)(i) or 5(d)(iii) of the Certificate of Incorporation, the voting power of the Super Voting Directors and the Board size shall decrease in accordance with Section 10(d) of the Certificate of Incorporation. Commencing from the first annual meeting of stockholders next succeeding such redemption and cancellation of Series A Preferred Stock (“Post-Redemption Meeting”) if the Common Stock is Listed, the Board shall be comprised of nine (9) directors who shall be nominated by the Board then in place and elected by the holders of Common Stock, at least three (3) of whom shall be Independent Directors.

(d) Except as otherwise provided in this Section 2.3, each director elected pursuant to this Section 2.3 will serve until the succeeding annual meeting of stockholders and, shall have one (1) vote on any matter submitted to the Board.

Section 2.4. Elections to the Board. Director nominees who are nominated and elected by the holder of Series A Preferred Stock shall be elected by the consent or vote of such holder. Director nominees who are voted on by all holders of Common Stock shall be elected by a plurality of the votes of the shares present in person or represented by proxy at the meeting and entitled to vote on the election of directors.

Section 2.5. Resignation; Removal; Vacancies. Any director may resign at any time upon notice given in writing or by electronic transmission to the Board or to the President or the Secretary of the Corporation. A resignation is effective when the resignation is delivered unless the resignation specifies a later effective date or an effective date determined upon the happening of an event or events. Unless otherwise specified therein no acceptance of such resignation shall be necessary to make it effective. Any director or the entire Board may be removed, with or without cause, by the holders of a majority of the shares then entitled to vote at an election of directors; provided, however, that any director designated or nominated for election by Platinum including as the holder of the Series A Preferred Stock may not be removed without cause except with its consent or vote, and any director designated by the Other Backstop

Parties or a director nominated pursuant to Section 2.3(b)(i) may not be removed without cause except with the consent or vote of the holders holding a majority of the shares of Common Stock held by all Other Holders. Unless otherwise provided in the Certificate of Incorporation or these by-laws, vacancies may be filled by directors holding a majority of the total votes held by directors then in office, although less than a quorum; provided, however, that (x) any vacancy left by any director designated by the Other Backstop Parties or any director nominated pursuant to Section 2.3(b)(i) shall be filled by the remaining director(s) designated by the Other Backstop Parties or the remaining director(s) nominated pursuant to Section 2.3(b)(i), as applicable, and, any resigning director designated by the Other Backstop Parties or director nominated pursuant to Section 2.3(b)(i) may participate in filling the vacancy to be created by his or her resignation, and (y) Platinum including as the holder of the Series A Preferred Stock shall have the right to fill vacancies left by directors which Platinum had appointed. Any director elected or appointed to fill a vacancy shall hold office until his or her successor is elected or appointed, as applicable, and qualified or until his or her earlier resignation or removal. In the event that any Platinum Director, a director designated by the Other Backstop Parties or a director nominated pursuant to Section 2.3(b)(i) ceases to be a director for any reason and such position remains vacant for more than ten (10) business days, from and after the eleventh (11th) business day following the creation of such vacancy, until such vacancy is filled, the approval of such Platinum Director, director designated by the Other Backstop Parties or director nominated pursuant to Section 2.3(b)(i) shall not be required for purposes of determining whether a Supermajority has been achieved.

Section 2.6. Regular Meetings. Regular meetings of the Board may be held at such places within or without the State of Delaware and at such times as the Board may from time to time determine, and if so determined notice thereof need not be given.

Section 2.7. Special Meetings. Special meetings of the Board may be held at any time or place within or without the State of Delaware whenever called by the Chairperson of the Board, if any, by the Vice Chairperson of the Board, if any, by the President or by any two (2) directors. At least five (5) business days' prior notice thereof shall be given by the person or persons calling the meeting. Attendance at such meeting by any director (except attendance at such meeting to protest the failure of proper notices) shall constitute waiver of any notice requirement by such director.

Section 2.8. Participation in Meetings by Conference Telephone Permitted. Unless otherwise restricted by the Certificate of Incorporation or these by-laws, members of the Board, or any committee designated by the Board, may participate in a meeting of the Board or committee by means of conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this by-law shall constitute presence in person at the meeting.

Section 2.9. Quorum; Vote Required for Action. At all meetings of the Board, directors holding a majority of the total votes shall constitute a quorum for the

transaction of business; provided that until the later of (i) the end of the Initial Board Term and (ii) the date that the Series A Preferred Stock is no longer outstanding, a quorum of the Board shall require the presence of at least one (1) Designated Other Director or a director nominated pursuant to Section 2.3(b)(i), but only if at least one of such individuals is then on the Board; provided, further, that if a properly noticed meeting of the Board fails to achieve a quorum solely due to the absence of the directors referred to in the foregoing proviso, then a new notice of meeting of the Board may be called in accordance with this Article II (except that each applicable notice period shall be reduced to two (2) business days for such new notice) and a quorum at such meeting shall require only the presence of directors holding a majority of the total votes. The vote by directors holding a majority of the total votes present at a meeting at which a quorum is present shall be the act of the Board unless the Certificate of Incorporation or Article IV of these by-laws shall require a different vote. In case at any meeting of the Board a quorum shall not be present, the members of the Board present may adjourn the meeting from time to time until a quorum shall be present.

Section 2.10. Organization. Meetings of the Board shall be presided over by the Chairperson of the Board, if any, or in the absence of the Chairperson of the Board by the Vice Chairperson of the Board, if any, or in the absence of the Vice Chairperson of the Board by the President, or in their absence by a chairperson chosen at the meeting. The Secretary, or in the absence of the Secretary an Assistant Secretary, shall act as secretary of the meeting, but in the absence of the Secretary and any Assistant Secretary the chairperson of the meeting may appoint any person to act as secretary of the meeting.

Section 2.11. Action by Directors Without a Meeting. Unless otherwise restricted by the Certificate of Incorporation or these by-laws, any action required or permitted to be taken at any meeting of the Board or of any committee thereof may be taken without a meeting if all members of the Board or committee, as the case may be, consent thereto in writing, or by electronic transmission and the writing or writings or electronic transmission or transmissions are filed with the minutes of proceedings of the Board, or committee. Such filing shall be in paper form if the minutes are maintained in paper form and shall be in electronic form if the minutes are maintained in electronic form.

Section 2.12. Compensation of Directors. Unless otherwise restricted by the Certificate of Incorporation or these by-laws, all Independent Directors shall be paid the same reasonable compensation for their services and reimbursement for expenses of attendance at meetings, which initially shall be \$250,000 per year (which during the first year following the Effective Date will be 50% in the form of cash and 50% in the form of grants of Common Stock pursuant to the 2016 Equity and Cash Incentive Plan adopted by the Corporation on [_____]), and thereafter shall be such amount as the Board, or any compensation committee designated thereby, may from time to time determine, provided that in addition to the vote required under Section 2.9 of these by-laws, so long as (i) any Designated Other Director is on the Board during the Initial Board Term or (ii) any director nominated pursuant to Section 2.3(b)(i) is on the Board, any action by the Board or any compensation committee designated thereby to reduce the aggregate compensation and/or reimbursement provided to any Independent Director shall require

the approval of at least two (2) votes cast by directors who are not Platinum Directors. Following such time that the votes held by Platinum Directors who are not Independent Directors no longer constitute a majority of the total votes available to be cast by the Board, the Board will engage an independent consultant experienced in board compensation matters to review the compensation for the Board.

ARTICLE III

Committees

Section 3.1. Committees. The Board may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. In the absence or disqualification of a member of a committee, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another member of the Board to act at the meeting in the place of any such absent or disqualified member. Any such committee, to the extent provided in the resolution of the Board, or in these by-laws, shall have and may exercise all the powers and authority of the Board in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it; but no such committee shall have the power or authority in reference to the following matters: (i) approving or adopting, or recommending to the stockholders, any action or matter (other than the election or removal of directors) expressly required by law to be submitted to stockholders for approval or (ii) adopting, amending or repealing these by-laws. Except as otherwise required by applicable independence rules of the NYSE or NASDAQ, the holder of the Series A Preferred Stock and the Designated Other Directors or directors nominated pursuant to Section 2.3(b)(i) shall have the right, upon request, to representation or membership, as applicable, and voting power on any committee formed hereunder in numbers proportionate to their representation or membership, as applicable, and voting power on the Board as a whole, provided, that, except as otherwise required by applicable independence rules of the NYSE or NASDAQ, (A) the holder of the Series A Preferred Stock shall be entitled, upon request, to be represented by at least one director who has at least one vote on any such committee and (B) at least one Designated Other Director or a director nominated pursuant to Section 2.3(b)(i), as applicable, shall be entitled, upon request, to be a member with at least one vote on any such committee.

Section 3.2. Committee Rules. Unless the Board otherwise provides, each committee designated by the Board may adopt, amend and repeal rules for the conduct of its business. A majority of the directors then serving on a committee of the Board shall constitute a quorum for the transaction of business by the committee, provided that to the extent a Designated Other Director or a director nominated pursuant to Section 2.3(b)(i) is a member of any committee, the presence of such director (which shall be no more than one) shall be required for a quorum of such committee; provided, further, that if a committee meeting fails to achieve a quorum solely due to the absence of

the director referred to in the foregoing proviso, then at the next meeting of the committee (which shall not be earlier than one (1) business day following the inquorate meeting), a quorum at such next meeting shall require only the presence of directors holding a majority of the total votes. The vote of the majority of the members of a committee present at a meeting at which a quorum is present shall be the act of the committee, unless the Certificate of Incorporation, these by-laws or a resolution of the Board requires a greater number.

ARTICLE IV

Approval of Certain Matters

Section 4.1. Supermajority Vote of the Board. (a) As used herein, “Supermajority” shall mean any of the following, as applicable, provided that for all purposes under the definition of Supermajority (including but not limited to the minimum voting thresholds, the numerators and the denominators), all directors (and their successors) added to the Board pursuant to Section 4.1(c)(4)(A) and their votes shall be disregarded in all respects until the latest to occur of (a) the expiration of the Initial Board Term, (b) the date the Common Stock is Listed, and (c) the date that no director designated by the Other Backstop Parties or nominated pursuant to Section 2.3(b)(i) remains on the Board:

(i) during the Initial Board Term, (A) if there is a CEO Director, at least nine (9) of the thirteen (13) director votes, including (X) at least seven (7) votes cast by the Designated Platinum Directors who are not Independent Directors, (Y) at least two (2) votes cast by directors who are not Platinum Directors and (Z) at least one (1) vote cast by a Designated Other Director; or (B) if there is no CEO Director, at least eight (8) of the eleven (11) director votes, including (X) at least six (6) votes cast by the Designated Platinum Directors, (Y) at least two (2) votes cast by directors who are not Platinum Directors and (Z) at least one (1) vote cast by a Designated Other Director;

(ii) following the Initial Board Term, if the Common Stock has been Listed and the share of Series A Preferred Stock is outstanding, at least eight (8) of the eleven (11) director votes, including (X) at least six (6) votes cast by the Platinum Directors who are not Independent Directors and (Y) at least two (2) votes cast by directors who are not Platinum Directors;

(iii) following the Initial Board Term, if the Common Stock has been Listed and the share of Series A Preferred Stock is not outstanding,

(A) until the Post-Redemption Meeting, at least six (6) of the nine (9) director votes, including (X) at least four (4) votes cast by the Platinum Directors who are not Independent Directors and (Y) at

least two (2) votes cast by directors who are not Platinum Directors; and

(B) after the Post-Redemption Meeting, at least two (2) votes cast by Independent Directors; and

(iv) following the Initial Board Term, if the Common Stock has not been Listed, at least seven (7) of the ten (10) director votes, including (X) at least five (5) votes cast by the directors nominated by the Initial Board who are not Independent Directors and (Y) at least two (2) votes cast by directors who are nominated pursuant to Section 2.3(b)(i).

(b) At any time irrespective of listing status and, other than in the case of (i) below, from and after the later of the end of the Initial Board Term and the date the Common Stock is Listed, and until the first annual meeting of stockholders to occur after (x) Platinum beneficially owns less than 12.5% of the issued and outstanding shares of Common Stock and (y) such time that no more than two (2) Platinum Directors are on the Board, the approval of a Supermajority of the Board shall be required:

- (i) for the Corporation to enter into any transaction with a Related Party (as defined below) of the Corporation, Platinum or Related Advisor (as defined in the Corporate Advisory Services Agreement dated [_____] between the Corporation and ~~insert Platinum affiliate name~~ Equity Advisors, LLC (the “CASA”)), including any amendments to the CASA or the Letter Agreement dated [_____] between the Corporation and Platinum (the “Platinum Letter Agreement”), except for (A) compensation agreements with members of the Board in the ordinary course of business, (B) execution of the CASA and the Platinum Letter Agreement on the Effective Date, (C) arm’s length commercial transactions in the ordinary course of business between any Platinum portfolio company and the Corporation if the aggregate transaction value does not exceed \$1 million per calendar year, and (D) any other transactions required by the Plan Support Agreement, dated August 24, 2016, among the Corporation and the parties named therein; provided that any decision to waive or enforce the Platinum Letter Agreement shall be delegated solely to the two (2) Designated Other Directors (or their successors).

“Affiliate” means, with respect to any person, is a person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the person specified.

“Related Party” means, with respect to any person, (x) any former, current or future director, officer, agent, Affiliate, employee or stockholder of such person and (y) any former, current or future director, officer, agent, Affiliate, employee, general or limited partner, member, manager or stockholder of any of the persons listed in clause (x) of this definition.

- (ii) for the Corporation to adopt any restrictions on the transferability of any shares of the Corporation; and
 - (iii) for the Corporation to approve or authorize any awards under the 2016 annual performance incentive plan of the Corporation.
- (c) If the Common Stock is not Listed, the approval of a Supermajority of the Board shall be required for:
- (1) the Corporation to enter into any fundamental transaction involving a sale of the Corporation (including any consolidation, reorganization, merger or sale of all or substantially all of the assets of the Corporation) other than a transaction (i) pursuant to the Bankruptcy Code (as defined in Plan) or (ii) with an implied equity value of the Corporation of greater than \$700 million (each such transaction permitted by clause (i) or (ii) or approved by a Supermajority of the Board pursuant to this Section 4.1(c)(1), a “Permitted Transaction”);
 - (2) the Corporation to acquire any assets, make any loan, purchase any securities or make any other investment, or sell, lease, transfer or otherwise dispose of any assets, in each case, the value of which individually or in the aggregate exceeds \$25 million in any transaction or series of related transactions;
 - (3) the Corporation to incur indebtedness for borrowed money in excess of \$5 million, other than for purposes of refinancing the New Term Loan Facility (as defined in the Plan) or the New ABL Credit Facility (as defined in the Plan) at the same or lower effective rates of interest (taking into account the payment to the financing sources of any fees or other amounts);
 - (4) any change to the size of the Board, except (A) for increases in the size of the Board to add Independent Directors, (B) for an increase in the size of the Board pursuant to Section 2.2(b) or Section 2.3(a) of these by-laws or (C) pursuant to the terms of a Permitted Transaction;
 - (5) the creation of new committees of the Board or the delegation of broader authority to the committees of the Board than is provided in the initial charters for such committees, other than as required by law;
 - (6) the Corporation to redeem or repurchase its equity securities and other securities exercisable or exchangeable for, or convertible into, its equity securities, in an amount in excess of \$5 million in any transaction and \$10 million in the aggregate in any fiscal year, other than (x) redemptions and repurchases offered to all of the Corporation’s stockholders on a pro rata basis based on their respective shareholdings and (y) redemptions and repurchases from

any employee, consultant, director or officer of the Corporation who ceases to be an employee, consultant, director or officer of the Corporation; and

(7) any amendment to these by-laws.

Section 4.2. Unanimous Vote of the Board. The unanimous approval of the Board shall be required to delist the Common Stock from the NYSE or NASDAQ, as applicable, except if such delisting is necessary to effect a cash-out or stock merger of the Corporation that constitutes a Permitted Transaction.

Section 4.3. Majority Vote of Non-Platinum Stockholders. The affirmative vote of stockholders holding a majority of all outstanding shares of Common Stock not held by Platinum shall be required for any issuance of shares of the Corporation in which Platinum or any of its Affiliates would participate, other than an issuance available on the same terms to all stockholders on a pro rata basis based on their respective shareholdings.

Section 4.4. Supermajority Vote of Stockholders. If the Common Stock is not Listed, the affirmative vote of stockholders holding at least 65% of all outstanding shares of Common Stock shall be required for any issuance of equity securities or other securities exercisable or exchangeable for, or convertible into, equity securities of the Corporation in an amount equal to 20% or more of the shares of Common Stock (on an as-converted basis) or with voting power of 20% or more of the Common Stock outstanding prior to such issuance, except for any issuance for the purpose of satisfying the market capitalization requirements of the NYSE or NASDAQ in order to obtain a listing of the Common Stock thereon (and only to the extent necessary to satisfy such requirements), provided that such issuance is made subject to pre-emptive rights available to each of the Other Holders, on a pro rata basis based on their respective shareholdings, if Platinum or any “managing member” or other Person(s) exercising Control over Platinum is acquiring any securities in such issuance.

ARTICLE V

Officers

Section 5.1. Executive and Other Officers. The Corporation shall have a Chief Executive Officer, a President, a Secretary, and a Treasurer. The Corporation may also have one or more Vice-Presidents, assistant officers, and subordinate officers as may be established from time to time by the Board. A person may hold more than one office in the Corporation except that no person may serve concurrently as both President and Vice-President of the Corporation. The Chief Executive Officer shall be a director, and the other officers may be directors.

Section 5.2. Chief Executive Officer. The Chief Executive Officer shall have general charge and supervision of the business of the Corporation subject to the direction of the Board. He or she shall perform the duties customarily performed, and

have the powers customarily possessed, by the chief executive officer of a corporation and shall perform such other duties and have such other powers as are from time to time assigned to him or her by the Board. The Chief Executive Officer may execute, in the name of the Corporation, all authorized deeds, mortgages, bonds, contracts or other instruments, except in cases in which the signing and execution thereof shall have been expressly delegated to some other officer or agent of the Corporation.

Section 5.3. President. Unless otherwise specified by resolution of the Board, the President shall be the chief operating officer of the Corporation, who shall have supervision of the operations of the Corporation, subject to the rights and authority of the Chief Executive Officer. He or she shall perform the duties customarily performed, and have the powers customarily possessed, by a president or chief operating officer of a corporation and shall perform such other duties and have such other powers as are from time to time assigned to him or her by the Board or the Chief Executive Officer. The President may execute, in the name of the Corporation, all authorized deeds, mortgages, bonds, contracts or other instruments, except in cases in which the signing and execution thereof shall have been expressly delegated to some other officer or agent of the Corporation.

Section 5.4. Vice Presidents. The Vice-President or Vice-Presidents, at the request of the Chief Executive Officer or the President, or in the President's absence or during his or her inability to act, shall perform the duties and exercise the functions of the President, and when so acting shall have the powers of the President. If there be more than one Vice-President, the Board may determine which one or more of the Vice-Presidents shall perform any of such duties or exercise any of such functions, or if such determination is not made by the Board, the Chief Executive Officer, or if he or she shall fail to do so, the President may make such determination; otherwise any of the Vice-Presidents may perform any of such duties or exercise any of such functions. Each Vice-President shall perform such other duties and have such other powers, and have such additional descriptive designations in his or her titles (if any), as are from time to time assigned to him or her by the Board, the Chief Executive Officer, or the President.

Section 5.5. Secretary. The Secretary shall keep the minutes of the meetings of the stockholders, of the Board and of any committees, in books provided for the purpose; he or she shall see that all notices are duly given in accordance with the provisions of these by-laws or as required by Delaware law, he or she shall be custodian of the records of the Corporation; he or she may witness any document on behalf of the Corporation, the execution of which is duly authorized, see that the corporate seal is affixed where such document is required or desired to be under its seal, and, when so affixed, may attest the same. In general, he or she shall perform such other duties customarily performed by a secretary of a corporation, and shall perform such other duties and have such other powers as are from time to time assigned to him or her by the Board, the Chief Executive Officer, or the President.

Section 5.6. Treasurer. The Treasurer shall have charge of and be responsible for all funds, securities, receipts and disbursements of the Corporation, and shall deposit, or cause to be deposited, in the name of the Corporation, all moneys or

other valuable effects in such banks, trust companies or other depositories as shall, from time to time, be selected by the Board; he or she shall render to the Chief Executive Officer, the President and the Board, whenever requested, an account of the financial condition of the Corporation. In general, he or she shall perform such other duties customarily performed by a treasurer of a corporation, and shall perform such other duties and have such other powers as are from time to time assigned to him or her by the Board, the Chief Executive Officer, or the President. Unless otherwise specified by the Board, the Treasurer shall be the chief financial officer and, in the absence of the election of a Controller, the chief accounting officer of the Corporation.

Section 5.7. Assistant and Subordinate Officers. The assistant and subordinate officers of the Corporation are all officers below the office of Vice-President, Secretary, or Treasurer. The assistant or subordinate officers shall have such duties as are from time to time assigned to them by the Board, the Chief Executive Officer, or the President or in the case of Assistant Treasurer and Assistant Secretary by the Treasurer and the Secretary, respectively.

Section 5.8. Election, Tenure and Removal of Officers. The Board shall elect the officers of the Corporation. The Board may from time to time authorize any committee or officer to appoint assistant and subordinate officers. Election or appointment of an officer, employee or agent shall not of itself create contract rights. All officers shall be appointed to hold their offices, respectively, during the pleasure of the Board. The Board (or, as to any assistant or subordinate officer, any committee or officer authorized by the Board) may remove an officer at any time. The removal of an officer does not prejudice any of his or her contract rights. The Board (or, as to any assistant or subordinate officer, any committee or officer authorized by the Board) may fill a vacancy which occurs in any office for the unexpired portion of the term.

Section 5.9. Compensation. The Board shall have power to fix the salaries and other compensation and remuneration, of whatever kind, of all officers of the Corporation. No officer shall be prevented from receiving such salary by reason of the fact that he or she is also a director of the Corporation. The Board may authorize any committee or officer, upon whom the power of appointing assistant and subordinate officers may have been conferred, to fix the salaries, compensation and remuneration of such assistant and subordinate officers.

ARTICLE VI

Stock

Section 6.1. Stock Certificates and Uncertificated Shares. The shares of the Corporation shall be represented by certificates, provided that the Board may provide by resolution or resolutions that some or all of any or all classes or series of the Corporation's stock shall be uncertificated shares. Any such resolution shall not apply to shares represented by a certificate theretofore issued until such certificate is surrendered to the Corporation. Every holder of stock represented by certificates shall be entitled to have a certificate signed by or in the name of the Corporation by any two (2) authorized

officers of the Corporation representing the number of shares registered in certificate form. Any or all signatures on the certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue. The Corporation shall not have power to issue stock certificates in bearer form.

Except as otherwise expressly provided by law, the rights and obligations of the holders of uncertificated shares and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 6.2. Lost, Stolen or Destroyed Stock Certificates; Issuance of New Certificates. The Corporation may issue a new certificate of stock or uncertificated shares in the place of any certificate theretofore issued by it, alleged to have been lost, stolen or destroyed, and the Corporation may require the owner of the lost, stolen or destroyed certificate, or such owner's legal representative, to give the Corporation a bond sufficient to indemnify it against any claim that may be made against it on account of the alleged loss, theft or destruction of any such certificate or the issuance of such new certificate or uncertificated shares.

ARTICLE VII

Finance

Section 7.1. Fiscal Year. The fiscal year of the Corporation shall be the twelve (12) calendar months period ending December 31 in each year, unless otherwise provided by the Board.

ARTICLE VIII

Miscellaneous

Section 8.1. Seal. The Corporation may have a corporate seal, which may be altered from time to time, and use the same by causing it or a facsimile thereof, to be impressed or affixed or in any other manner reproduced.

Section 8.2. Waiver of Notice of Meetings of Stockholders, Directors and Committees. Whenever notice is required to be given by law or under any provision of the Certificate of Incorporation or these by-laws, a written waiver, signed by the person entitled to notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to notice. Attendance of a person at a meeting shall constitute a waiver of notice of such meeting, except when the person attends a meeting for the express purpose of objecting at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any regular or special meeting of the stockholders, directors or members of a committee

of directors need be specified in any written waiver of notice or any waiver by electronic transmission unless so required by the Certificate of Incorporation or these by-laws.

Section 8.3. Indemnification of Directors and Officers. Except as provided in this Section 8.3, the Corporation shall indemnify each Indemnitee to the fullest extent permitted by Delaware law (as it presently exists or may hereafter be amended but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than permitted prior to such amendment). Expenses reasonably incurred by Indemnitee in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of Indemnitee to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized by law. Indemnitee's obligation to reimburse the Corporation shall be unsecured and no interest shall be charged thereon.

In the event that any director designated or nominated for election by Platinum or any Other Holder is entitled to indemnification under this Section 8.3 for which such person is also entitled to indemnification from Platinum or such Other Holder, the Corporation hereby agrees that its duties to indemnify such person, whether pursuant to these by-laws or otherwise, shall be primary to those of Platinum or such Other Holder, and to the extent Platinum or such Other Holder actually indemnifies any such person, Platinum or such Other Holder, as applicable, shall be subrogated to the rights of such person against the Corporation for indemnification hereunder. The Corporation hereby acknowledges the subrogation rights of Platinum and such Other Holders under such circumstances and agrees to execute and deliver such further documents and/or instruments as Platinum or such Other Holder, as applicable, may reasonably request in order to evidence any such subrogation rights, whether before or after Platinum or such Other Holder makes any such indemnification payment. The Corporation hereby waives any right against Platinum and such Other Holders to indemnification, subrogation or contribution in respect of amounts payable by the Corporation pursuant to this Section 8.3. Furthermore, the Corporation expressly agrees that Platinum and the Other Holders are intended third party beneficiaries as to the indemnification provisions of this Section 8.3 and shall be entitled to bring suit against the Corporation to enforce said provisions.

No claim for indemnification shall be paid by the Corporation unless the Corporation has determined that Indemnitee acted in good faith and in a manner Indemnitee reasonably believed to be in or not opposed to the best interests of the Corporation and, with respect to any criminal action or proceeding, had no reasonable cause to believe that Indemnitee's conduct was unlawful. Unless ordered by a court, such determinations shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of Indemnitee is proper in the circumstances because Indemnitee has met the applicable standard of conduct set forth in this Section 8.3. Such determination shall be made by (1) directors holding a majority of the total votes not held by directors who are, or were nominated or designated by, parties, or Affiliates of parties, to the action, suit or proceeding for which indemnification is sought,

even though less than a quorum, or (2) by a committee of such directors designated by such majority vote, even though less than a quorum, or (3) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion, or (4) by the stockholders. Indemnitee shall be presumed to have met the relevant standard, and, if the determination is not made by the Corporation within thirty (30) days of a demand by Indemnitee for indemnification, Indemnitee shall be deemed to have met such standard.

Indemnitee shall promptly notify the Corporation in writing upon the sooner of (a) becoming aware of an action, suit or proceeding where indemnification or the advance payment or reimbursement of Expenses may be sought or (b) being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any matter which may be subject to indemnification or the advance payment or reimbursement of Expenses covered hereunder. The failure of Indemnitee to so notify the Corporation shall not relieve the Corporation of any obligation which it may have to Indemnitee pursuant to this by-law. The Corporation shall pay any amounts due under this Section 8.3, in cash, promptly, and in any event within sixty (60) days, following written demand from the Indemnitee, unless the Corporation shall have determined that the Indemnitee has not met the applicable standard of conduct set forth in this Section 8.3.

As a condition to indemnification or the advance payment or reimbursement of Expenses, any demand for payment by Indemnitee hereunder shall be in writing and shall provide reasonable accounting for the Expenses to be paid by the Corporation.

For the purposes of this by-law, the term "Indemnitee" shall mean any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation) by reason of the fact that the person is or was a director or officer of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise; the term "Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors, officers, and employees or agents, so that any person who is or was a director, officer, employee or agent of such constituent corporation, or is or was serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under this Section 8.3 with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued; the term "other enterprises" shall include employee benefit plans; service "at the request of the Corporation" shall include service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director, officer, employee or agent with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person

reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner “not opposed to the best interests of the Corporation”; the term “Expenses” shall include all reasonable out of pocket fees, costs and expenses, including without limitation, attorney’s fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, ERISA excise taxes or penalties assessed on Indemnatee with respect to an employee benefit plan, Federal, state, local or foreign taxes imposed as a result of the actual or deemed receipt of any payments under this by-law, penalties and all other disbursements or expenses of the types customarily incurred in connection with defending, preparing to defend, or investigating an actual or threatened action, suit or proceeding (including Indemnatee’s counterclaims that directly respond to and negate the affirmative claim made against Indemnatee (“Permitted Counterclaims”) in such action, suit or proceeding, whether civil, criminal, administrative or investigative, but shall exclude the costs of any of Indemnatee’s counterclaims, other than Permitted Counterclaims.

Any action, suit or proceeding regarding indemnification or advance payment or reimbursement of Expenses arising out of these by-laws or otherwise shall only be brought and heard in the Court of Chancery of the State of Delaware. In the event of any payment under this by-law, the Corporation shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnatee (under any insurance policy or otherwise), who shall execute all papers required and shall do everything necessary to secure such rights, including the execution of such documents necessary to enable the Corporation to effectively bring suit to enforce such rights. Except as required by law or as otherwise becomes public, Indemnatee will keep confidential any information that arises in connection with this by-law, including but not limited to, claims for indemnification or the advance payment or reimbursement of Expenses, amounts paid or payable under this by-law and any communications between the Indemnatee, the Corporation and any other parties to such matter.

The rights to indemnification and to the advancement of expenses provided by or granted pursuant to this Section 8.3 shall be deemed independent of, and shall not be deemed exclusive of or a limitation on, any other rights to which any person seeking indemnification or advancement of expenses may be entitled or may hereafter acquire under any statute, provision of the Certificate of Incorporation, provision of these by-laws, agreement, vote of stockholders or of disinterested directors or otherwise, both as to such person’s official capacity and as to action in another capacity while holding such office. It is the intent of the Corporation that indemnification of and advancement of expenses to Indemnitees shall be made to the fullest extent permitted by law.

The Corporation’s obligation, if any, to indemnify, to hold harmless, or to provide advancement of expenses to any Indemnatee who was or is serving at its request as a director, officer, employee, agent or manager of another corporation, partnership, limited liability company, joint venture, trust or other enterprise or nonprofit entity (including service with respect to an employee benefit plan) shall be reduced by any amount such Indemnatee actually collects as indemnification, holding harmless, or

advancement of expenses from such other corporation, partnership, limited liability company, joint venture, trust or other enterprise nonprofit entity.

The rights to indemnification and advancement of expenses provided by, or granted pursuant to, this Section 8.3 shall be contract rights, and such rights shall continue as to a person who has ceased to be an Indemnitee or has ceased to serve the Corporation or at the Corporation's request, and shall inure to the benefit of the estate, heirs, legatees, distributees, executors, administrators and other comparable legal representatives of such person. No amendment of the Certificate of Incorporation or this by-law shall impair the rights of any Indemnitee arising at any time with respect to events occurring prior to such amendment.

Section 8.4. Indemnification and Advancement of Expenses to Certain Other Persons. The Corporation may from time to time grant rights to indemnification and advancement of expenses to such persons and with such scope and effect as the Board may determine, subject to applicable law.

Section 8.5. Interested Directors; Quorum. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers, or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board or committee which authorizes the contract or transaction, or solely because such director's or officer's votes are counted for such purpose, if: (1) the material facts as to director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board or the committee, and the Board or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (2) the material facts as to director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (3) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified, by the Board, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board or of a committee which authorizes the contract or transaction.

Section 8.6. Form of Records. Any records maintained by the Corporation in the regular course of its business, including its stock ledger, books of account and minute books, may be kept on, or by means of, or be in the form of, any information storage device, or method provided that the records so kept can be converted into clearly legible paper form within a reasonable time. The Corporation shall so convert any records so kept upon the request of any person entitled to inspect such records in accordance with law.

Section 8.7. Exclusive Forum. Unless the Corporation consents in writing to the selection of an alternative forum, a state court located within the State of Delaware

(or, if no state court located within the State of Delaware has jurisdiction, the federal district court for the District of Delaware) shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action or proceeding asserting a claim of breach of a fiduciary duty owed by any director or officer or other employee or agent of the Corporation to the Corporation or the Corporation's stockholders or debtholders, (iii) any action or proceeding asserting a claim against the Corporation or any director or officer or other employee or agent of the Corporation arising pursuant to any provision of the Delaware General Corporation Law or the Certificate of Incorporation or these by-laws (in each case, as they may be amended from time to time), or (iv) any other "internal corporate claim" as defined in Section 115 of the Delaware General Corporation Law. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this by-law.

Section 8.8. Voting Stock in Other Corporations. Stock of other corporations or associations, registered in the name of the Corporation, may be voted by the Chief Executive Officer, the President, a Vice-President, the Treasurer or a proxy appointed by any of them. The Board, however, may by resolution appoint some other person or persons to vote such shares, in which case such person or persons shall be entitled to vote such shares upon the production of a certified copy of such resolution.

Section 8.9. Bonds. The Board may require any officer, agent or employee of the Corporation to give a bond to the Corporation, conditioned upon the faithful discharge of his or her duties, with one or more sureties and in such amount as may be satisfactory to the Board.

Section 8.10. Amendment of By-Laws. Except as provided in Section 4.1(c)(7) of these by-laws or Section 11 of the Certificate of Incorporation, these by-laws of the Corporation may be altered, amended or repealed or new by-laws may be made or adopted by the Board at any regular or special meeting of the Board.

Blackline for Amended Exhibit C to Plan Supplement

**Amended and Restated Certificate of Formation of
Reorganized Key Energy Services, LLC**

AMENDED AND RESTATED
CERTIFICATE OF FORMATION
OF
KEY ENERGY SERVICES, LLC

[•], 20[•]

Key Energy Services, LLC, a limited liability company organized and existing under the laws of the State of Texas (the “*Company*”), hereby certifies as follows:

1. The name of the Company is Key Energy Services, LLC.
2. The Company is a limited liability company.
3. The original Certificate of Formation was filed with the Secretary of State of the State of Texas on December 21, 2006, and made effective on December 31, 2006 (the “*Original Certificate*”), pursuant to the Plan of Conversion of Yale E. Key, Inc. into Key Energy Services, LLC.
4. The file number issued to the Company by the Secretary of State of the State of Texas is 800750440.
5. Each new amendment contained in this Amended and Restated Certificate of Formation (this “*Certificate*”) has been made in accordance with the provisions of the Texas Business Organizations Code, as amended (the “*TBOC*”).
6. This Certificate, including each new amendment contained herein, has been duly made, adopted and approved in the manner and by the vote required by the TBOC and the governing documents of the Company.
7. This Certificate accurately states the text of the Original Certificate, as further amended by this Certificate. This Certificate does not contain any other change in the Original Certificate except for the information permitted to be omitted by the provisions of the TBOC applicable to the Company.
8. This Certificate becomes effective ~~when filed with the Secretary of State of the State of Texas~~ on [\[•\], 20\[•\]](#).
9. The text of the Original Certificate is hereby amended and restated to read in its entirety as follows:

ARTICLE I
Entity Name and Type

The name of the Company is Key Energy Services, LLC. The entity is a domestic limited liability company.

ARTICLE II
Organization and Conversion

The Company has been formed pursuant to a Plan of Conversion whereby Yale E. Key, Inc., a Texas corporation formed on June 26, 1961 whose address is 1301 McKinney Street, Suite 1800, Houston, Texas 77010, has been converted from a Texas corporation into the Company, a Texas limited liability company.

ARTICLE III
Purpose

The purpose for which the Company is formed is for the transaction of any and all lawful purposes for which a limited liability company may be organized under the TBOC.

ARTICLE IV
Duration

The period of the duration of the Company is perpetual.

ARTICLE V
Management

The Company will ~~have managers~~ be governed by its members. The name and address of each initial ~~manager~~ member is set forth below.

<u>Name</u>	<u>Address</u>
{ <u>Key Energy Services, Inc.</u>	{ <u>1301 McKinney Street, Suite 1800 Houston, Texas 77010</u>

ARTICLE VI
Effectiveness of Filing

This document becomes effective when it is filed with the Texas Secretary of State.

ARTICLE VII
Initial Registered Office and Agent

The name and address of the initial registered agent and registered office is as follows:

<u>Name</u>	<u>Address</u>
CT Corporation System	1999 Bryan Street – Suite 900 Dallas, Texas 75201-3136

ARTICLE VIII
Limitation of Sole Member Liability

To the greatest extent permitted by applicable law in effect from time to time, the sole member of the Company shall not be liable to the Company for monetary damages for an act or omission in the sole member's capacity as sole member of the Company except to the extent that the sole member is found to be liable for: (i) a breach of the sole member's duty of loyalty to the Company; (ii) an act or omission not in good faith or which involves intentional misconduct or a knowing violation of the law; (iii) a transaction from which the sole member derived an improper personal benefit; (iv) an act or omission for which the liability of a member is expressly provided by statute; or (v) an act relating to an unlawful membership repurchase or payment of a current or liquidation distribution. If the applicable law is hereafter amended to authorize the further elimination or limitation of the liability of a member, then the liability of the sole member of the Company shall be eliminated or limited to the fullest extent permitted by the applicable law as so amended. No amendment, modification, or repeal of this provision will apply to or adversely affect any right or protection of the sole member of the Company hereunder for or with respect to any acts or omissions of the sole member occurring prior to such amendment, modification or repeal.

ARTICLE IX
Indemnification and Insurance

The Company shall indemnify the sole member, officers, employees, and agents of the Company to the same extent that a corporation is permitted to indemnify its directors, employees, and agents under the TBOC (or the corresponding provision of any subsequent law), as amended from time to time, as well to the same extent that indemnification is required under the TBOC for directors, employees and agents of corporations. Such indemnification shall not be deemed exclusive of any other rights to which such persons may be entitled, under any regulations, agreements, vote of the sole member, or otherwise, both as to actions taken in their official capacity and as to action in another capacity while holding such office, and shall inure to the benefit of the heirs, executors and administrators of such persons. The Company shall have the power to enter into agreements providing for indemnification by the Company of the sole member, or former officers, employees and agents or any other person of or who served any predecessor corporation, partnership, joint venture, trust or other enterprise from and against any and all expenses, liabilities or other matters. The sole member of the Company may purchase, on behalf of the Company, such liability, indemnification and/or other similar insurance as the sole member, in its sole discretion, shall determine is necessary or appropriate from time to time. No amendment, modification, or repeal of this provision will apply to or adversely affect any right or protection of the sole member, officer, employee or agent of the Company hereunder for or with respect to any acts or omissions of such persons occurring prior to such amendment, modification or repeal.

ARTICLE X
Restriction on Issuing Non-Voting Equity Securities

From and after the date hereof, the Company shall not be authorized to issue non-voting equity securities to the extent prohibited by Section 1123(a)(6) of the Chapter 11 of Title 11 of the United States Code (the “*Bankruptcy Code*”); provided that the foregoing restriction shall (i) have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code, (ii) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company and (iii) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned, being an authorized person ~~and~~
~~manager~~ on behalf of the Company, executes this Amended and Restated Certificate of
Formation of Key Energy Services, LLC, and certifies to the truth of the facts stated therein as of
the date first written above.

Name: Katherine I. Hargis
Title: Vice President, Chief Legal Officer and
Secretary

[Signature Page to Key Energy Services LLC A&R Certificate of Formation]

Blackline for Amended Exhibit D to Plan Supplement

**Amended and Restated Limited Liability Company Agreement of
Reorganized Key Energy Services, LLC**

AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT

OF

KEY ENERGY SERVICES, LLC

This Amended and Restated Limited Liability Company Agreement (~~the~~this “**Agreement**”) of Key Energy Services, LLC (the “**Company**”), is entered into this [•] of [•], 20[•], by Key Energy Services, Inc., a Delaware corporation, as the sole member (the “**Member**”) ~~and the Manager (as defined below).~~

RECITALS

WHEREAS, the Company was formed as a Texas limited liability company by filing a plan of conversion and a certificate of formation with the Secretary of State of the State of Texas effective as of December 31, 2006, pursuant to the Texas Business Organizations Code, as amended from time to time (the “**TBOC**”);

WHEREAS, the Member and the then managers of the Company entered into the Limited Liability Company Agreement of Key Energy Services, LLC (the “**Original Agreement**”) on December 31, 2006;

WHEREAS, on October 23, 2016, the Member and the ~~Manager~~ then manager of the Company amended the Original Agreement to preserve the Member’s membership in the Company upon filing a voluntary petition for relief under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”);

WHEREAS, on October 24, 2016, the Member, the Company, Misr Key Energy Investments, LLC and Misr Key Energy Services, LLC, filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”);

WHEREAS, on ~~[•], 20[•]~~ December 6, 2016, the Bankruptcy Court entered an order confirming that certain Joint Prepackaged Plan of Reorganization of Key Energy Services, Inc., et al. (the “**Plan**”);

WHEREAS, on [•], 20[•], the Plan became effective, and the Company filed an amended and restated certificate of formation (the “**Certificate**”) with the Secretary of State of the State of Texas pursuant to such Plan; and

WHEREAS, the Member desires to amend and restate the Original Agreement (as amended) in its entirety to reflect certain restrictions on issuing non-voting equity securities pursuant to Section 1123(a)(6) of the Bankruptcy Code.

NOW, THEREFORE, the Member ~~and the Manager~~, by execution of this Agreement, ~~do~~ does hereby agree as follows:

1. Formation. The Company has been formed as a Texas limited liability company under and pursuant to the TBOC. The ~~manager(s)~~Member shall, or shall cause officers of the Company ~~shall to~~, execute, deliver and file any certificates (and any amendments and/or restatements thereof) necessary for the Company to qualify to do business in the State of Texas and in any other jurisdiction in which the Company may wish to conduct business.

2. Name. The name of the Company is Key Energy Services, LLC. The business of the Company shall be conducted under such name or such other names that comply with applicable law as the ~~managers~~Member of the Company may from time to time deem necessary or desirable.

3. Purpose and Powers. The purpose of the Company shall be to engage in any lawful business or activity for which limited liability companies may be formed under the TBOC. The Company shall possess and may exercise all of the powers and privileges granted by the TBOC or by any other applicable law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the purpose of the Company.

4. Registered Office and Registered Agent. The registered office of the Company required by the ~~Act~~TBOC to be maintained in the State of Texas shall be the registered office named in the Certificate or such other office (which need not be a place of business of the Company) as the Member ~~or managers~~ may designate from time to time in the manner provided by applicable law. The registered agent of the Company in the State of Texas shall be the registered agent named in the Certificate or such other person or persons as the Member ~~or managers~~ may designate from time to time.

5. Member. The Member shall be the sole member of the Company and agrees by executing this Agreement to be bound by the terms of this Agreement. The Member shall have the sole membership interest (as defined in the TBOC) in the Company (the "*Interest*"). The rights, duties and liabilities of the Member ~~and the managers of the Company~~ shall be as provided in the TBOC for members ~~and managers, respectively~~, except, to the extent permitted by the TBOC, as otherwise provided herein.

6. Capital Contribution. The Member shall have the right, but not the obligation, to make capital contributions to the Company as the Member in its sole discretion may determine.

7. Allocations and Distributions.

(a) The net profits and net losses of the Company, and other items of income, gain, loss, deduction and credit, will be allocated 100 percent to the Member for capital account and federal income tax purposes, and the Company, as a separate entity, is to be disregarded for federal income tax purposes.

(b) The Member (i) shall not be entitled to interest on its capital contributions to the Company, and (ii) shall not have the right to distributions or to the return of any capital contributions except for (x) distributions in accordance with this Section 7(b) and (y) upon dissolution and winding up of the Company. Distributions prior to dissolution of the Company

shall be made at such times and in such amounts as the ~~managers of the Company determine~~Member determines. Notwithstanding any other provision of this Agreement to the contrary, the Company shall not make a distribution to the Member if such distribution would violate Sections 101.206 and 11.053 of the TBOC.

8. ~~Management by the Manager.~~

(a) The management of the Company shall be vested exclusively in ~~a manager or manager(s) of the Company, which are hereby each designated as a "manager" of the Company within the meaning of Section 1.002(51) of the TBOC. No Member, in its capacity as a member, shall have any part in the management of the Company or any authority to, or right to, act on behalf of or bind the Company in connection with any matter. The managers of the Company shall be appointed solely by the Member. [The Member hereby appoints [•] as the initial manager of the Company][The present manager of the Company is [•]] (the "**Manager**"), and the Manager hereby agrees to be bound by the provisions of this Agreement. The Member may remove the Manager (or any other manager(s) of the Company), and appoint substitute managers of the Company, at any time, with or without cause, upon written notice to the Manager (or such other manager(s) of the Company)~~the Member. To the fullest extent permitted by law, notwithstanding any other provision of this Agreement or the TBOC to the contrary, the ~~managers of the Company~~Member shall be authorized to act on behalf of and to bind the Company in all respects, ~~without any further consent, vote or approval of the Member, and the manager's and the Member's~~ powers shall include, without limitation, the authority to negotiate, complete, execute and deliver any and all agreements, deeds, instruments, receipts, certificates and other documents on behalf of the Company, and to take all such other actions on behalf of the Company as the ~~managers of the Company~~Member may consider necessary or advisable in connection with the management of the Company.

(b) The Member may at any time appoint one or more officers of the Company to whom it may delegate some or all of its duties, powers and responsibilities. Each officer may hold any number of offices. Each officer may be removed by the Member at any time for any reason.

(c) Notwithstanding any provision of this Agreement to the contrary, any contract, agreement, deed, lease, note or other document or instrument executed on behalf of the Company by the Member will be deemed to have been duly executed by the Company and third parties will be entitled to rely upon the Member's power to bind the Company without otherwise ascertaining that the requirements of this Agreement have been satisfied.

~~(b) The managers may designate one or more persons to fill one or more officer positions of the Company.~~

~~(c) The managers of the Company may resign at any time upon 30 days' advance written notice to the Member.~~

~~(d) Persons dealing with the Company are entitled to rely conclusively upon the power and authority of the managers of the Company as herein set forth.~~

~~9. Powers of the Member. The Member, in its capacity as the member of the Company, shall not take part in the management of the Company's business or transact any business for the Company and shall have no power to sign for or to bind the Company.~~

9. ~~10.~~ **Transfer of Interest; Admission of Additional Members.** The Member may assign its Interest in whole or in part at any time. Upon assignment of the Member's entire Interest to a transferee in compliance with this Section 109, the transferee shall automatically be deemed admitted to the Company as a substituted member of the Company, the Member shall simultaneously be deemed to have resigned from the Company as a member of the Company, and the Company shall continue without dissolution (and all applicable references herein to the "Member" shall be read as references to the transferee as the substituted member of the Company), *provided*, in any event, that the transferee must agree, in a document or instrument delivered to the ~~managers~~ Company at or prior to the time of such substitution, to be bound by the terms of this Agreement. One or more additional members of the Company may be admitted to the Company with the consent of the Member. Upon the admission to the Company of any additional member(s), the members of the Company ~~and the managers of the Company~~ shall cause this Agreement to be amended and restated to reflect the admission of such additional member(s) and the initial capital contribution, if any, of such additional member(s) and the intention of the members to cause the Company to be classified as a partnership or corporation for federal income tax purposes, and to include such other provisions as the parties may agree to reflect the change of status of the Company from a single member limited liability company to a limited liability company with two or more members.

10. ~~11.~~ **Withdrawal of Members.** Except pursuant to the second sentence of Section 109, a member of the Company may not withdraw or be expelled from the Company.

11. ~~12.~~ **Winding Up and Term of the Company.** The Company shall wind up upon any act or event causing the winding up of the Company under the TBOC, unless, if permitted by the TBOC, the Company is continued in accordance with the TBOC. For the avoidance of doubt, (a) the Member shall not cease to be a member of the Company upon the filing of a petition in bankruptcy or becoming party to any bankruptcy or insolvency proceeding and (b) the Member or its representative shall take such further action as it deems necessary or advisable to continue the Company in operation notwithstanding the filing of a petition in bankruptcy by either the Member or the Company. Subject to an earlier winding up as described in the first sentence of this Section 1211, the Company shall have a perpetual existence.

12. ~~13.~~ **Limitation of Liability and Indemnification.**

(a) Except as otherwise required by the TBOC, ~~neither the Member nor the managers of the Company~~ shall not be liable for the debts, obligations or liabilities of the Company, including a debt, obligation, or liability under a judgment, decree or order of a court, solely by reason of being a member ~~or managers~~ of the Company.

(b) The ~~managers of the Company~~ Member shall not be liable to the Company ~~or to the Member or to any other member of the Company or other person or entity who may become a party to or bound by this Agreement~~ for any losses, claims, damages or liabilities arising from any act or omission performed or omitted by the ~~managers of the Company~~ Member in

connection with this Agreement or the Company's business and affairs or for breach of any duties (including fiduciary duties) arising under or in connection with this Agreement or the Company, except for any losses, claims, damages or liabilities primarily attributable to the ~~managers'~~ Member's willful misconduct, bad faith, recklessness or gross negligence, as finally determined by a court of competent jurisdiction, or as otherwise required by law.

(c) Each person who was or is a respondent or defendant, or is threatened to be made a respondent or defendant, or testifies or otherwise participates, in any threatened, pending, or completed action, suit or proceeding, whether civil, criminal, administrative, arbitrative or investigative, any appeal in such an action, suit or proceeding, and any inquiry or investigation that could lead to such an action, suit, or proceeding (any of the foregoing hereinafter called a "*proceeding*"), whether or not by or in the right of the Company, because such person is or was a member, manager, officer, employee or agent of the Company or is or was serving at the request of the Company as a member, manager, director, officer, partner, venturer, proprietor, trustee, employee, administrator, agent or similar functionary of another foreign or domestic corporation, limited or general partnership, limited liability company, business trust, real estate investment trust, joint venture, joint stock company, cooperative, association, bank, insurance company, credit union, association, proprietorship, trust, employee benefit plan, other enterprise or other organization (hereinafter a "*Covered Person*") shall be indemnified by the Company to the fullest extent authorized or permitted by applicable law, as the same exists or may hereafter be changed, against all judgments (including arbitration awards), court costs, penalties, excise and similar taxes, fines, settlements, reasonable attorneys' fees and other expenses (all of the foregoing hereinafter called "*expenses*") actually incurred by such person in connection with such proceeding, and such right to indemnification shall continue as to a person who has ceased to be a member, manager, director, officer, partner, venturer, proprietor, trustee, employee, administrator, agent or similar functionary and shall inure to the benefit of his or her heirs, executors and administrators; *provided, however*, that the Company shall not be obligated to indemnify a Covered Person for any such expenses if a court of competent jurisdiction, in a judgment that has become final and non-appealable, shall have determined that the acts or omissions of such Covered Person constituted willful misconduct, bad faith, recklessness or gross negligence. The right to indemnification conferred by this Section 1312 shall be a contract right and shall include the right to be paid or reimbursed by the Company the reasonable expenses incurred in defending or otherwise participating in any such proceeding in advance of its final disposition upon receipt by the Company of a written undertaking by or on behalf of the Covered Person to repay all amounts so advanced if it shall be ultimately determined by final judicial decision from which there is no further right to appeal that the Covered Person is not entitled to be indemnified for such expenses under this Section 1312 or otherwise.

13. ~~14.~~ **Restriction on Issuing Non-Voting Equity Securities.** Notwithstanding anything herein to the contrary, the Company shall not be authorized to issue non-voting equity securities to the extent prohibited by Section 1123(a)(6) of the Bankruptcy Code; *provided* that the foregoing restriction shall (i) have no further force and effect beyond that required under Section 1123(a)(6) of the Bankruptcy Code, (ii) only have such force and effect for so long as Section 1123 of the Bankruptcy Code is in effect and applicable to the Company and (iii) in all events may be amended or eliminated in accordance with applicable law as from time to time may be in effect.

14. ~~**15.-Amendment.**~~ This Agreement may not be amended except by a writing signed by the Member ~~and the managers of the Company.~~

15. ~~**16.-Governing Law.**~~ This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, without giving effect to any choice of law principles.

16. ~~**17.-Severability.**~~ The provisions of this Agreement will be deemed severable and the invalidity or unenforceability of any provision will not affect the validity or enforceability of the other provisions hereof; *provided* that if any provision of this Agreement, as applied to any party or to any circumstance, is judicially determined not to be enforceable in accordance with its terms, the court judicially making such determination may modify the provision in a manner consistent with its objectives such that it is enforceable, and/or to delete specific words or phrases, and in its modified form, such provision will then be enforceable and will be enforced.

17. ~~**18.-Entire Agreement.**~~ This Agreement constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes all prior understandings, agreements or representations by or among the parties, written or oral, to the extent they relate in any way to the subject matter hereof.

18. ~~**19.-Counterparts.**~~ This Agreement may be executed in two or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument.

20. Effectiveness of Agreement. This Agreement shall be effective as of the time of the filing of the Certificate with the Secretary of State of Texas.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the undersigned ~~have~~has executed this Amended and Restated Limited Liability Company Agreement of Key Energy Services, LLC, as of the date first written above.

MEMBER:

KEY ENERGY SERVICES, INC.

By: _____
[•]
[•]

MANAGER:

By: _____
[•]

[Signature Page to Key Energy Services A&R LLC Agreement]

Blackline for Amended Exhibit I to Plan Supplement

New Warrant Agreement

WARRANT AGREEMENT

dated as of [●], 201[●] between

KEY ENERGY SERVICES, INC.

and

AMERICAN STOCK TRANSFER & TRUST COMPANY, LLC,

as Warrant Agent

TABLE OF CONTENTS

	Page
Article 1 Definitions	1
Section 1.01 Certain Definitions	1
Article 2 Issuance, Execution and Transfer of Warrants	7
Section 2.01 Issuance and Delivery of Warrants.....	7
Section 2.02 Execution and Authentication of Warrants.....	7
Section 2.03 Registration, Transfer, Exchange and Substitution	8
Section 2.04 Form of Warrant Certificates; Private Placement Legend.....	9
Section 2.05 Cancellation of the Warrant Certificates	10
Section 2.06 Limitations on Transfer of Plan Warrants	10
Section 2.07 Limitations on Transfer of Cash-Out Warrants	10
Article 3 Exercise and Settlement of Warrants.....	11
Section 3.01 Exercise of Warrants	11
Section 3.02 Procedure for Exercise	11
Section 3.03 Settlement of Warrants.....	12
Section 3.04 Delivery of Common Shares	13
Section 3.05 No Fractional Common Shares to Be Issued.....	14
Section 3.06 Acquisition of Warrants by Company	14
Section 3.07 Validity of Exercise.....	14
Section 3.08 Certain Calculations	14
Section 3.09 Reservation and Listing of Shares.....	15
Section 3.10 Charges, Taxes and Expenses.....	15
Article 4 Adjustments.....	15
Section 4.01 Adjustments to Exercise Price.....	15
Section 4.02 Adjustments to Number of Warrants.....	17
Section 4.03 Certain Distributions of Rights and Warrants; Stockholder Rights Plan.....	17
Section 4.04 Restrictions on Adjustments.....	18
Section 4.05 Adjustment upon Reorganization Transaction	18
Section 4.06 Successor upon Consolidation or Merger.....	19
Section 4.07 Common Shares Outstanding; Common Shares Reserved for Issuance on Exercise	19
Section 4.08 Calculations; Instructions to Warrant Agent	20
Section 4.09 Notice of Adjustment	20
Section 4.10 Statements on Warrants.....	20
Section 4.11 Effect of Adjustment	20
Section 4.12 Warrant Agent Not Responsible for Adjustments or Validity.....	20
Article 5 Cash Exit Transaction.....	21
Section 5.01 Cash Exit Transaction	21
Article 6 Other Provisions Relating to Rights of Warrantholders	21
Section 6.01 No Rights as Stockholders.....	21
Section 6.02 Mutilated or Missing Global Warrant Certificates	21
Section 6.03 Modification, Waiver and Meetings.....	21
Section 6.04 Reorganization Transaction.....	22
Article 7 Concerning the Warrant Agent and Other Matters	22
Section 7.01 Change of Warrant Agent.....	22
Section 7.02 Compensation; Further Assurances	23
Section 7.03 Reliance on Counsel.....	23
Section 7.04 Proof of Actions Taken	23
Section 7.05 Correctness of Statements	24
Section 7.06 Validity of Agreement.....	24

TABLE OF CONTENTS
(continued)

	Page
Section 7.07 Use of Agents	24
Section 7.08 Liability of Warrant Agent	24
Section 7.09 Legal Proceedings	24
Section 7.10 Actions as Agent	25
Section 7.11 Appointment and Acceptance of Agency	25
Section 7.12 Successors and Assigns	25
Section 7.13 Notices.....	25
Section 7.14 Applicable Law; Jurisdiction.....	25 <u>26</u>
Section 7.15 Waiver of Jury Trial	26
Section 7.16 Benefit of this Warrant Agreement	26
Section 7.17 Registered Warrantholder.....	26
Section 7.18 Headings.....	26 <u>27</u>
Section 7.19 Counterparts	27
Section 7.20 Entire Agreement	27
Section 7.21 Severability.....	27
Section 7.22 Termination	27
Section 7.23 Confidentiality.....	27

SCHEDULE A

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL WARRANTS

Exhibit A-1	Form of 4-Year Global Warrant Certificate
Exhibit A-2	Form of 4-Year Individual Warrant Certificate
Exhibit B-1	Form of 5-Year Global Warrant Certificate
Exhibit B-2	Form of 5-Year Individual Warrant Certificate
Exhibit C-1	Form of Global Warrant Exercise Notice
Exhibit C-2	Form of Individual Warrant Exercise Notice
Exhibit D	Fee Schedule
Exhibit E	Initial Cash-Out Warrantholders
Exhibit F	Private Placement Legend for Individual Warrant Certificates
Exhibit G	Private Placement Legend for Cash-Out Warrant Shares Acquired Upon Exercise of Individual Warrant Certificates

WARRANT AGREEMENT

Warrant Agreement (as it may be amended from time to time, this “**Warrant Agreement**”), dated as of [●], 201[●], between Key Energy Services, Inc., a Delaware corporation (the “**Company**”), and American Stock Transfer & Trust Company, LLC, a New York State chartered limited purpose trust company (the “**Warrant Agent**”).

WITNESSETH THAT:

WHEREAS, pursuant to the terms and conditions of the Plan of Reorganization, dated September 21, 2016 (the “**Plan**”), relating to the reorganization under Chapter 11 of Title 11 of the United States Code (the “**Bankruptcy Code**”) of the Company and certain of its direct Subsidiaries (as hereinafter defined), certain holders of the Company’s common stock to be cancelled on the date the Plan becomes effective (the “**Initial Beneficial Owners**”) are to be issued the 4-Year Warrants and the 5-Year Warrants to purchase ~~1~~919,090 Common Shares (as hereinafter defined) in the aggregate at an exercise price of \$~~43.52~~ per share for the 4-Year Warrants and ~~1~~919,090 Common Shares in the aggregate at an exercise price of \$~~54.40~~ per share for the 5-Year Warrants, as the same may be adjusted pursuant to Article 4 hereof;

WHEREAS, the Warrants have the terms, conditions and rights set forth in this Warrant Agreement (including the Exhibits hereto);

WHEREAS, the Company desires that the Warrant Agent act on behalf of the Company, and the Warrant Agent is willing to so act, in connection with the issuance, exchange, Transfer, substitution and exercise of Warrants;

WHEREAS, the Plan Warrants (as hereinafter defined) and the Common Shares underlying the Plan Warrants have been offered and sold in reliance on the exemption from the registration requirements of the Securities Act and any applicable state securities or “blue sky” laws (the “**Securities Law Registration Requirements**”) afforded by Section 1145(a)(2) of the Bankruptcy Code; and

WHEREAS, the Cash-Out Warrants (as hereinafter defined) and the Common Shares underlying the Cash-Out Warrants have been offered and sold in reliance on the exemption from the Securities Law Registration Requirements set forth in Section 4(a)(2) of the Securities Act and Rule 506 promulgated thereunder.

NOW THEREFORE in consideration of the mutual agreements herein contained, the Company and the Warrant Agent agree as follows:

Article 1

Definitions

Section 1.01 Certain Definitions. As used in this Warrant Agreement, the following terms shall have their respective meanings set forth below:

“**4-Year Global Warrant**” means a 4-Year Warrant in the form of a Global Warrant Certificate.

“**4-Year Global Warrant Certificate**” means any certificate representing the 4-Year Warrants satisfying the requirements set forth in Section 2.04(a).

“**4-Year Exercise Price**” means \$~~43.52~~ per share, subject to adjustment pursuant to Article 4.

“**4-Year Expiration Date**” means the Close of Business on [●], 20[●].

“**4-Year Individual Warrant**” means a 4-Year Warrant in the form of an Individual Warrant Certificate.

“**4-Year Individual Warrant Certificate**” means any certificate representing the 4-Year Warrants satisfying the requirements set forth in Section 2.04(b).

“**4-Year Warrants**” means the warrants of the Company which expire on the 4-Year Expiration Date and are issued pursuant to this Warrant Agreement with the terms, conditions and rights set forth herein.

“**5-Year Global Warrant**” means a 5-Year Warrant in the form of a Global Warrant Certificate.

“**5-Year Global Warrant Certificate**” means any certificate representing the 5-Year Warrants satisfying the requirements set forth in Section 2.04(a).

“**5-Year Exercise Price**” means \$~~54.40~~ per share, subject to adjustment pursuant to Article 4.

“**5-Year Expiration Date**” means the Close of Business on [●], 20[●].

“**5-Year Individual Warrant**” means a 5-Year Warrant in the form of an Individual Warrant Certificate.

“**5-Year Individual Warrant Certificate**” means any certificate representing the 5-Year Warrants satisfying the requirements set forth in Section 2.04(b).

“**5-Year Warrants**” means the warrants of the Company which expire on the 5-Year Expiration Date and are issued pursuant to this Warrant Agreement with the terms, conditions and rights set forth herein.

“**Affiliate**” shall mean, with respect to any specified Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such first specified Person. For the purposes of this definition, “control” when used with respect to any Person means the power to direct the management and policies of such Person, directly or indirectly, whether through the ownership of voting securities, by contract or otherwise, and the terms “controlling” and “controlled” have meanings correlative to the foregoing.

“**Appropriate Officer**” has the meaning set forth in Section 2.02(a).

“**Authentication Order**” means a Company Order for authentication and delivery of the Warrants.

“**Bankruptcy Code**” has the meaning set forth in the Recitals.

“**Beneficial Owner**” means any Person beneficially owning an interest in a Global Warrant, which interest is credited to the account of a direct participant in the Depository for the benefit of such Person through the book-entry system maintained by the Depository (or its agent). For the avoidance of doubt, a Participant may also be a Beneficial Owner.

“**Board**” means the board of directors of the Company.

“**Business Day**” means any day other than a Saturday, a Sunday, a day which is a legal holiday in the State of New York, or a day on which banking institutions and trust companies in the State of New York are authorized or obligated by Law, regulation or executive order to close.

“**Cash**” means such coin or currency of the United States as at any time of payment is legal tender for the payment of public and private debts.

“**Cash Exit Transaction**” means any Reorganization Transaction in which the Common Shares would be converted into, changed into or exchanged for consideration consisting solely of Cash.

“**Cash-Out Warrants**” means those (i) Warrants issued to the Initial Cash-Out Warrantholders pursuant to the Equity Holder Cash-Out Subscription and (ii) any Warrants issued pursuant to this Warrant Agreement in replacement or substitution of, or upon Transfer of, any Warrants referred to in clause (i).

“**Cash-Out Warrant Shares**” has the meaning set forth in Section 2.04(c).

“**Close of Business**” means 5:00 p.m., New York City time.

“**Closing Date**” means the effective date of the Plan.

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

“**Common Shares Deemed Outstanding**” means, at any given time, the sum of (a) the number of Common Shares actually outstanding at such time, plus (b) the number of Common Shares issuable upon conversion or exchange of Convertible Securities actually outstanding at such time, regardless of whether the Convertible Securities are actually exercisable at such time, plus (c) the number of Common Shares reserved for issuance at such time under the Company’s New MIP or any other equity incentive plan of the Company, regardless of whether the Common Shares are actually subject to outstanding options at such time or whether any outstanding options are actually exercisable at such time; provided, that Common Shares Deemed Outstanding at any given time shall not include shares owned or held by or for the account of the Company or any of its wholly-owned subsidiaries.

“**Company**” has the meaning set forth in the Preamble.

“**Company Order**” means a written request or order signed in the name of the Company by any Appropriate Officer and delivered to the Warrant Agent.

“**Convertible Securities**” means options, rights, warrants or other securities convertible into or exchangeable or exercisable for Common Shares (including the Warrants).

“**Depository**” means The Depository Trust Company, its nominees, and their respective successors.

“**Equity Holder Cash-Out Subscription**” has the meaning set forth in the Plan.

“**Exchange Act**” means the Securities Exchange Act of 1934, as amended from time to time, and the related rules and regulations promulgated thereunder.

“**Exercise Date**” has the meaning set forth in Section 3.02(c).

“**Ex-Date**” means with respect to a dividend or distribution to holders of the Common Shares, the first date on which the Common Shares can be traded without the right to receive such dividend or distribution.

“**Exercise Notice**” means a Global Warrant Exercise Notice or an Individual Warrant Exercise Notice, as the case may be.

“**Exercising Owner**” means any Beneficial Owner that exercises Plan Warrants pursuant to the terms hereof or any Warrantholder that exercises Cash-Out Warrants pursuant to the terms hereof.

“**Exercise Price**” means the 4-Year Exercise Price or the 5-Year Exercise Price, as applicable.

“**Expiration Date**” means the 4-Year Expiration Date or the 5-Year Expiration Date, as applicable.

“**Fair Value**,” as of a specified date, means the price per Common Share or per unit of other Securities or other distributed property determined as follows:

(i) in the case of Common Shares or other Securities listed on the New York Stock Exchange or the NASDAQ Stock Market, the VWAP of a Common Share or a single unit of such other Security for the 20 Trading Days ending on, but excluding, the specified date (or if the Common Shares or other Securities have been listed for less than 20 Trading Days, the VWAP for such lesser period of time);

(ii) in the case of Common Shares or other Securities listed on a U.S. exchange other than the New York Stock Exchange or the NASDAQ Stock Market, the VWAP of a Common Share or a single unit of such other Security in composite trading for the principal U.S. national or regional securities exchange on which such Securities are then listed for the 20 Trading Days ending on, but excluding, the specified date (or if the Common Shares or other Securities have been listed for less than 20 Trading Days, the VWAP for such lesser period of time);

(iii) in the case of Common Shares or other Securities that are publicly traded but are not listed on a U.S. exchange, the average of the reported bid and ask prices of a Common Share or a single unit of such other Security in the over-the-counter market on which such Securities are then traded for the 20 Trading Days ending on, but excluding, the specified date (or if the Common Shares or other Securities have been publicly traded (but not listed) for less than 20 Trading Days, the average of the reported bid and ask prices for such lesser period of time); or

(iv) in all other cases, the fair value per Common Share or per unit of other Securities or other distributed property as of a date not earlier than 20 Business Days preceding the specified date as determined in good faith by the Board (subject to the provisions of Section 3.03(c));

provided, however, that in the case of a determination of Fair Value of a Common Share as a result of a Cash Exit Transaction, such Fair Value shall be equal to the amount of the Cash consideration payable in respect of one Common Share in such Cash Exit Transaction.

“Full Physical Settlement” means the settlement method pursuant to which an Exercising Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of Common Shares equal to the Full Physical Share Amount in exchange for payment in Cash by the Exercising Owner of the applicable Exercise Price.

“Full Physical Share Amount” means, for each Warrant exercised as to which Full Physical Settlement is applicable, one Common Share.

“Funds Account” has the meaning set forth in Section 3.02(e) hereof.

“Global Warrants” means the 4-Year Global Warrants or the 5-Year Global Warrants, as applicable.

“Global Warrant Certificates” means the 4-Year Global Warrant Certificates or the 5-Year Global Warrant Certificates, as applicable.

“Global Warrant Exercise Notice” means, for any Global Warrant, an exercise notice substantially in the form set forth in Exhibit C-1 hereto.

“Global Warrantholder” means the Person acting as the Depository or nominee of the Depository in whose name the applicable Warrants are registered in the Warrant Register. The initial Global Warrantholder shall be Cede & Co., as the Depository’s nominee.

“Independent Appraiser” shall mean a United States investment banking firm or valuation firm of national or regional standing in the United States which firm does not, and whose directors and officers or Affiliates do not, have a direct or indirect financial interest in or prior material relationship with the Company or any of its Affiliates.

“Individual Warrants” means the 4-Year Individual Warrants or the 5-Year Individual Warrants, as applicable.

“Individual Warrant Certificates” means the 4-Year Individual Warrant Certificates or the 5-Year Individual Warrant Certificates, as applicable.

“Individual Warrant Exercise Notice” means, for any Individual Warrant, an exercise notice substantially in the form set forth in Exhibit C-2 hereto.

“Initial Beneficial Owners” has the meaning set forth in the Recitals.

“Initial Cash-Out Warrantholders” means the Persons set forth on Exhibit E hereto.

“Law” means any federal, state, local, foreign or provincial law, statute, ordinance, rule, regulation, judgment, order, injunction, decree or agency requirement having the force of law or any undertaking to or agreement with any governmental authority, including common law.

“**Net Share Amount**” means for each Warrant exercised as to which Net Share Settlement is applicable, a fraction of a Common Share equal to (i) the Fair Value (as of the Exercise Date for such Warrant) of one Common Share minus the Exercise Price therefor *divided* by (ii) such Fair Value. The number of Common Shares issuable upon exercise, on the same Exercise Date, of Warrants as to which Net Share Settlement is applicable shall be aggregated for each Beneficial Owner or Warrantholder, as applicable, with any fractional Common Share rounded down to the nearest whole share as provided in Section 3.05. In no event shall the Company deliver a fractional Common Share in connection with an exercise of Warrants as to which Net Share Settlement is applicable.

“**Net Share Settlement**” means the settlement method pursuant to which an Exercising Owner shall be entitled to receive from the Company, for each Warrant exercised, a number of Common Shares equal to the Net Share Amount without any payment of Cash therefor.

“**New MIP**” has the meaning set forth in the Plan.

“**Number of Warrants**” means the “Number of Warrants” specified on the face of the applicable Warrant Certificate, subject to adjustment pursuant to Article 4.

“**Objecting Owner**” means any Exercising Owner that delivers a written objection to the determination of Fair Value pursuant to Section 3.03(c).

“**Officer’s Certificate**” means a certificate signed by any Appropriate Officer.

“**Open of Business**” means 9:00 a.m., New York City time.

“**Participant**” means any direct participant of the Depository, the account of which is credited with a beneficial interest in the Global Warrant for the benefit of a Beneficial Owner through the book-entry system maintained by the Depository (or its agent).

“**Person**” means an individual, partnership, firm, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, governmental authority or other entity of whatever nature.

“**Plan**” has the meaning set forth in the Recitals.

“**Plan Warrants**” means all Warrants other than the Cash-Out Warrants.

“**Private Placement Legend**” has the meaning set forth in Section 2.04(c).

“**Record Date**” means, with respect to any dividend, distribution or other transaction or event in which the holders of Common Shares have the right to receive any Cash, Securities or other property or in which Common Shares (or another applicable Security) are exchanged for or converted into, or any combination of, Cash, Securities or other property, the date fixed for determination of holders of Common Shares entitled to receive such Cash, Securities or other property or participate in such exchange or conversion (whether such date is fixed by the Board or by statute, contract or otherwise).

“**Reference Property**” has the meaning set forth in Section 4.05(a).

“**Reorganization Transaction**” means any (i) sale, lease, license, or other disposition of all or substantially all of the assets of the Company and its subsidiaries, taken as a whole, (ii) sale, transfer or other disposition of all or substantially all of the outstanding Common Shares, (iii) merger or consolidation of the Company into or with another person or entity or (iv) recapitalization, reorganization, consolidation, reclassification, change in the outstanding Common Shares (other than changes resulting from a subdivision or combination to which Section 4.01(a) applies), statutory share exchange or other transaction, in each case as a result of which the Common Shares would be converted into, changed into or exchanged for Securities or other property or assets (including Cash) or any combination thereof.

“**Securities**” means (i) any capital stock (whether common stock or preferred stock, voting or nonvoting), partnership, membership or limited liability company interest or other equity or voting interest, (ii) any right, option,

warrant or other security or evidence of indebtedness convertible into, or exercisable or exchangeable for, directly or indirectly, any interest described in clause (i), (iii) any notes, bonds, debentures, trust receipts and other obligations, instruments or evidences of indebtedness, and (iv) any other “securities,” as such term is defined or determined under the Securities Act.

“**Securities Act**” means the Securities Act of 1933, as amended from time to time, and the related rules and regulations promulgated thereunder.

“**Securities Law Registration Requirements**” has the meaning set forth in the Recitals.

“**Settlement Date**” means, in respect of a Warrant that is exercised hereunder, (a) in all circumstances other than a Net Share Settlement where Fair Value has been determined by the Board pursuant to clause (iv) of the definition thereof, the third Business Day immediately following the Exercise Date for such Warrant, and (b) in the event of a Net Share Settlement where Fair Value has been determined by the Board pursuant to clause (iv) of the definition thereof, the third Business Day immediately following (1) the determination of Fair Value by the Independent Appraiser, (2) the election by the Exercising Owner pursuant to Section 3.03(c) to have Full Physical Settlement apply or (3) if neither clause (1) nor clause (2) applies, the tenth (10th) day after receipt by the Exercising Owner of notice of such Fair Value and supporting documentation regarding such determination, as required by Section 3.03(c).

“**Subsidiary**” means, as to any Person, any corporation, partnership, limited liability company or other organization, whether incorporated or unincorporated, of which at least a majority of the securities or other interests having by their terms voting power to elect a majority of the Board or others performing similar functions with respect to such corporation or other organization is directly or indirectly beneficially owned or controlled by such party or by any one or more of its subsidiaries, or by such party and one or more of its subsidiaries.

“**Trading Day**” means each Monday, Tuesday, Wednesday, Thursday and Friday, other than any day on which Securities are not traded on the applicable securities exchange.

“**Transfer**” means, with respect to any Warrant, to directly or indirectly (whether by act, omission or operation of law), sell, exchange, transfer, hypothecate, negotiate, gift, convey in trust, pledge, assign, encumber, or otherwise dispose of, or by adjudication of a Person as bankrupt, by assignment for the benefit of creditors, by attachment, levy or other seizure by any creditor (whether or not pursuant to judicial process), or by passage or distribution of Warrants under judicial order or legal process, carry out or permit the transfer or other disposition of, all or any portion of such Warrant.

“**Transferee**” means a Person to whom any Warrant (or interest in a Global Warrant) is Transferred.

“**Trigger Event**” has the meaning set forth in Section 4.03(a)(i).

“**Unit of Reference Property**” has the meaning set forth in Section 4.05(a).

“**VWAP**” means, for any Trading Day, the price for Securities (including Common Shares) determined by the daily volume weighted average price per unit of such Securities for such Trading Day on the trading market on which such Securities are then listed or quoted, in each case, for the regular trading session (including any extensions thereof, without regard to pre-open or after hours trading outside of such regular trading session) as reported on the New York Stock Exchange or NASDAQ Stock Market, or if such Securities are not listed or quoted on the New York Stock Exchange or NASDAQ Stock Market, as reported by the principal U.S. national or regional securities exchange on which such Securities are then listed or quoted, whichever is applicable, as published by Bloomberg at 4:15 p.m., New York City time (or 15 minutes following the end of any extension of the regular trading session), on such Trading Day, or if such volume weighted average price is unavailable or in manifest error, the price per unit of such Securities using a volume weighted average price method selected by an Independent Appraiser selected by the Board in good faith.

“**Warrant**” or “**Warrants**” means the 4-Year Warrants and/or the 5-Year Warrants, as applicable.

“**Warrant Agent**” has the meaning set forth in the Preamble.

“**Warrant Agreement**” has the meaning set forth in the Preamble.

“**Warrant Certificates**” means the Global Warrant Certificates and the Individual Warrant Certificates.

“**Warrantholder**” means each Person in whose name Warrants are registered in the Warrant Register.

“**Warrant Register**” has the meaning set forth in Section 2.03(a).

Article 2

Issuance, Execution and Transfer of Warrants

Section 2.01 Issuance and Delivery of Warrants.

(a) On the Closing Date, the Company shall issue and execute the Global Warrant Certificates (in accordance with Section 2.02) evidencing an initial number of Plan Warrants equal to ~~10~~899,700 in the aggregate in the case of the 4-Year Warrants and ~~10~~899,700 in the aggregate in the case of the 5-Year Warrants (each such Number of Warrants to be subject to adjustment from time to time as described herein) in accordance with the terms of this Warrant Agreement and deliver such Global Warrant Certificates to the Warrant Agent for authentication, along with duly executed Authentication Orders. The Warrant Agent shall then register such Global Warrants in the name of the Global Warrantholder, which will then credit interests in such Global Warrants to the accounts of the applicable Participants for the benefit of the applicable Initial Beneficial Owners pursuant to the procedures of the Depository and in accordance with the Plan on the Closing Date.

(b) On the Closing Date, the Company shall issue and execute the Individual Warrant Certificates (in accordance with Section 2.02) evidencing an initial number of Cash-Out Warrants equal to ~~10~~19,390 in the aggregate in the case of the 4-Year Warrants and ~~10~~19,390 in the aggregate in the case of the 5-Year Warrants (each such Number of Warrants to be subject to adjustment from time to time as described herein) in accordance with the terms of this Warrant Agreement and the Plan and deliver such Individual Warrant Certificates to the Warrant Agent for authentication, along with duly executed Authentication Orders. The Warrant Agent shall then deliver such Individual Warrant Certificates to the respective Initial Cash-Out Warrantholders.

(c) The Warrant Certificates shall each evidence one or more Warrants. Each Warrant evidenced thereby shall be exercisable, in the event of Full Physical Settlement, for one Common Share upon payment of the applicable Exercise Price and compliance with the procedures set forth in this Warrant Agreement. On the Closing Date, the Warrant Agent shall, upon receipt of such Global Warrants, Individual Warrants and Authentication Orders, authenticate such Global Warrants and Individual Warrants in accordance with Section 2.02 and register such Global Warrants and Individual Warrants in the Warrant Register. The Global Warrants and Individual Warrants shall be dated as of the Closing Date and, subject to the terms hereof, shall evidence the only Warrants issued or outstanding under this Warrant Agreement as of the Closing Date. The Global Warrant Certificates shall be deposited on the Closing Date with the Warrant Agent as custodian for the Depository.

(d) All 4-Year Warrants and all 5-Year Warrants issued under this Warrant Agreement shall in all respects be equally and ratably entitled to their respective benefits hereof, without preference, priority, or distinction on account of the actual time of the issuance and authentication or any other terms thereof. Each Warrant shall be, and shall remain, subject to the provisions of this Warrant Agreement until such time as all of the Warrants evidenced thereby shall have been duly exercised or shall have expired or been canceled in accordance with the terms hereof. Each Beneficial Owner and Warrantholder shall be bound by all of the terms and provisions of this Warrant Agreement as fully and effectively as if such Beneficial Owner or Warrantholder had signed the same.

(e) Any Warrant that is included in an Unclaimed Distribution referred to in paragraph (3)(d) of Section E of Article VI of the Plan shall be deemed cancelled and no longer outstanding for all purposes of this Warrant Agreement.

Section 2.02 Execution and Authentication of Warrants.

(a) Each of the Warrant Certificates shall be executed on behalf of the Company by a duly authorized officer (each such officer, an “**Appropriate Officer**”) of the Company. The signature of any of the Appropriate Officers on the Warrant Certificates may be in the form of a facsimile or other electronically transmitted signature (including, without limitation, electronic transmission in portable document format (.pdf)).

(b) Any of the Warrant Certificates bearing the signatures of individuals, each of whom was, at the time he or she signed any of the Warrant Certificates or his or her facsimile signature was affixed to such Warrant Certificates, as the case may be, an Appropriate Officer, shall bind the Company, notwithstanding that such individuals or any of them have ceased to be such an Appropriate Officer prior to the authentication of such Warrant Certificate by the Warrant Agent or was not such an Appropriate Officer at the date of such Warrant Certificate.

(c) No Warrant shall be entitled to any benefit under this Warrant Agreement or be valid or obligatory for any purpose unless there appears on the applicable Warrant Certificate a certificate of authentication substantially in the form provided for herein executed by the Warrant Agent, and such signature upon any of the Warrant Certificates shall be conclusive evidence, and the only evidence, that such Warrant Certificate has been duly authenticated and delivered hereunder. The signature of the Warrant Agent on any of the Warrant Certificates may be in the form of a facsimile or other electronically transmitted signature (including, without limitation, electronic transmission in portable document format (.pdf)).

Section 2.03 Registration, Transfer, Exchange and Substitution.

(a) The Company shall cause to be kept at the office of the Warrant Agent, and the Warrant Agent shall maintain, a register (the “**Warrant Register**”) in which the Company shall provide for the registration of any Warrants and any Transfers, exchanges or substitutions of any Warrant as provided herein. Any Warrant issued upon any registration of Transfer or exchange of or substitution for any Warrant shall be a valid obligation of the Company, evidencing the same obligations, and entitled to the same benefits under this Warrant Agreement, as any Warrant surrendered for such registration of Transfer, exchange or substitution. Upon the Company’s request, the Warrant Agent shall provide to the Company as soon as reasonably practicable a copy of the Warrant Register as of the date of such request.

(b) Transfers of a Global Warrant shall be limited to Transfers in whole, and not in part, to the Company, the Depository, their successors, and their respective nominees. A Global Warrant may be Transferred to such parties upon the delivery of a written instruction of Transfer in form reasonably satisfactory to the Warrant Agent and the Company, duly executed by the Global Warrantholder or by such Global Warrantholder’s attorney, duly authorized in writing. No such Transfer shall be effected until, and the Transferee shall succeed to the rights of the Global Warrantholder only upon, final acceptance and registration of the Transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any Transfer of a Global Warrant by the Global Warrantholder as provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name such Global Warrant is registered as the owner thereof for all purposes, notwithstanding any notice to the contrary. To permit a registration of a Transfer of a Global Warrant, the Company shall execute the Global Warrant Certificates at the Warrant Agent’s request and the Warrant Agent shall authenticate such Global Warrant Certificates. Any of such Global Warrant Certificates shall be deposited on or after the date hereof with the Warrant Agent. No service charge shall be made for any such registration of Transfer. A party requesting transfer of a Global Warrant must provide any evidence of authority that may be required by the Warrant Agent, including but not limited to, a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association, Inc.

(c) Interests of Beneficial Owners in a Global Warrant registered in the name of the Depository or its nominee shall only be Transferred in accordance with the procedures of the Depository, the applicable Participant and applicable Law.

(d) So long as any Global Warrant is registered in the name of the Depository or its nominee, the Beneficial Owners shall have no rights under this Warrant Agreement with respect to such Global Warrant held on their behalf by the Depository, and the Depository may be treated by the Company, the Warrant Agent and any agent of the Company or the Warrant Agent as the absolute owner of such Global Warrant for all purposes. Accordingly, any such Beneficial Owner’s interest in such Global Warrant will be shown only on, and the Transfer

of such interest shall be effected only through, records maintained by the Depository or its nominee or the applicable Participant, and neither the Company nor the Warrant Agent shall have any responsibility or liability with respect to such records maintained by the Depository or its nominee or the applicable Participant. Notwithstanding the foregoing, nothing herein shall prevent the Company, the Warrant Agent or any agent of the Company or the Warrant Agent from giving effect to any written certification, proxy or other authorization furnished by the Depository or impair the operation of customary practices of the Depository or Participants governing the exercise of the rights of a Beneficial Owner.

(e) Cash-Out Warrants may be Transferred only upon surrender of the Individual Warrant Certificate representing such Warrants for registration of Transfer. Individual Warrant Certificates may be presented for registration of Transfer and exchange at the offices of the Warrant Agent upon the delivery of a written instruction of Transfer in form reasonably satisfactory to the Warrant Agent and the Company, duly executed by the holder thereof or by such holder's attorney, duly authorized in writing. No such Transfer shall be effected until, and the Transferee shall succeed to the rights of the holder thereof only upon, final acceptance and registration of the Transfer in the Warrant Register by the Warrant Agent. Prior to the registration of any Transfer of a Cash-Out Warrant represented by an Individual Warrant Certificate as provided herein, the Company, the Warrant Agent, and any agent of the Company or the Warrant Agent may treat the Person in whose name such Individual Warrant Certificate is registered as the owner thereof for all purposes, notwithstanding any notice to the contrary. To permit a registration of a Transfer of a Cash-Out Warrant, the Company shall execute any Individual Warrant Certificate at the Warrant Agent's request and the Warrant Agent shall authenticate such Individual Warrant Certificate. No service charge shall be made for any such registration of Transfer. A party requesting Transfer of a Cash-Out Warrant must provide any evidence of authority that may be required by the Warrant Agent, including but not limited to, a signature guarantee from an eligible guarantor institution participating in a signature guarantee program approved by the Securities Transfer Association, Inc. If less than all Cash-Out Warrants represented by an Individual Warrant Certificate are Transferred, exchanged or substituted in accordance with this Warrant Agreement, the Individual Warrant Certificate shall be surrendered to the Warrant Agent and a new Individual Warrant Certificate for a Number of Warrants equal to the Cash-Out Warrants represented by such individual Warrant Certificate that were not Transferred, exchanged or substituted, registered in such name or names as may be directed in writing by the surrendering Warrantholder, shall be executed by the Company and delivered to the Warrant Agent along with a duly executed Authentication Order and the Warrant Agent shall authenticate such new Individual Warrant Certificate and shall deliver such new Individual Warrant Certificate to the Person or Persons entitled to receive the same. Upon the written request of a Warrantholder, subject to applicable Law and receipt by the Company of an opinion of counsel (which may be in-house counsel of such holder) or seller's representation letter reasonably satisfactory to the Company indicating that the Cash-Out Warrants of such Warrantholder are no longer "restricted securities" under the applicable federal securities laws of the United States, the Company shall enable eligible Cash-Out Warrants held by such Warrantholder to be "DTC eligible" so that such Cash-Out Warrants may be held in book-entry form through the Depository. Once such Cash-Out Warrants become "DTC eligible," any Individual Warrant Certificates representing such Cash-Out Warrants may be presented to the Warrant Agent by such Warrantholder in exchange for one or more Global Warrants up to the aggregate number of such Cash-Out Warrants, to be registered in the name of the Depository, or its nominee, for crediting to the accounts of its participants pursuant to the procedures of the Depository. Upon such presentation, the Company may execute one or more Global Warrant Certificates representing the aggregate number of such Cash-Out Warrants and deliver the same to the Warrant Agent for authentication and delivery in accordance with Section 2.02. Such Global Warrant Certificates shall be deposited with the Warrant Agent as custodian for the Depository. An Individual Warrant Certificate representing Cash-Out Warrants may not be exchanged for a Global Warrant except upon satisfaction of the requirements set forth above.

Section 2.04 Form of Warrant Certificates; Private Placement Legend.

(a) Each of the Global Warrant Certificates shall be in substantially the form set forth in Exhibit A-1 hereto and shall have such insertions as are appropriate or required by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as the Company may deem appropriate and as are not inconsistent with the provisions of this Warrant Agreement, such as may be required to comply with this Warrant Agreement, any Law or any rule of any securities exchange on which Warrants may be listed, and such as may be necessary to conform to customary usage.

(b) Each Individual Warrant Certificate shall be in substantially the form set forth in Exhibit A-2 hereto and shall have such insertions as are appropriate or required by this Warrant Agreement and may have such letters, numbers or other marks of identification and such legends and endorsements, stamped, printed, lithographed or engraved thereon, as the Company may deem appropriate and as are not inconsistent with the provisions of this Warrant Agreement, such as may be required to comply with this Warrant Agreement, any Law or any rule of any securities exchange on which Warrants may be listed, and such as may be necessary to conform to customary usage.

(c) Except as provided below, each Individual Warrant Certificate shall bear a legend substantially to the effect set forth in Exhibit F. Common Shares issuable upon exercise of Warrants represented by an Individual Warrant Certificate (the “**Cash-Out Warrant Shares**”) shall bear a legend substantially to the effect set forth in Exhibit G. Each of such legends is referred to herein as a “**Private Placement Legend**”.

Upon any Transfer of a Cash-Out Warrant Share pursuant to Rule 144 under the Securities Act or under an effective registration statement under the Securities Act, the Company shall permit the holder of such Cash-Out Warrant Share to exchange such Cash-Out Warrant Share for a Common Share that does not bear the Private Placement Legend subject to the following sentence. In the case of a Transfer of Cash-Out Warrant Shares pursuant to Rule 144 under the Securities Act, an opinion of counsel (which may be in-house counsel of such holder) or seller’s representation letter reasonably satisfactory to the Company shall be tendered therewith indicating that there are no impediments to the removal of such Private Placement Legend under the applicable federal securities laws of the United States. Once the Private Placement Legend has been removed with respect to a Cash-Out Warrant Share, upon the written request of the holder thereof, the Company will cooperate with such holder to register such Cash-Out Warrant Shares in the name of the Depository, or its nominee or custodian for crediting to the accounts of its participants pursuant to the procedures of the Depository.

Section 2.05 Cancellation of the Warrant Certificates. Any Warrant Certificate shall be promptly cancelled by the Warrant Agent upon the earlier of (i) its Expiration Date, (ii) the consummation of a Cash Exit Transaction (as provided in Section 5.01), (iii) the mutilation of the Warrant Certificate as described in Section 6.02, or (iv) registration of Transfer or exercise of all Warrants represented thereby and, except as provided in this Article 2 in case of a Transfer or Section 6.02 in case of mutilation, no Warrant Certificate shall be issued hereunder in lieu thereof. The Warrant Agent shall deliver to the Company from time to time or otherwise dispose of such cancelled Warrant Certificates as the Company may direct.

Section 2.06 Limitations on Transfer of Plan Warrants. Notwithstanding any other provision of this Warrant Agreement, the Plan Warrants are being offered and sold, and the Common Shares issuable upon exercise thereof are being offered and sold, pursuant to an exemption from the registration requirement of Section 5 of the Securities Act provided by Section 1145 of the Bankruptcy Code, and to the extent that any Beneficial Owner is an “underwriter” as defined in Section 1145(b)(1) of the Bankruptcy Code, such Beneficial Owner may not be able to Transfer any Plan Warrants or Common Shares issuable upon exercise thereof in the absence of an effective registration statement under the Securities Act or an exemption from registration thereunder. Notwithstanding anything contained in this Warrant Agreement (but without limiting or modifying any express obligation of the Warrant Agent hereunder), the Warrant Agent shall not be under any duty or responsibility to ensure compliance by the Company, the Global Warranholder, any Beneficial Owner of Plan Warrants or Common Shares issuable upon exercise thereof or any other Person with any applicable federal or state securities or bankruptcy Laws. By accepting a Transfer of a Plan Warrant or Common Share issuable upon exercise thereof, (x) the applicable Participant agrees to inform the Beneficial Owner of the limitations on Transfer set forth in this Section 2.06, and shall instruct and direct such Beneficial Owner to conform to the restrictions set forth herein and shall maintain any applicable legends in its books and records and (y) the Beneficial Owner acknowledges the foregoing.

Section 2.07 Limitations on Transfer of Cash-Out Warrants. Notwithstanding any other provision of this Warrant Agreement, the Cash-Out Warrants and the Cash-Out Warrant Shares are being offered and sold pursuant to an exemption from the registration requirement of Section 5 of the Securities Act provided by Section 4(a)(2) of the Securities Act and Rule 506 promulgated thereunder. Warranholders and the holders of Cash-Out Warrant Shares may not be able to Transfer any Cash-Out Warrants or Cash-Out Warrant Shares in the absence of an effective registration statement under the Securities Act or an exemption from registration thereunder. Notwithstanding anything contained in this Warrant Agreement (but without limiting or modifying any express

obligation of the Warrant Agent hereunder), the Warrant Agent shall not be under any duty or responsibility to ensure compliance by the Company, any Warrantholders or holders of Cash-Out Warrant Shares or any other Person with any applicable federal or state securities or bankruptcy Laws.

Article 3

Exercise and Settlement of Warrants

Section 3.01 Exercise of Warrants. At any time prior to Close of Business on its Expiration Date or cancellation pursuant to Section 2.05, each Warrant may be exercised in accordance with this Article 3. Subject to Section 5.01 hereof, any Warrants not exercised prior to their applicable Expiration Date shall expire unexercised and all rights thereunder and all rights in respect thereof under this Warrant Agreement shall cease as of the Close of Business on their applicable Expiration Date.

Section 3.02 Procedure for Exercise.

(a) To exercise a Plan Warrant, a Beneficial Owner must arrange for (i) the delivery of the Exercise Notice duly completed and executed by its applicable Participant to the principal office of each of the Warrant Agent and the Company, (ii) if Full Physical Settlement is elected, payment to the Warrant Agent in an amount equal to the respective Exercise Price for each Warrant to be exercised together with all applicable taxes and charges thereto (except for taxes and charges for which the Company is responsible pursuant to Section 3.10), (iii) delivery of each Warrant to be exercised through the facilities of the Depository and (iv) compliance with all other procedures established by the Depository, the applicable Participant and the Warrant Agent for the exercise of Warrants.

(b) To exercise a Cash-Out Warrant, a Warrantholder must (i) surrender the Individual Warrant Certificate evidencing such Cash-Out Warrant at the principal office of the Warrant Agent, (ii) arrange for the delivery of the Exercise Notice duly completed and executed to the principal office of each of the Warrant Agent and the Company and (iii) if Full Physical Settlement is elected, pay to the Warrant Agent an amount equal to the Exercise Price for each Warrant to be exercised together with all applicable taxes and charges thereto (except for such taxes and charges for which the Company is responsible pursuant to Section 3.10).

(c) The date on which all the requirements for exercise set forth in this Section 3.02 in respect of a Warrant are satisfied is the “**Exercise Date**” for such Warrant.

(d) Subject to Section 3.02(f) and Section 3.02(g), any exercise of a Warrant pursuant to the terms of this Warrant Agreement shall be irrevocable and enforceable in accordance with its terms.

(e) All funds received by the Warrant Agent under this Warrant Agreement that are to be distributed or applied by the Warrant Agent in the performance of services in accordance with this Warrant Agreement (the “**Funds**”) shall be held by the Warrant Agent as agent for the Company and deposited in one or more bank accounts to be maintained by the Warrant Agent in its name as agent for the Company (the “**Funds Account**”). Until paid pursuant to the terms of this Warrant Agreement, the Warrant Agent will hold the Funds through the Funds Account in deposit accounts of commercial banks with Tier 1 capital exceeding \$1 billion or with an average rating above investment grade by S&P (LT Local Issuer Credit Rating), Moody’s (Long Term Rating) and Fitch Ratings, Inc. (LT Issuer Default Rating), each as reported by Bloomberg Finance L.P. The Warrant Agent shall have no responsibility or liability for any diminution of the Funds that may result from any deposit made by the Warrant Agent in accordance with this paragraph, including any losses resulting from a default by any bank, financial institution or other third party. The Warrant Agent may from time to time receive interest, dividends or other earnings in connection with such deposits. ~~The Warrant Agent shall pay such interest, dividends or earnings to the Company.~~

(f) The Company shall use commercially reasonable efforts to assist and cooperate with any Exercising Owner required to make any governmental filings or obtain any governmental approvals prior to or in connection with any exercise of a Warrant (including, without limitation, making any filings required to be made by

the Company), and any exercise of a Warrant may be made contingent upon the making of any such filing and the receipt of any such approval.

(g) Notwithstanding any other provision of this Warrant Agreement, if the exercise of any Warrant is to be made in connection with a registered public offering or a Reorganization Transaction, such exercise may, upon proper election in the Exercise Notice, be conditioned upon consummation of such offering or transaction in which case such exercise shall not be deemed effective until the consummation of such offering or transaction.

(h) The Warrant Agent shall forward funds deposited in the Funds Account in a given ~~month~~week by the fifth Business Day of the following ~~month~~week by wire transfer to an account designated by the Company.

(i) In the case of Full Physical Settlement, payment of the applicable Exercise Price upon exercise of Warrants shall be by federal wire or other immediately available funds payable to the account maintained by the Warrant Agent in its name as agent for the Company. The Warrant Agent shall provide an exercising Beneficial Owner or Warrantholder, as the case may be, upon request, with the appropriate payment instructions.

Section 3.03 Settlement of Warrants.

(a) Full Physical Settlement shall apply to each Warrant unless the Exercising Owner elects for Net Share Settlement to apply upon exercise of such Warrant. Such election shall be made in the Exercise Notice for such Warrant or as otherwise provided in Section 3.03(c).

(b) If Full Physical Settlement applies to the exercise of a Warrant, upon the proper and valid exercise thereof by an Exercising Owner, the Company shall cause to be delivered to the Exercising Owner, the Full Physical Settlement Amount on the Settlement Date.

(c) If Net Share Settlement applies to the exercise of a Warrant and Fair Value has been determined by the Board pursuant to clause (iv) of the definition thereof, then the Company shall provide each Exercising Owner with written notice of such Fair Value and supporting documentation regarding such determination as reasonably requested by such Exercising Owner. An Exercising Owner may, within 10 days after its receipt of notice of such Fair Value and supporting documentation:

(1) deliver to the Company and the Warrant Agent a written objection to such determination, in which case the Fair Value shall be determined by an Independent Appraiser selected by the Company in good faith, subject to the following:

(i) The Independent Appraiser's determination shall be based upon the fair market value of the Company determined on a going concern basis as between a willing buyer and a willing seller and taking into account all relevant factors determinative of value. In determining the Fair Value of any Common Shares, no consideration shall be given to any restrictions on transfer of the Common Shares imposed by agreement or by federal or state securities laws, or to the existence or absence of, or any limitations on, voting rights; and

(ii) The Independent Appraiser shall be instructed to deliver a written opinion regarding Fair Value within 30 days after submission to it of such objection. Such opinion shall be final and binding on the Company and the Objecting Owner. The reasonable costs and expenses of the Independent Appraiser in making such determination shall be borne equally by the Company and the Objecting Owner; or

(2) elect to have Full Physical Settlement apply to the exercise of each such Warrant by (x) delivering written notice of such election to the Company and the Warrant Agent, and (y) making payment to the Warrant Agent in an amount equal to the Exercise Price for each such Warrant together with all applicable taxes and charges thereto (except for taxes and charges for which the Company is responsible pursuant to Section 3.10).

(d) If Net Share Settlement applies to the exercise of a Warrant, upon the proper and valid exercise thereof by an Exercising Owner, the Company shall cause to be delivered to the Exercising Owner, the Net Share Amount on the Settlement Date, with any fractional Common Share rounded down to the nearest whole share as provided in Section 3.05.

(e) If there is a dispute as to the determination of the applicable Exercise Price or the calculation of the number of Common Shares to be delivered to an Exercising Owner, the Company shall cause to be promptly delivered to the Exercising Owner, the number of Common Shares that is not in dispute.

Section 3.04 Delivery of Common Shares.

(a) In connection with the exercise of Warrants, the Warrant Agent shall:

(1) examine all Exercise Notices and all other documents delivered to it to ascertain whether, on their face, such Exercise Notices and any such other documents have been executed and completed in accordance with their terms;

(2) where an Exercise Notice or other document appears on its face to have been improperly completed or executed or some other irregularity in connection with the exercise of the Warrant exists, endeavor to inform the appropriate parties (including the Person submitting such instrument) of the need for fulfillment of all requirements, specifying those requirements which appear to be unfulfilled;

(3) inform the Company of and cooperate with and assist the Company in resolving any reconciliation problems between the Exercise Notices received and delivery of Warrants to the Warrant Agent's account;

(4) advise the Company with respect to an exercise, no later than ~~two~~three Business Days following the satisfaction of each of the applicable procedures for exercise set forth in Section 3.02(a) or Section 3.02(b), as the case may be, of (v) the receipt of such Exercise Notice and the number of Warrants exercised in accordance with the terms and conditions of this Warrant Agreement, (w) if Full Physical Settlement applies, the number of Common Shares to be delivered by the Company, (x) the instructions with respect to issuance of the Common Shares, subject, in the case of exercise of a Global Warrant, to the timely receipt from the Depository of the necessary information, (y) the number of Persons who will become holders of record of the Company (who were not previously holders of record) as a result of receiving Common Shares upon exercise of the Warrants and (z) such other information as the Company shall reasonably require;

(5) promptly deposit in the Funds Account all Funds received in payment of the applicable Exercise Price in connection with Full Physical Settlement of Warrants;

(6) promptly cancel and destroy the applicable Warrant Certificate if all Warrants represented thereby have been exercised in full and deliver a certificate of destruction to the Company, unless the Company shall otherwise direct in writing;

(7) if all Warrants represented by a Warrant Certificate shall not have been exercised in full, (i) in respect of a Global Warrant Certificate, note and authenticate such decrease in the Number of Warrants on Schedule A of such Global Warrant Certificate and (ii) in respect of an Individual Warrant Certificate, deliver a new Individual Warrant Certificate, authenticated by the Warrant Agent, for the balance of the number of Warrants represented by the surrendered Individual Warrant Certificate; and

(8) provide to the Company, upon the Company's request, the number of Warrants previously exercised, the number of Common Shares issued in connection with such exercises and the number of remaining outstanding Warrants.

(b) With respect to each properly exercised Warrant in accordance with this Warrant Agreement, the Company shall cause its transfer agent to issue, in book-entry form at the transfer agent or through the Depository, the Common Shares due in connection with such exercise for the benefit and in the name of the Person designated by the Beneficial Owner or Warrantholder submitting the applicable Exercise Notice. The Person on whose behalf and in whose name any Common Shares are registered shall for all purposes be deemed to have become the holder of record of such Common Shares as of the Close of Business on the applicable Exercise Date.

(c) Promptly after the Warrant Agent shall have taken the action required by this Section 3.04 (or at such later time as may be mutually agreeable to the Company and the Warrant Agent), the Warrant Agent shall account to the Company with respect to the consummation of any exercise of any Warrants.

Section 3.05 No Fractional Common Shares to Be Issued.

(a) Notwithstanding anything to the contrary in this Warrant Agreement, the Company shall not be required to issue any fraction of a Common Share upon exercise of any Warrants.

(b) If any fraction of a Common Share would, except for the provisions of this Section 3.05, be issuable on the exercise of any Warrants, the Company shall instead round down to the nearest whole share the number of Common Shares that such Person designated in the applicable Exercise Notice shall receive. All Warrants exercised by a Beneficial Owner or Warrantholder on the same Exercise Date shall be aggregated for purposes of determining the number of Common Shares to be delivered pursuant to Section 3.04(b).

(c) Each Beneficial Owner and Warrantholder, by its acceptance of an interest in a Warrant, expressly waives its right to any fraction of a Common Share upon its exercise of such Warrant.

Section 3.06 Acquisition of Warrants by Company. The Company shall have the right, except as limited by Law, to purchase or otherwise to acquire one or more Warrants at such times, in such manner and for such consideration as agreed by the Company and the applicable Beneficial Owner or Warrantholder.

Section 3.07 Validity of Exercise. All questions as to the validity, form and sufficiency (including time of receipt) of a Warrant exercise shall be determined by the Company in good faith, which determination shall be final and binding with respect to the Warrant Agent. The Warrant Agent shall incur no liability for or in respect of and, except to the extent such liability arises from the Warrant Agent's gross negligence, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment), shall be indemnified and held harmless by the Company for acting or refraining from acting upon, or as a result of such determination by the Company. The Company reserves the absolute right to waive any of the conditions to the exercise of Warrants or defects in Exercise Notices with regard to any particular exercise of Warrants.

Section 3.08 Certain Calculations.

(a) The Warrant Agent shall be responsible for performing all calculations, save for in the case of Net Share Settlements, required in connection with the exercise and settlement of the Warrants as described in this Article 3. In connection therewith, the Warrant Agent shall provide prompt written notice to the Company, in accordance with Section 3.04(a)(4), of the number of Common Shares deliverable upon exercise and settlement of Warrants. The Company shall be responsible for all calculations and determinations required in connection with any Net Share Settlements and shall provide written notification to the Warrant Agent of the Net Share Amount to be issued on the Settlement Date for any Net Share Settlement. For the avoidance of doubt, the Warrant Agent shall not be responsible for performing the calculations set forth in Article 4 or the calculations delegated to the Independent Appraiser in accordance with this Warrant Agreement.

(b) The Warrant Agent shall not be accountable with respect to the validity or value of any Common Shares or Units of Reference Property that may at any time be issued or delivered upon the exercise of any Warrant, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible, to the extent not arising from the Warrant Agent's gross negligence, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment), for any failure of the Company to issue, transfer or deliver any Common Shares or Units of Reference Property, or to comply with any of the covenants of the Company contained in this Article 3.

Section 3.09 Reservation and Listing of Shares. The Company will at all times reserve and keep available, out of its authorized but unissued Common Shares, solely for the purpose of providing for the exercise of the Warrants, the aggregate number of Common Shares then issuable upon exercise of the Warrants at any time. The Company will use its commercially reasonable efforts to (A) procure, at its sole expense, the listing of the Common Shares issuable upon exercise of the Warrants (other than Cash-Out Warrant Shares that contain a Private Placement Legend) at any time, subject to issuance or notice of issuance, on all principal stock exchanges on which the Common Shares are then listed or traded and (B) maintain such listings of such Common Shares at all times after issuance. The Company will use commercially reasonable efforts to ensure that the Common Shares may be issued without violation of any applicable law or regulation or of any requirement of any securities exchange on which the Common Shares are listed or traded.

Section 3.10 Charges, Taxes and Expenses. Issuance of the Warrants and issuance of Common Shares upon the exercise of the Warrants shall be made without charge for any issue or transfer tax or other incidental expense in respect of the issuance thereof, all of which taxes and expenses shall be paid by the Company; provided, however, that the Company shall not be required to pay any tax that may be payable in respect of any Transfer involved in the issuance and delivery of such Warrants or Common Shares (including certificates therefor) in a name other than the Beneficial Owner or Warrantholder of the Warrant surrendered upon exercise or Transfer of the Warrant, and the Company shall not be required to issue or deliver such Warrants or Common Shares, as applicable, unless and until the Persons requesting the issuance thereof shall have paid to the Company the amount of such tax or shall have established to the satisfaction of the Company that such tax has been paid.

Article 4

Adjustments

Section 4.01 Adjustments to Exercise Price. After the date on which the Warrants are first issued and while any Warrants remain outstanding and unexpired, the Exercise Prices shall be subject to adjustment (without duplication) upon the occurrence of any of the following events:

(a) The issuance of Common Shares as a dividend or distribution to all holders of Common Shares, or a subdivision, combination, split, reverse split or reclassification of the outstanding Common Shares into a greater or smaller number of Common Shares, in which event the Exercise Prices shall be adjusted based on the following formula:

$$E_1 = E_0 \times \frac{N_0}{N_1}$$

where:

E_1 = the applicable Exercise Price in effect immediately after (i) the Open of Business on the Ex-Date in the case of a dividend or distribution or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification;

E_0 = the applicable Exercise Price in effect immediately prior to (i) the Open of Business on the Ex-Date in the case of a dividend or distribution or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification;

- N_0 = the number of Common Shares Deemed Outstanding immediately prior to (i) the Open of Business on the Record Date in the case of a dividend or distribution or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification; and
- N_1 = the number of Common Shares equal to (i) in the case of a dividend or distribution, the sum of the number of Common Shares Deemed Outstanding immediately prior to the Open of Business on the Record Date for such dividend or distribution plus the total number of Common Shares issued pursuant to such dividend or distribution or (ii) in the case of a subdivision, combination, split, reverse split or reclassification, the number of Common Shares Deemed Outstanding immediately after such subdivision, combination, split, reverse split or reclassification.

Such adjustment shall become effective immediately after (i) the Open of Business on the Ex-Date in the case of a dividend or distribution or (ii) the consummation of the transaction in the case of a subdivision, combination, split, reverse split or reclassification. If any dividend or distribution or subdivision, combination, split, reverse split or reclassification of the type described in this Section 4.01(a) is declared or announced but not so paid or made, the Exercise Prices shall again be adjusted to the applicable Exercise Prices that would then be in effect if such dividend or distribution or subdivision, combination, split, reverse split or reclassification had not been declared or announced, as the case may be.

(b) The issuance as a dividend or distribution to all holders of Common Shares of evidences of indebtedness, Securities of the Company or any other Person (other than Common Shares), Cash or other property (excluding any dividend or distribution covered by Section 4.01(a)), in which event the Exercise Prices will be adjusted based on the following formula:

$$E_1 = E_0 \times \frac{P - FMV}{P}$$

where:

- E_1 = the applicable Exercise Price in effect immediately after the Open of Business on the Ex-Date for such dividend or distribution;
- E_0 = the applicable Exercise Price in effect immediately prior to the Open of Business on the Ex-Date for such dividend or distribution;
- P = the Fair Value of a Common Share as of immediately prior to the Open of Business on the second Business Day preceding the Ex-Date for such dividend or distribution; and
- FMV = the Fair Value of the portion of such dividend or distribution applicable to one Common Share as of the Open of Business on the date of such dividend or distribution.

Such decrease shall become effective immediately after the Open of Business on the Ex-Date for such dividend or distribution. In the event that such dividend or distribution is declared or announced but not so paid or made, the Exercise Prices shall again be adjusted to be the Exercise Prices which would then be in effect if such distribution had not been declared or announced.

(c) If any single action would require adjustment of the Exercise Prices pursuant to more than one subsection of this Section 4.01, only one adjustment shall be made and such adjustment shall be the amount of adjustment that has the highest, relative to the rights and interests of the registered holders of the Warrants then outstanding, absolute value.

(d) The Company may from time to time, to the extent permitted by Law, decrease the Exercise Prices and/or increase the Number of Warrants by any amount for any period of at least twenty days. In that case, the Company shall give the Global Warrantholder, the Warrantholders and the Warrant Agent at least ten days' prior written notice of such increase or decrease, and such notice shall state the applicable decreased Exercise Prices and/or increased Number of Warrants and the period during which the decrease and/or increase will be in effect. The Company may make such decreases in the Exercise Prices and/or increases in the Number of Warrants,

in addition to those set forth in this Article 4, as the Board deems advisable, including to avoid or diminish any income tax to holders of the Common Shares resulting from any dividend or distribution of stock (or rights to acquire stock) or from any event treated as such for income tax purposes.

(e) Notwithstanding this Section 4.01 or any other provision of this Warrant Agreement or the Warrants, if an Exercise Prices adjustment becomes effective on any Ex-Date, and a Warrant has been exercised on or after such Ex-Date and on or prior to the related Record Date resulting in the Person issued Common Shares being treated as the record holder of the Common Shares on or prior to the Record Date, then, notwithstanding the Exercise Prices adjustment provisions in this Section 4.01, the Exercise Prices adjustment relating to such Ex-Date will not be made with respect to such Warrant. Instead, such Person will be treated as if it were the record owner of Common Shares on an un-adjusted basis and participate in the related dividend, distribution or other event giving rise to such adjustment.

Section 4.02 Adjustments to Number of Warrants. Concurrently with any adjustment to the Exercise Prices under Section 4.01, the Number of Warrants in respect of each Warrant Certificate will be adjusted such that the Number of Warrants in effect immediately following the effectiveness of such adjustment will be equal to the Number of Warrants in effect immediately prior to such adjustment, multiplied by a fraction, (i) the numerator of which is the applicable Exercise Price in effect immediately prior to such adjustment and (ii) the denominator of which is the applicable Exercise Price in effect immediately following such adjustment.

Section 4.03 Certain Distributions of Rights and Warrants; Stockholder Rights Plan.

(a) (i) Rights or warrants distributed by the Company to all holders of Common Shares entitling the holders thereof to subscribe for or purchase the Company's Securities (either initially or under certain circumstances), which rights or warrants, until the occurrence of a specified event or events (a "**Trigger Event**"):

- (1) are deemed to be transferred with such Common Shares;
- (2) are not exercisable; and
- (3) are also issued in respect of future issuances of Common Shares,

shall be deemed not to have been distributed for purposes of Article 4 (and no adjustment to the Exercise Price or the Number of Warrants under this Article 4 will be made) until the occurrence of the earliest Trigger Event, whereupon such rights and warrants shall be deemed to have been distributed and an appropriate adjustment (if any is required) to the Exercise Prices and the Number of Warrants shall be made under this Article 4 (subject in all respects to Section 4.04).

(ii) If any such right or warrant is subject to events, upon the occurrence of which such rights or warrants become exercisable to purchase different securities, evidences of indebtedness or other assets, then the date of the occurrence of any and each such event shall be deemed to be the date of distribution and Record Date with respect to new rights or warrants with such rights (subject in all respects to Section 4.03(b)).

(iii) In addition, except as set forth in Section 4.03(b), in the event of any distribution (or deemed distribution) of rights or warrants, or any Trigger Event or other event (of the type described in clause (ii) above) with respect thereto that was counted for purposes of calculating a distribution amount for which an adjustment to the Exercise Prices and the Number of Warrants under Article 4 was made:

- (1) in the case of any such rights or warrants that shall all have been redeemed or repurchased without exercise by the holders thereof, the Exercise Prices and the Number of Warrants shall be readjusted upon such final redemption or repurchase to give effect to such distribution or Trigger Event, as the case may be, equal to the per share redemption or repurchase price received by a holder or holders of Common Shares with respect to such rights or warrants (assuming such holder had retained such rights or warrants) made to all holders of Common Shares as of the date of such redemption or repurchase; and

(2) in the case of such rights or warrants that shall have expired or been terminated without exercise by the holders thereof, the Exercise Prices and the Number of Warrants shall be readjusted as if such rights and warrants had not been issued or distributed.

(b) If the Company has a stockholder rights plan in effect with respect to the Common Shares, upon exercise of a Warrant the holder shall be entitled to receive, in addition to the Common Shares, the rights under such stockholder rights plan, unless, prior to such exercise, such rights have separated from the Common Shares, in which case the Exercise Prices and the Number of Warrants shall be adjusted at the time of separation as if the Company had made a distribution to all holders of Common Shares as described in the first paragraph of Section 4.01(b), subject to readjustment in the event of the expiration, termination or redemption of such rights.

Section 4.04 Restrictions on Adjustments.

(a) No adjustment shall be made to the 4-Year Exercise Price or the 5-Year Exercise Price under Section 4.01, nor will any corresponding adjustment be made to the Number of Warrants under Section 4.02, unless the adjustment would result in a change of at least 1% of the 4-Year Exercise Price or the 5-Year Exercise Price, as the case may be; provided, however, that any adjustment of less than 1% that was not made by reason of this Section 4.04(a) shall be carried forward and made as soon as such adjustment, together with any other adjustments not previously made by reason of this Section 4.04(a), would result in a change of at least 1% in the aggregate. All calculations under this Article 4 shall be made to the nearest cent or to the nearest 1/100th of a Common Share, as the case may be.

(b) In no event shall the Company adjust the 4-Year Exercise Price or the 5-Year Exercise Price or make a corresponding adjustment to the number of Common Shares issuable upon exercise of any Warrant to the extent that the adjustment would reduce the applicable Exercise Price below the par value of the Common Shares.

(c) No adjustment shall be made to the 4-Year Exercise Price or the 5-Year Exercise Price under Section 4.01, nor will any corresponding adjustment be made to the Number of Warrants under Section 4.02, upon: (i) the issuance of any Securities by the Company on the Effective Date and pursuant to the Plan, (ii) the issuance of any Common Shares pursuant to any present or future plan providing for the reinvestment of dividends or interest payable on the Company's Securities and the investment of additional optional amounts in Common Shares under any plan, (iii) the issuance of Securities by the Company to employees, officers, directors or consultants of the Company or its Subsidiaries pursuant to the New MIP or other management or director incentive plans or stock or stock option compensation plans, including pursuant to any employment, severance or consulting agreements, or (iv) a change in par value of the Common Shares.

(d) If the Company takes a record of the holders of Common Shares for the purpose of entitling them to receive a dividend or other distribution, and thereafter (and before the dividend or distribution has been paid or delivered to members) legally abandons its plan to pay or deliver such dividend or distribution, then thereafter no adjustment to the Exercise Prices or the Number of Warrants then in effect shall be required by reason of the taking of such record.

Section 4.05 Adjustment upon Reorganization Transaction.

(a) If there occurs any Reorganization Transaction (other than a Cash Exit Transaction) while any Warrants remain outstanding and unexpired, then following the effective time of the Reorganization Transaction, the right to receive Common Shares upon exercise of a Warrant shall be changed to a right to receive, upon exercise of such Warrant, the kind and amount of shares of stock, other securities or other property or assets (including Cash or any combination thereof) (the "**Reference Property**") that a holder of one Common Share would have owned or been entitled to receive in connection with such Reorganization Transaction (such kind and amount of Reference Property per Common Share, a "**Unit of Reference Property**"). In the event holders of Common Shares have the opportunity to elect the form of consideration to be received in a Reorganization Transaction, the type and amount of consideration into which the Warrants shall be exercisable from and after the effective time of such Reorganization Transaction shall be deemed to be the weighted average of the types and amounts of consideration received by the holders of Common Shares in such Reorganization Transaction. The Company hereby

agrees not to become a party to any Reorganization Transaction unless its terms are consistent with this Section 4.05.

(b) At any time from, and including, the effective time of a Reorganization Transaction:

(1) each Warrant shall be exercisable for a single Unit of Reference Property instead of one Common Share; and

(2) any calculation of Fair Value shall be made with respect to a Unit of Reference Property.

(c) On or prior to the effective time of any Reorganization Transaction, the Company or the successor or purchasing Person, as the case may be, shall execute an amendment to this Warrant Agreement providing that the Warrants shall be exercisable for Units of Reference Property in accordance with the terms of this Section 4.05. If the Reference Property in connection with any Reorganization Transaction includes shares of stock or other securities and assets of a Person other than the successor or purchasing Person, as the case may be, in such Reorganization Transaction, then the Company shall cause such amendment to this Warrant Agreement to be executed by such other Person and such amendment shall contain such additional provisions to protect the interests of the Global Warrantholder (for the benefit of the Beneficial Owners) and the Warrantholders as the Board shall reasonably consider necessary by reason of the foregoing. Any such amendment to this Warrant Agreement shall provide for adjustments which shall be as nearly equivalent as may be practicable to the adjustments provided for in this Article 4. In the event the Company shall execute an amendment to this Warrant Agreement pursuant to this Section 4.05, the Company shall promptly file with the Warrant Agent an Officer's Certificate briefly stating the reasons therefor, the kind or amount of Cash, securities or property or assets that will comprise a Unit of Reference Property after the relevant Reorganization Transaction, any adjustment to be made with respect thereto and that all conditions precedent have been complied with. The Company shall cause notice of the execution of the amendment to be mailed to the Global Warrantholder and the Warrantholders within 20 Business Days after execution thereof.

(d) The above provisions of this Section 4.05 shall similarly apply to successive Reorganization Transactions.

Section 4.06 Successor upon Consolidation or Merger.

(a) The Company may consolidate or merge with another Person only (i) if the Company is the surviving Person or (ii) if the Company is not the surviving Person, then:

(1) the successor to the Company assumes all of the Company's obligations under this Warrant Agreement; and

(2) the successor to the Company provides written notice of such assumption to the Warrant Agent prior to the consummation of such consolidation or merger, together with such identifying corporate information as may be reasonably requested by the Warrant Agent.

(b) Such successor to the Company thereafter may cause to be signed, and may issue any or all of, the Global Warrants issuable pursuant to this Warrant Agreement which theretofore shall not have been issued by the Company; and, upon the order of such successor Person, instead of the Company, and subject to all the terms, conditions and limitations in this Warrant Agreement, the Warrant Agent shall authenticate and deliver, as applicable, any Global Warrants that previously shall have been signed and delivered by the officers of the Company to the Warrant Agent for authentication, and any Warrants which such successor to the Company thereafter shall cause to be signed and delivered to the Warrant Agent for such purpose.

Section 4.07 Common Shares Outstanding; Common Shares Reserved for Issuance on Exercise.

(a) For the purposes of this Article 4, the number of Common Shares at any time outstanding shall not include Common Shares held, directly or indirectly, by the Company or any of its Subsidiaries.

(b) Such number of Common Shares as will be issuable upon the exercise of all outstanding Warrants for Common Shares have been authorized and reserved for issuance. The Company covenants that all Common Shares that shall be so issuable shall be duly and validly issued, fully paid and non-assessable.

(c) The Company agrees to authorize and direct its current and future transfer agents for the Common Shares to reserve for issuance the number of Common Shares specified in this Section 4.07 and shall take all action required to increase the authorized number of Common Shares if at any time there shall be insufficient authorized but unissued Common Shares to permit such reservation or to permit the exercise of a Warrant. Promptly after each of the Expiration Dates, the Warrant Agent shall certify to the Company the aggregate Number of Warrants then outstanding, and thereafter no Common Shares shall be required to be reserved in respect of such Warrants.

Section 4.08 Calculations; Instructions to Warrant Agent. The Company shall be responsible for making all calculations called for under this Article 4 for purposes of determining any adjustments to the Exercise Prices and the Number of Warrants, including determinations as to Fair Value and the composition of Units of Reference Property. Such calculations and determinations shall be final and binding on the Global Warrantholder and all Beneficial Owners and Warrantholders absent manifest error. The Company shall provide a schedule of the Company's calculations and determinations to the Warrant Agent, and the Warrant Agent is entitled to rely upon the accuracy of the Company's calculations without independent verification.

Section 4.09 Notice of Adjustment. The Company shall mail, or cause to be mailed, to the Global Warrantholder, the Warrantholders and the Warrant Agent, in accordance with Section 7.13, a notice of any adjustment or readjustment to the Exercise Prices or the Number of Warrants no less than three Business Days prior to the effective date of such adjustment or readjustment. The Company shall file with the Warrant Agent such notice and an Officer's Certificate setting forth such adjustment or readjustment and kind and amount of securities, Cash or other property for which a Warrant shall thereafter be exercisable and the applicable Exercise Price, showing in reasonable detail the facts upon which such adjustment or readjustment is based. The Officer's Certificate shall be conclusive evidence that the adjustment or readjustment is correct, and the Warrant Agent shall not be deemed to have any knowledge of any adjustments or readjustments unless and until it has received such Officer's Certificate. The Warrant Agent shall not be under any duty or responsibility with respect to any such Officer's Certificate except to exhibit the same to the Global Warrantholder and the Warrantholders.

Section 4.10 Statements on Warrants. Other than notation of any applicable increase or decrease in the Number of Warrants on Schedule A of each Global Warrant Certificate, the form of each Global Warrant Certificate need not be changed because of any adjustment or readjustment made pursuant to this Article 4, and Global Warrant Certificates issued after such adjustment or readjustment may state the same information (other than the applicable adjusted Exercise Price and the adjusted Number of Warrants) as are stated in the Global Warrant Certificates initially issued pursuant to this Warrant Agreement.

Section 4.11 Effect of Adjustment. The Depository and applicable Participants shall effect any applicable adjustments, changes or payments to the Beneficial Owners with respect to beneficial interests in the Global Warrants resulting from any adjustments or readjustments, changes or payments effected pursuant to this Article 4 in accordance with the procedures of the Depository and the applicable Participants.

Section 4.12 Warrant Agent Not Responsible for Adjustments or Validity. The Warrant Agent shall at no time be under any duty or responsibility to determine whether any facts exist that may require an adjustment or readjustment of the Exercise Prices and the Number of Warrants, or with respect to the nature or extent of any such adjustment or readjustment when made, or with respect to the method employed, herein or in any supplemental agreement provided to be employed, in making the same. The Warrant Agent shall have no duty to verify or confirm any calculation called for hereunder. The Warrant Agent shall have no liability for any failure or delay in performing its duties hereunder caused by any failure or delay of the Company in providing such calculations to the Warrant Agent. The Warrant Agent shall not be accountable with respect to the validity or value (or the kind or amount) of any Common Shares or of any Securities or property which may at any time be issued or delivered upon the exercise of any Warrant or upon any adjustment or readjustment pursuant to this Article 4, and it makes no representation with respect thereto. The Warrant Agent shall not be responsible for any failure of the Company to make any Cash payment or to issue, transfer or deliver any Common Shares or stock certificates or other securities

or property or scrip upon the surrender of any Warrant for the purpose of exercise or upon any adjustment pursuant to this Article 4, or to comply with any of the covenants of the Company contained in this Article 4. The Warrant Agent shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein or in any notice from the Company. The Warrant Agent may rely conclusively, and shall be protected in acting, upon any notice, instruction, request, order, judgment, certification, opinion or advice of counsel, statement, demand or other instrument or document, not only as to its due execution, validity (including the authority of the person signing or presenting the same) and effectiveness, but also as to the truth and accuracy of any information contained therein, which the Warrant Agent shall believe to be genuine and to have been signed or presented by the person or parties purporting to sign the same.

Article 5

Cash Exit Transaction

Section 5.01 Cash Exit Transaction. Upon consummation of a Cash Exit Transaction, all unexercised Warrants shall be automatically cancelled for no consideration; provided, however, that in the case of a Cash Exit Transaction in which the Cash consideration paid per Common Share exceeds the exercise price of any Warrant, each such Warrant shall be deemed to have been, for all purposes, exercised immediately prior to consummation of such Cash Exit Transaction for the Net Share Amount.

Article 6

Other Provisions Relating to Rights of Warrantholders

Section 6.01 No Rights as Stockholders. Nothing contained in this Warrant Agreement or in any Warrant Certificate shall be construed as conferring upon any Person, by virtue of holding or having a beneficial interest in a Warrant, the right to vote, to consent, to receive any Cash dividends, stock dividends, allotments or rights or other distributions paid, allotted or distributed or distributable to the holders of Common Shares, or to exercise any rights whatsoever as a stockholder of the Company unless, until and only to the extent such Persons become holders of record of Common Shares issued upon settlement of Warrants.

Section 6.02 Mutilated or Missing Global Warrant Certificates. If any Warrant Certificate is mutilated, defaced, lost, destroyed or stolen, then on the terms set forth in this Warrant Agreement, such Warrant Certificate may be replaced with a new Warrant Certificate, of like date and tenor and representing the same number of Warrants, at the cost of the Company at the office of the Warrant Agent subject to the replacement procedures of the Warrant Agent which shall include obtaining an open penalty surety bond satisfactory to the Warrant Agent holding the Company and the Warrant Agent harmless. Any such new Warrant Certificate shall constitute an original contractual obligation of the Company, whether or not the allegedly lost, stolen, mutilated or destroyed Warrant Certificate shall be at any time enforceable by anyone. All Warrant Certificates shall be issued upon the express condition that the foregoing provisions are exclusive with respect to the substitution for lost, stolen, mutilated or destroyed Warrant Certificates, and shall preclude any and all other rights or remedies notwithstanding any Law or statute existing or hereafter enacted to the contrary with respect to the substitution for and replacement of negotiable instruments or other securities without their surrender.

Section 6.03 Modification, Waiver and Meetings

(a) This Warrant Agreement may be modified or amended by the Company and the Warrant Agent, without the consent of any Warrantholder, any Beneficial Owner of any Warrant, or any applicable Participant with respect to any Warrant, for the purposes of curing any ambiguity or correcting or supplementing any defective provision contained in this Warrant Agreement or to make any other provisions in regard to matters or questions arising in this Warrant Agreement which the Company and the Warrant Agent may deem necessary or desirable; provided that such modification or amendment does not adversely affect the interests of the Warrantholders or the Beneficial Owners in any material respect. As a condition precedent to the Warrant Agent's execution of any amendment, the Company shall deliver to the Warrant Agent a certificate from an Appropriate Officer that states that the proposed amendment is in compliance with the terms of this Section 6.03.

(b) Modifications and amendments to this Warrant Agreement or to the terms and conditions of Warrants not contemplated by Section 6.03(a) may also be made by the Company and the Warrant Agent, and noncompliance with any provision of the Warrant Agreement or Warrants may be waived, by the Beneficial Owners and Warranholders (pursuant to a proper vote or consent of a majority of the Warrants at the time outstanding). ~~Notwithstanding anything to the contrary herein, the Company may amend Schedule A from time to time to accurately reflect the name and address of the Global Warranholder after the Closing Date without any further consent or agreement from any other Person.~~

(c) However, no modification, amendment or waiver may, without the written consent of the Beneficial Owners and Warranholders of the 4-Year Warrants (if such modification, amendment or waiver relates to the 4-Year Warrants) or the 5-Year Warrants (if such modification, amendment or waiver relates to the 5-Year Warrants), pursuant to a proper vote or consent of each applicable Warrant:

(A) change the applicable Expiration Date; or

(B) increase the applicable Exercise Price or decrease the applicable Number of Warrants (except as set forth in Article 4).

Section 6.04 Reorganization Transaction. In the event of any Reorganization Transaction, then, and in each such case, the Company will mail or cause to be mailed to the Global Warranholder and each other Warranholder, as promptly as reasonably practicable upon execution of the agreement providing for such Reorganization Transaction, a notice specifying the effective date on which such Reorganization Transaction is or is expected to take place, and the time, if any is to be fixed, as of which the holders of record of Common Shares (or such other stock or Securities at the time deliverable upon the exercise of a Warrant) shall be entitled to exchange their Common Shares (or such other stock or Securities) for Securities or other property deliverable upon such Reorganization Transaction.

Article 7

Concerning the Warrant Agent and Other Matters

Section 7.01 Change of Warrant Agent.

(a) The Warrant Agent, or any successor to it hereafter appointed, may resign its duties and be discharged from all further duties and liabilities hereunder (except for liability arising as a result of the Warrant Agent's own gross negligence, willful misconduct or bad faith) after giving sixty (60) days' notice in writing to the Company, except that such shorter notice may be given as the Company shall, in writing, accept as sufficient. If the office of the Warrant Agent becomes vacant by resignation or incapacity to act or otherwise, the Company shall appoint in writing a successor warrant agent in place of the Warrant Agent. If the Company shall fail to make such appointment within a period of thirty (30) days after it has been notified in writing of such resignation or incapacity by the resigning or incapacitated warrant agent or by the Global Warranholder or Beneficial Owners and Warranholders representing a majority of the Warrants at the time outstanding, then the Global Warranholder or Beneficial Owners and Warranholders representing a majority of the Warrants at the time outstanding may appoint a successor warrant agent.

(b) The Warrant Agent may be removed by the Company at any time upon thirty (30) days' written notice to the Warrant Agent; provided, however, that the Company shall not remove the Warrant Agent until a successor warrant agent meeting the qualifications hereof shall have been appointed; provided, further, that, until such successor warrant agent has been appointed, the Company shall compensate the Warrant Agent in accordance with Section 7.02.

(c) Any successor warrant agent, whether appointed by the Company or by such a court, shall be a corporation or banking association organized, in good standing and doing business under the Laws of the United States of America or any state thereof or the District of Columbia, and authorized under such Laws to exercise corporate trust powers and subject to supervision or examination by federal or state authority and having a combined capital and surplus of not less than \$50,000,000. The combined capital and surplus of any such successor

warrant agent shall be deemed to be the combined capital and surplus as set forth in the most recent report of its condition published prior to its appointment; provided that such reports are published at least annually pursuant to Law or to the requirements of a federal or state supervising or examining authority. After acceptance in writing of such appointment by the successor warrant agent, such successor warrant agent shall be vested with all the authority, powers, rights, immunities, duties and obligations of its predecessor warrant agent with like effect as if originally named as warrant agent hereunder, without any further act or deed; but if for any reason it becomes necessary or appropriate, the predecessor warrant agent shall execute and deliver, at the expense of the Company, an instrument transferring to such successor warrant agent all the authority, powers and rights of such predecessor warrant agent hereunder; and upon request of any successor warrant agent, the Company shall make, execute, acknowledge and deliver any and all instruments in writing to more fully and effectually vest in and conform to such successor warrant agent all such authority, powers, rights, immunities, duties and obligations. Upon assumption by a successor warrant agent of the duties and responsibilities hereunder, the predecessor warrant agent shall deliver and transfer, at the expense of the Company, to the successor warrant agent any property at the time held by it hereunder. As soon as practicable after such appointment, the Company shall give notice thereof to the predecessor warrant agent, the Global Warrantholder and each transfer agent for its Common Shares. Failure to give such notice, or any defect therein, shall not affect the validity of the appointment of the successor warrant agent.

(d) Any entity into which the Warrant Agent may be merged or converted or with which it may be consolidated, or any corporation resulting from any merger, conversion or consolidation to which the Warrant Agent shall be a party, or any Person succeeding to all or substantially all of the corporate trust or agency business of the Warrant Agent, shall be the successor warrant agent under this Warrant Agreement without the execution or filing of any paper or any further act on the part of any of the parties hereto; provided that such entity would be eligible for appointment as a successor warrant agent under Section 7.01(c). In case at the time such successor to the Warrant Agent shall succeed to the agency created by this Warrant Agreement, any Global Warrant Certificate shall have been countersigned but not delivered, any such successor to the Warrant Agent may adopt the countersignature of the original Warrant Agent and deliver such Global Warrant Certificate so countersigned, and in case at that time any Global Warrant Certificates shall not have been countersigned, any successor to the Warrant Agent may countersign such Global Warrant Certificate either in the name of the predecessor Warrant Agent or in the name of the successor Warrant Agent; and in all such cases such Global Warrant Certificate shall have the full force provided in the Global Warrant Certificate and in this Warrant Agreement.

(e) In case at any time the name of the Warrant Agent shall be changed and at such time any Global Warrant Certificate shall have been countersigned but not delivered, the Warrant Agent may adopt the countersignatures under its prior name and deliver such Global Warrant Certificate so countersigned; and in case at that time any Global Warrant Certificate shall not have been countersigned, the Warrant Agent may countersign such Global Warrant Certificate either in its prior name or in its changed name; and in all such cases such Global Warrant Certificate shall have the full force provided in the Global Warrant Certificate and in this Warrant Agreement.

Section 7.02 Compensation; Further Assurances. The Company agrees that it will (a) pay the Warrant Agent reasonable compensation for its services as Warrant Agent in accordance with Exhibit D attached hereto and, except as otherwise expressly provided, will pay or reimburse the Warrant Agent upon written demand for all reasonable and documented expenses, disbursements and advances incurred or made by the Warrant Agent in accordance with any of the provisions of this Warrant Agreement (including the reasonable and documented compensation, expenses and disbursements of its counsel ~~not to exceed \$[•]~~ incurred in connection with the execution and administration of this Warrant Agreement), except any such expense, disbursement or advance as may arise from its or any of their gross negligence, willful misconduct or bad faith, and (b) perform, execute, acknowledge and deliver or cause to be performed, executed, acknowledged and delivered all such further and other acts, instruments and assurances as may reasonably be required by the Warrant Agent for the carrying out or performing of the provisions of this Warrant Agreement. The Warrant Agent agrees to provide the Company with prior written notice of the retention of counsel whose compensation, expenses and disbursements are to be paid or reimbursed by the Company under this Section 7.02.

Section 7.03 Reliance on Counsel. The Warrant Agent may consult with legal counsel (who may be legal counsel for the Company), and the written opinion of such counsel or any advice of legal counsel subsequently confirmed by a written opinion of such counsel shall be full and complete authorization and protection to the

Warrant Agent as to any action taken or omitted by it in good faith and in accordance with such written opinion or advice.

Section 7.04 Proof of Actions Taken. Whenever in the performance of its duties under this Warrant Agreement the Warrant Agent shall deem it necessary or desirable that any matter be proved or established by the Company prior to taking or suffering or omitting any action hereunder, such matter (unless other evidence in respect thereof be herein specifically prescribed) may, in the absence of bad faith on the part of the Warrant Agent, be deemed to be conclusively proved and established by an Officer's Certificate delivered to the Warrant Agent; and such Officer's Certificate shall, in the absence of bad faith on the part of the Warrant Agent, be relied upon by the Warrant Agent for any action taken, suffered or omitted in good faith by it under the provisions of this Warrant Agreement; but in its discretion the Warrant Agent may in lieu thereof accept other evidence of such fact or matter or may require such further or additional evidence as to it may seem reasonable.

Section 7.05 Correctness of Statements. The Warrant Agent shall not be liable for or by reason of any of the statements of fact or recitals contained in this Warrant Agreement or any Warrant Certificate (except its countersignature thereof) or be required to verify the same, and all such statements and recitals are and shall be deemed to have been made by the Company only.

Section 7.06 Validity of Agreement. From time to time, the Warrant Agent may apply to any Appropriate Officer for instruction and the Company shall provide the Warrant Agent with such instructions concerning the services to be provided hereunder. The Warrant Agent shall not be held to have notice of any change of authority of any Person, until receipt of notice thereof from the Company. The Warrant Agent shall not be under any responsibility in respect of the validity of this Warrant Agreement or the execution and delivery hereof or in respect of the validity or execution of any Global Warrant Certificate (except its countersignature thereof); nor shall it be responsible for any breach by the Company of any covenant or condition contained in this Warrant Agreement or in any Warrant Certificate; nor shall it by any act hereunder be deemed to make any representation or warranty as to the authorization or reservation of any Common Shares to be issued pursuant to this Warrant Agreement or any Warrants or as to whether any Common Shares will, when issued, be validly issued and fully paid and non-assessable. The Warrant Agent and its agents and subcontractors shall not be liable and shall be indemnified by the Company for any action taken or omitted by Warrant Agent in reliance in good faith upon any Company instructions except to the extent that the Warrant Agent had actual knowledge of facts and circumstances that would render such reliance unreasonable.

Section 7.07 Use of Agents. The Warrant Agent may execute and exercise any of the rights or powers hereby vested in it or perform any duty hereunder either itself or by or through its attorneys or agents provided that the Warrant Agent shall remain responsible for the activities or omissions of any such agent or attorney and reasonable care has been exercised in the selection and in the continued employment of such attorney or agent.

Section 7.08 Liability of Warrant Agent. The Warrant Agent shall incur no liability or responsibility to the Company or to any Beneficial Owner or Warrantholder for any action taken or not taken (i) in reliance on any notice, resolution, waiver, consent, order, certificate, or other paper, document or instrument believed by it to be genuine and to have been signed, sent or presented by the proper party or parties or (ii) in relation to its services under this Warrant Agreement, unless such liability arises out of or is attributable to the Warrant Agent's gross negligence, material breach of this Warrant Agreement, or willful misconduct or bad faith. The Company agrees to indemnify the Warrant Agent and save it harmless against any and all losses, expenses and liabilities, including judgments, costs and reasonable counsel fees, for anything done or omitted in good faith by the Warrant Agent in the execution of this Warrant Agreement or otherwise arising in connection with this Warrant Agreement, except as a result of the Warrant Agent's gross negligence, material breach of this Warrant Agreement, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment). The Warrant Agent shall be liable hereunder only for its gross negligence, material breach of this Warrant Agreement, willful misconduct or bad faith (as determined by a court of competent jurisdiction in a final non-appealable judgment), for which the Warrant Agent is not entitled to indemnification under this Warrant Agreement.

Section 7.09 Legal Proceedings. The Warrant Agent shall be under no obligation to institute any action, suit or legal proceeding or to take any other action likely to involve expense unless the Company, any Warrantholder or any applicable Participant on behalf of a Beneficial Owner shall furnish the Warrant Agent with

reasonable indemnity for any costs and expenses which may be incurred, but this provision shall not affect the power of the Warrant Agent to take such action as the Warrant Agent may consider proper, whether with or without any such security or indemnity. The Warrant Agent shall promptly notify the Company and each Beneficial Owner and Warranholder in writing of any claim made or action, suit or proceeding instituted against it arising out of or in connection with this Warrant Agreement.

Section 7.10 Actions as Agent. The Warrant Agent shall act hereunder solely as agent and not in a ministerial or fiduciary capacity, and its duties shall be determined solely by the provisions hereof. The duties and obligations of the Warrant Agent shall be determined solely by the express provisions of the Warrant Agreement, and the Warrant Agent shall not be liable except for the performance of such duties and obligations as are specifically set forth in the Warrant Agreement. No implied covenants or obligations shall be read into the Warrant Agreement against the Warrant Agent. The Warrant Agent shall not be liable for anything that it may do or refrain from doing in good faith in connection with this Warrant Agreement except for its own negligence, willful misconduct or bad faith.

Section 7.11 Appointment and Acceptance of Agency. The Company hereby appoints the Warrant Agent to act as agent for the Company in accordance with the instructions set forth in this Warrant Agreement, and the Warrant Agent hereby accepts the agency established by this Warrant Agreement and agrees to perform the same upon the terms and conditions herein set forth or as the Company and the Warrant Agent may hereafter agree.

Section 7.12 Successors and Assigns. All the covenants and provisions of this Warrant Agreement by or for the benefit of the Company or the Warrant Agent shall bind and inure to the benefit of their respective successors and assigns hereunder. The Warrant Agent may assign this Warrant Agreement or any rights and obligations hereunder, in whole or in part, to an Affiliate thereof with the prior consent of the Company, provided that the Warrant Agent may make such an assignment without consent of the Company to any successor to the Warrant Agent by consolidation, merger or transfer of its assets subject to the terms and conditions of the Warrant Agreement.

Section 7.13 Notices. Any notice or demand authorized by this Warrant Agreement to be given or made to the Company shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Company with the Warrant Agent) or electronic mail, as follows:

Key Energy Services, Inc.
1301 McKinney Street, Suite 1800
Houston, Texas 77010
Attention: [✉ Katherine Hargis – Vice President, Chief Legal Officer and Secretary](mailto:khargis@keyenergy.com)
Email: [✉ khargis@keyenergy.com](mailto:khargis@keyenergy.com)

with a copy (which shall not constitute notice) to:

[\[Address\]](#)
[\[Attention\]](#)
[Wachtell, Lipton, Rosen & Katz](#)
[51 West 52nd Street](#)
[New York, New York 10019](#)
[Attention: Joshua A. Feltman](#)
[Email: jafeltman@WLRK.com](#)
[\[Email\]](#)
[and to:](#)

[Sidley Austin LLP](#)
[555 West Fifth Street, Suite 4000](#)
[Los Angeles, California 90013](#)
[Attention: Jeffrey E. Bjork](#)
[Email: jbjork@sidley.com](#)

Any notice or demand authorized by this Warrant Agreement to be given or made to the Warrant Agent shall be sufficiently given or made if sent by mail first-class, postage prepaid, addressed (until another address is filed in writing by the Warrant Agent with the Company) or electronic mail, as follows:

American Stock Transfer & Trust Company, LLC

[6201 15th Avenue](#)

[Brooklyn, NY 11219](#)

Attention: [Reorg Department](#)

Address: [\[redacted\]](#)

Email: [\[redacted\]@amstock.com](#)

Any notice or demand authorized by this Warrant Agreement to be given or made to the Global Warrantholder or any other Warrantholder shall be sufficiently given or made if sent by first-class mail, postage prepaid or electronic mail to the last address of the Global Warrantholder or other Warrantholder as it shall appear on the Warrant Register.

Section 7.14 Applicable Law; Jurisdiction. The validity, interpretation and performance of this Warrant Agreement and of the Warrant Certificates shall be governed in accordance with the laws of the State of Delaware, without giving effect to the principles of conflicts of Laws thereof. The parties hereto irrevocably consent to the exclusive jurisdiction of the courts of the State of Delaware and any federal court located in such state in connection with any action, suit or proceeding arising out of or relating to this Warrant Agreement. Each party agrees to commence any such suit, action or proceeding either in the Court of Chancery of the State of Delaware or any court of the United States located in the State of Delaware. Each party hereto hereby irrevocably waives, and agrees not to assert, by way of motion, as a defense, counterclaim or otherwise, in any suit, action or proceeding with respect to this Warrant Agreement, any claim that it is not personally subject to the jurisdiction of the above-named courts for any reason other than the failure to serve process in accordance with this Section 7.14, that its property is exempt or immune from jurisdiction of any such court or from any legal process commenced in such courts (whether through service of notice, attachment prior to judgment, attachment in aid of execution of judgment, execution of judgment or otherwise), and to the fullest extent permitted by applicable law, that the suit, action or proceeding in any such court is brought in an inconvenient forum, or that this Warrant Agreement, or the subject matter hereof, may not be enforced in or by such courts and further irrevocably waives, to the fullest extent permitted by applicable law, the benefit of any defense that would hinder, fetter or delay the levy, execution or collection of any amount to which the party is entitled pursuant to the final judgment of any court having jurisdiction. Each party irrevocably consents to the service of process out of any of the aforementioned courts in any such suit, action or proceeding by the mailing of copies thereof by registered mail, postage prepaid, to such party at its mailing address determined in accordance with this Warrant Agreement, such service of process to be effective upon acknowledgment of receipt of such registered mail. Nothing herein shall affect the right of any party to serve process in any other manner permitted by law.

Section 7.15 Waiver of Jury Trial. EACH OF THE COMPANY AND THE WARRANT AGENT ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY WHICH MAY ARISE UNDER THIS WARRANT AGREEMENT OR A WARRANT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PERSON HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PERSON MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS WARRANT AGREEMENT OR A WARRANT. EACH OF THE COMPANY AND THE WARRANT AGENT CERTIFIES AND ACKNOWLEDGES THAT (a) NO REPRESENTATIVE, AGENT OR ATTORNEY OF THE OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER, (b) SUCH PERSON UNDERSTANDS AND HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (c) SUCH PERSON MAKES THIS WAIVER VOLUNTARILY, AND (d) SUCH PERSON HAS BEEN INDUCED TO ENTER INTO THIS WARRANT AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

Section 7.16 Benefit of this Warrant Agreement. Nothing in this Warrant Agreement expressed and nothing that may be implied from any of the provisions hereof is intended, or shall be construed, to confer upon, or

give to, any Person or corporation other than the parties hereto and the Beneficial Owners and Warrantholders any right, remedy or claim under or by reason of this Warrant Agreement or of any covenant, condition, stipulation, promise or agreement hereof, and all covenants, conditions, stipulations, promises and agreements in this Warrant Agreement contained shall be for the sole and exclusive benefit of the parties hereto, Beneficial Owners, the Warrantholders and their respective successors.

Section 7.17 Registered Warrantholder. Prior to due presentment for registration of Transfer, the Company and the Warrant Agent may deem and treat the Person in whose name any Warrants are registered in the Warrant Register as the absolute owner thereof for all purposes whatever (notwithstanding any notation of ownership or other writing thereon made by anyone other than the Company or the Warrant Agent) and neither the Company nor the Warrant Agent shall be affected by any notice to the contrary or be bound to recognize any equitable or other claim to or interest in any Warrants on the part of any other Person and shall not be liable for any registration of Transfer of Warrants that are registered or to be registered in the name of a fiduciary or the nominee of a fiduciary unless made with actual knowledge that a fiduciary or nominee is committing a breach of trust in requesting such registration of Transfer or with such knowledge of such facts that its participation therein amounts to bad faith.

Section 7.18 Headings. The Article and Section headings herein are for convenience only and are not a part of this Warrant Agreement and shall not affect the interpretation thereof.

Section 7.19 Counterparts. This Warrant Agreement may be executed in any number of counterparts on separate counterparts, each of which so executed shall be deemed to be an original, but all such counterparts shall together constitute one and the same instrument.

Section 7.20 Entire Agreement. This Warrant Agreement and the Warrant Certificates constitute the entire agreement of the Company, the Warrant Agent and the Beneficial Owners and Warrantholders with respect to the subject matter hereof and supersede all prior agreements and undertakings, both written and oral, among the Company, the Warrant Agent and the Beneficial Owners and Warrantholders with respect to the subject matter hereof.

Section 7.21 Severability. Wherever possible, each provision of this Warrant Agreement shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Warrant Agreement shall be prohibited by or invalid under applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Warrant Agreement.

Section 7.22 Termination. This Warrant Agreement, as it relates to the 4-Year Warrants and the 5-Year Warrants shall terminate at the 4-Year Expiration Date and the 5-Year Expiration Date, respectively (or Close of Business on the Settlement Date with respect to any Exercise Notice delivered or deemed delivered prior to the applicable Expiration Date). Notwithstanding the foregoing, this Warrant Agreement, as it relates to the 4-Year Warrants and the 5-Year Warrants will terminate on such earlier date on which all outstanding 4-Year Warrants or the 5-Year Warrants have been exercised, respectively. All provisions regarding indemnification, warranty, liability and limits thereon shall survive the termination or expiration of this Warrant Agreement.

Section 7.23 Confidentiality. The Warrant Agent and the Company agree that personal, non-public Global Warrantholder, Beneficial Owner and Warrantholder information which is exchanged or received pursuant to the negotiation or the carrying out of this Warrant Agreement shall remain confidential, and shall not be voluntarily disclosed to any other person, except disclosures pursuant to applicable securities Laws or otherwise as may be required by Law, including, without limitation, pursuant to subpoenas from state or federal government authorities.

[signature pages follow]

IN WITNESS WHEREOF, this Warrant Agreement has been duly executed by the parties hereto as of the day and year first above written.

KEY ENERGY SERVICES, INC.

By: _____
Name:
Title:

AMERICAN STOCK TRANSFER & TRUST COMPANY,
LLC

By: _____
Name:
Title:

[SIGNATURE PAGE TO WARRANT AGREEMENT]

Schedule A

SCHEDULE OF INCREASES OR DECREASES IN GLOBAL WARRANTS

The initial Number of Global Warrants is [●]. In accordance with the Warrant Agreement dated as of [●], 201[●] among the Company and American Stock Transfer & Trust Company, LLC, as Warrant Agent, the following increases or decreases in the Number of Warrants have been made:

Date	Amount of increase in Number of Warrants evidenced by this Global Warrant	Amount of decrease in Number of Warrants evidenced by this Global Warrant	Number of Warrants evidenced by this Global Warrant following such decrease or increase	Signature of authorized signatory
-------------	--	--	--	--

EXHIBIT A-1

FORM OF 4-YEAR GLOBAL WARRANT CERTIFICATE

No. [1]

CUSIP NO. [●]49309J 111

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

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

Key Energy Services, Inc.

[•]~~+~~, 201[•]

NUMBER OF WARRANTS: Initially, ~~+~~1899,700 Warrants, subject to adjustment as described in the Warrant Agreement dated as of [•], 201[•] between Key Energy Services, Inc. and American Stock Transfer & Trust Company, LLC, as Warrant Agent (as supplemented or amended, the “**Warrant Agreement**”), each of which is exercisable for one Common Share.

EXERCISE PRICE: Initially, \$~~+~~43.52 per Warrant, subject to adjustment as described in the Warrant Agreement.

FORM OF SETTLEMENT:

Full Physical Settlement: If Full Physical Settlement is applicable, the Company shall deliver, against payment of the Exercise Price, a number of Common Shares equal to the number of Warrants exercised.

Net Share Settlement: If Net Share Settlement is applicable, the Company shall deliver, without any Cash payment therefor, a number of Common Shares equal to the quotient determined by dividing (i) the Fair Value (as of the Exercise Date) of the number of Common Shares deliverable pursuant to Full Physical Settlement minus the aggregate Exercise Price that would be payable pursuant to Full Physical Settlement by (ii) the Fair Value (as of the Exercise Date) of the number of Common Shares deliverable pursuant to Full Physical Settlement.

DATES OF EXERCISE: At any time, and from time to time, prior to the Close of Business on the Expiration Date.

EXPIRATION DATE: The Close of Business on [•], 20[•].

This Global Warrant Certificate certifies that:

~~+~~Cede & Co., or its registered assigns, is the Global Warrantholder of the Number of Warrants (the “**Warrants**”) specified above (such number subject to adjustment from time to time as described in the Warrant Agreement).

Reference is hereby made to the further provisions of this Global Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This Global Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this Global Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, Key Energy Services, Inc. has caused this instrument to be duly executed as of the date first written above.

KEY ENERGY SERVICES, INC.

By: _____
Name:
Title:

Certificate of Authentication

These are the Warrants referred to in the above-mentioned Warrant Agreement. Countersigned as of the date above written:

American Stock Transfer & Trust Company, LLC,
as Warrant Agent

By: _____
Authorized Officer

KEY ENERGY SERVICES, INC.

The Warrants evidenced by this Global Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to the Warrant Agreement, dated as of [●], 201[●] (as it may be amended or supplemented, the “**Warrant Agreement**”), between the Company and American Stock Transfer & Trust Company, LLC, as Warrant Agent, and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Global Warrantholder consents by issuance of this Global Warrant Certificate. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the laws of the State of Delaware.

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

Name, Address and Zip Code of Assignee

and irrevocably appoints _____
Name of Agent

as its agent to transfer this Warrant Certificate on the books of the Warrant Agent.

[Signature page follows]

Date: []

Name of Assignor

By: _____

Name:

Title:

(Sign exactly as your name appears on this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

Schedule A

SCHEDULE OF INCREASES OR DECREASES IN 4-YEAR GLOBAL WARRANTS

The initial Number of 4-Year Global Warrants is 899,700. In accordance with the Warrant Agreement dated as of [●], 201[●] among the Company and American Stock Transfer & Trust Company, LLC, as Warrant Agent, the following increases or decreases in the Number of 4-Year Global Warrants have been made:

<u>Date</u>	<u>Amount of increase in Number of 4-Year Global Warrants evidenced by this Global Warrant</u>	<u>Amount of decrease in Number of 4-Year Global Warrants evidenced by this Global Warrant</u>	<u>Number of 4-Year Global Warrants evidenced by this Global Warrant following such decrease or increase</u>	<u>Signature of authorized signatory</u>
-------------	--	--	--	--

EXHIBIT A-2

FORM OF 4-YEAR INDIVIDUAL WARRANT CERTIFICATE

[FACE]

No. [●]

CUSIP NO. ~~[●]~~[49309J 111](#)

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO VARIOUS TERMS, PROVISIONS AND CONDITIONS, INCLUDING CERTAIN RESTRICTIONS ON THE SALE, TRANSFER, ASSIGNMENT, DISTRIBUTION OR OTHER DISPOSITION (EACH, A “TRANSFER”) OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE, IN THAT CERTAIN WARRANT AGREEMENT DATED AS OF [●], ~~2016~~[2011](#) [●] (THE “WARRANT AGREEMENT”), BETWEEN THE COMPANY AND THE WARRANT AGENT NAMED THEREIN. THE COMPANY WILL NOT REGISTER THE TRANSFER OF SUCH SECURITIES ON THE BOOKS OF THE COMPANY UNLESS AND UNTIL THE TRANSFER HAS BEEN MADE IN COMPLIANCE WITH THE TERMS OF THE WARRANT AGREEMENT. A COPY OF THE WARRANT AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE ISSUER OF THIS CERTIFICATE.

Key Energy Services, Inc.

[●] ~~+~~, 201[●]

NUMBER OF WARRANTS: Initially, [●] Warrants, subject to adjustment as described in the Warrant Agreement dated as of [●], 201[●] between Key Energy Services, Inc. and American Stock Transfer & Trust Company, LLC, as Warrant Agent (as supplemented or amended, the “**Warrant Agreement**”), each of which is exercisable for one Common Share.

EXERCISE PRICE: Initially, \$~~+~~43.52 per Warrant, subject to adjustment as described in the Warrant Agreement.

FORM OF SETTLEMENT:

Full Physical Settlement: If Full Physical Settlement is applicable, the Company shall deliver, against payment of the Exercise Price, a number of Common Shares equal to the number of Warrants exercised.

Net Share Settlement: If Net Share Settlement is applicable, the Company shall deliver, without any Cash payment therefor, a number of Common Shares equal to the quotient determined by dividing (i) the Fair Value (as of the Exercise Date) of the number of Common Shares deliverable pursuant to Full Physical Settlement minus the aggregate Exercise Price that would be payable pursuant to Full Physical Settlement by (ii) the Fair Value (as of the Exercise Date) of the number of Common Shares deliverable pursuant to Full Physical Settlement.

DATES OF EXERCISE: At any time, and from time to time, prior to the Close of Business on the Expiration Date.

EXPIRATION DATE: The Close of Business on [●], 20[●].

This Warrant Certificate certifies that:

[], or its registered assigns, is the holder of the Number of Warrants (the “**Warrants**”) specified above (such number subject to adjustment from time to time as described in the Warrant Agreement).

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, Key Energy Services, Inc. has caused this instrument to be duly executed as of the date first written above.

KEY ENERGY SERVICES, INC.

By: _____
Name:
Title:

Certificate of Authentication

These are the Warrants referred to in the above-mentioned Warrant Agreement. Countersigned as of the date above written:

American Stock Transfer & Trust Company, LLC,
as Warrant Agent

By: _____
Authorized Officer

[Form of Reverse of Warrant Certificate]

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to the Warrant Agreement, dated as of [●], 201[●] (as it may be amended or supplemented, the “**Warrant Agreement**”), between the Company and American Stock Transfer & Trust Company, LLC, as Warrant Agent, and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the holder consents by issuance of this Warrant Certificate. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the laws of the State of Delaware.

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

Name, Address and Zip Code of Assignee

and irrevocably appoints _____
Name of Agent

as its agent to transfer this Warrant Certificate on the books of the Warrant Agent.

[Signature page follows]

Date: []

Name of Assignor

By: _____

Name:

Title:

(Sign exactly as your name appears on this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

EXHIBIT B-1

FORM OF 5-YEAR GLOBAL WARRANT CERTIFICATE

No. [REDACTED]

CUSIP NO. [REDACTED] [49309J 129](#)

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

TRANSFER OF THIS GLOBAL WARRANT SHALL BE LIMITED TO TRANSFERS IN WHOLE, AND NOT IN PART, TO THE COMPANY, DTC, THEIR SUCCESSORS AND THEIR RESPECTIVE NOMINEES.

Key Energy Services, Inc.

[•]~~H~~, 201[•]

NUMBER OF WARRANTS: Initially, ~~1~~899,700 Warrants, subject to adjustment as described in the Warrant Agreement dated as of [•], 201[•] between Key Energy Services, Inc. and American Stock Transfer & Trust Company, LLC, as Warrant Agent (as supplemented or amended, the “**Warrant Agreement**”), each of which is exercisable for one Common Share.

EXERCISE PRICE: Initially, \$~~1~~54.40 per Warrant, subject to adjustment as described in the Warrant Agreement.
FORM OF SETTLEMENT:

Full Physical Settlement: If Full Physical Settlement is applicable, the Company shall deliver, against payment of the Exercise Price, a number of Common Shares equal to the number of Warrants exercised.

Net Share Settlement: If Net Share Settlement is applicable, the Company shall deliver, without any Cash payment therefor, a number of Common Shares equal to the quotient determined by dividing (i) the Fair Value (as of the Exercise Date) of the number of Common Shares deliverable pursuant to Full Physical Settlement minus the aggregate Exercise Price that would be payable pursuant to Full Physical Settlement by (ii) the Fair Value (as of the Exercise Date) of the number of Common Shares deliverable pursuant to Full Physical Settlement.

DATES OF EXERCISE: At any time, and from time to time, prior to the Close of Business on the Expiration Date.

EXPIRATION DATE: The Close of Business on [•], 20[•].

This Global Warrant Certificate certifies that:

~~H~~Cede & Co., or its registered assigns, is the Global Warrantholder of the Number of Warrants (the “**Warrants**”) specified above (such number subject to adjustment from time to time as described in the Warrant Agreement).

Reference is hereby made to the further provisions of this Global Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This Global Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this Global Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, Key Energy Services, Inc. has caused this instrument to be duly executed as of the date first written above.

KEY ENERGY SERVICES, INC.

By: _____
Name:
Title:

Certificate of Authentication

These are the Warrants referred to in the above-mentioned Warrant Agreement. Countersigned as of the date above written:

American Stock Transfer & Trust Company, LLC,
as Warrant Agent

By: _____
Authorized Officer

KEY ENERGY SERVICES, INC.

The Warrants evidenced by this Global Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to the Warrant Agreement, dated as of [●], 201[●] (as it may be amended or supplemented, the “**Warrant Agreement**”), between the Company and American Stock Transfer & Trust Company, LLC, as Warrant Agent, and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the Global Warrantholder consents by issuance of this Global Warrant Certificate. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the laws of the State of Delaware.

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

Name, Address and Zip Code of Assignee

and irrevocably appoints _____
Name of Agent

as its agent to transfer this Warrant Certificate on the books of the Warrant Agent.

[Signature page follows]

Date: []

Name of Assignor

By: _____

Name:

Title:

(Sign exactly as your name appears on this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

Schedule A

SCHEDULE OF INCREASES OR DECREASES IN 5-YEAR GLOBAL WARRANTS

The initial Number of 5-Year Global Warrants is 899,700. In accordance with the Warrant Agreement dated as of [●], 201[●] among the Company and American Stock Transfer & Trust Company, LLC, as Warrant Agent, the following increases or decreases in the Number of 5-Year Global Warrants have been made:

<u>Date</u>	<u>Amount of increase in Number of 5-Year Global Warrants evidenced by this Global Warrant</u>	<u>Amount of decrease in Number of 5-Year Global Warrants evidenced by this Global Warrant</u>	<u>Number of 5-Year Global Warrants evidenced by this Global Warrant following such decrease or increase</u>	<u>Signature of authorized signatory</u>
-------------	--	--	--	--

EXHIBIT B-2

FORM OF 5-YEAR INDIVIDUAL WARRANT CERTIFICATE

[FACE]

No. [●]

CUSIP NO. ~~[●]~~[49309J129](#)

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE SUBJECT TO VARIOUS TERMS, PROVISIONS AND CONDITIONS, INCLUDING CERTAIN RESTRICTIONS ON THE SALE, TRANSFER, ASSIGNMENT, DISTRIBUTION OR OTHER DISPOSITION (EACH, A “TRANSFER”) OF THE SECURITIES REPRESENTED BY THIS CERTIFICATE, IN THAT CERTAIN WARRANT AGREEMENT DATED AS OF [●], ~~2016~~[201](#)[●] (THE “WARRANT AGREEMENT”), BETWEEN THE COMPANY AND THE WARRANT AGENT NAMED THEREIN. THE COMPANY WILL NOT REGISTER THE TRANSFER OF SUCH SECURITIES ON THE BOOKS OF THE COMPANY UNLESS AND UNTIL THE TRANSFER HAS BEEN MADE IN COMPLIANCE WITH THE TERMS OF THE WARRANT AGREEMENT. A COPY OF THE WARRANT AGREEMENT MAY BE OBTAINED UPON WRITTEN REQUEST TO THE SECRETARY OF THE ISSUER OF THIS CERTIFICATE.

Key Energy Services, Inc.

[•]-[H], 201[•]

NUMBER OF WARRANTS: Initially, [•] Warrants, subject to adjustment as described in the Warrant Agreement dated as of [•], 201[•] between Key Energy Services, Inc. and American Stock Transfer & Trust Company, LLC, as Warrant Agent (as supplemented or amended, the “**Warrant Agreement**”), each of which is exercisable for one Common Share.

EXERCISE PRICE: Initially, \$[•]-[H]54.40 per Warrant, subject to adjustment as described in the Warrant Agreement.

FORM OF SETTLEMENT:

Full Physical Settlement: If Full Physical Settlement is applicable, the Company shall deliver, against payment of the Exercise Price, a number of Common Shares equal to the number of Warrants exercised.

Net Share Settlement: If Net Share Settlement is applicable, the Company shall deliver, without any Cash payment therefor, a number of Common Shares equal to the quotient determined by dividing (i) the Fair Value (as of the Exercise Date) of the number of Common Shares deliverable pursuant to Full Physical Settlement minus the aggregate Exercise Price that would be payable pursuant to Full Physical Settlement by (ii) the Fair Value (as of the Exercise Date) of the number of Common Shares deliverable pursuant to Full Physical Settlement.

DATES OF EXERCISE: At any time, and from time to time, prior to the Close of Business on the Expiration Date.

EXPIRATION DATE: The Close of Business on [•], 20[•].

This Warrant Certificate certifies that:

[], or its registered assigns, is the holder of the Number of Warrants (the “**Warrants**”) specified above (such number subject to adjustment from time to time as described in the Warrant Agreement).

Reference is hereby made to the further provisions of this Warrant Certificate set forth on the reverse hereof, and such further provisions shall for all purposes have the same effect as though fully set forth in this place.

This Warrant Certificate shall not be valid unless countersigned by the Warrant Agent.

In the event of any inconsistency between the Warrant Agreement and this Warrant Certificate, the Warrant Agreement shall govern.

IN WITNESS WHEREOF, Key Energy Services, Inc. has caused this instrument to be duly executed as of the date first written above.

KEY ENERGY SERVICES, INC.

By: _____
Name:
Title:

Certificate of Authentication

These are the Warrants referred to in the above-mentioned Warrant Agreement. Countersigned as of the date above written:

American Stock Transfer & Trust Company, LLC,
as Warrant Agent

By: _____
Authorized Officer

[Form of Reverse of Warrant Certificate]

The Warrants evidenced by this Warrant Certificate are part of a duly authorized issue of Warrants issued by the Company pursuant to the Warrant Agreement, dated as of [●], 201[●] (as it may be amended or supplemented, the “**Warrant Agreement**”), between the Company and American Stock Transfer & Trust Company, LLC, as Warrant Agent, and are subject to the terms and provisions contained in the Warrant Agreement, to all of which terms and provisions the holder consents by issuance of this Warrant Certificate. Without limiting the foregoing, all capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

The Warrant Agreement and the terms of the Warrants are subject to amendment as provided in the Warrant Agreement.

This Warrant Certificate shall be governed by, and interpreted in accordance with, the laws of the State of Delaware.

FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned assigns and transfers the Warrant(s) represented by this Certificate to:

Name, Address and Zip Code of Assignee

and irrevocably appoints _____
Name of Agent

as its agent to transfer this Warrant Certificate on the books of the Warrant Agent.

[Signature page follows]

Date: []

Name of Assignor

By: _____

Name:

Title:

(Sign exactly as your name appears on this Certificate)

NOTICE: The signature(s) should be guaranteed by an eligible guarantor institution (banks, stockbrokers, savings and loan associations and credit unions with membership in an approved signature guarantee medallion program), pursuant to S.E.C. Rule 17Ad-15.

Form of Global Warrant Exercise Notice

[Address]

Attention: Transfer Department

Re: Warrant Agreement dated as of [●], 201[●] between Key Energy Services, Inc. (the “**Company**”) and American Stock Transfer & Trust Company, LLC, as Warrant Agent (as it may be supplemented or amended, the “**Warrant Agreement**”)

The undersigned hereby irrevocably elects to exercise the right, represented by the Global Warrant Certificate No. ____ held for its benefit through the book-entry facilities of The Depository Trust Company (the “**Depository**”), to exercise ____ Warrants and receive the consideration deliverable in exchange therefor pursuant to the following settlement method (check one):

Full Physical Settlement

Net Share Settlement

If Full Physical Settlement is elected, the undersigned shall tender payment of the Exercise Price therefore in accordance with instructions received from the Warrant Agent.

Please check below if this exercise is contingent upon a registered public offering or any Reorganization Transaction in accordance with Section 3.02(g) of the Warrant Agreement.

This exercise is being made in connection with a registered public offering or any other Reorganization Transaction; provided, that in the event that such transaction shall not be consummated, then this exercise shall be deemed revoked.

THIS EXERCISE NOTICE MUST BE DELIVERED TO THE WARRANT AGENT, PRIOR TO CLOSE OF BUSINESS ON THE EXPIRATION DATE. THE WARRANT AGENT SHALL NOTIFY YOU OF THE ADDRESS AND PHONE NUMBER WHERE YOU CAN CONTACT THE WARRANT AGENT AND TO WHICH WARRANT EXERCISE NOTICES ARE TO BE SUBMITTED.

All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

By: _____

Authorized Signature

Address:

Telephone:

EXHIBIT C-2

FORM OF INDIVIDUAL WARRANT EXERCISE NOTICE

[Address]

Attention: Transfer Department

Re: Warrant Agreement dated as of [●], 201[●] between Key Energy Services, Inc. (the “**Company**”) and American Stock Transfer & Trust Company, LLC, as Warrant Agent (as it may be supplemented or amended, the “**Warrant Agreement**”)

The undersigned hereby irrevocably elects to exercise the right, represented by the Warrant Certificate No. ~~held for its benefit through the book-entry facilities of the Warrant Agent~~ _____, to exercise _____ Warrants and receive the consideration deliverable in exchange therefor pursuant to the following settlement method (check one):

Full Physical Settlement

Net Share Settlement

If Full Physical Settlement is elected, the undersigned shall tender payment of the Exercise Price therefore in accordance with instructions received from the Warrant Agent.

Please check below if this exercise is contingent upon a registered public offering or any Reorganization Transaction in accordance with Section 3.02(g) of the Warrant Agreement.

This exercise is being made in connection with a registered public offering or any other Reorganization Transaction; provided, that in the event that such transaction shall not be consummated, then this exercise shall be deemed revoked.

THIS EXERCISE NOTICE MUST BE DELIVERED TO THE WARRANT AGENT, PRIOR TO CLOSE OF BUSINESS ON THE EXPIRATION DATE. THE WARRANT AGENT SHALL NOTIFY YOU OF THE ADDRESS AND PHONE NUMBER WHERE YOU CAN CONTACT THE WARRANT AGENT AND TO WHICH WARRANT EXERCISE NOTICES ARE TO BE SUBMITTED.

All capitalized terms used herein and not otherwise defined shall have the meanings set forth in the Warrant Agreement.

By: _____

Authorized Signature

Address:

Telephone:

EXHIBIT D

Fee Schedule

~~†~~The Company shall pay the Warrant Agent for performance of its services under this Warrant Agreement such compensation as shall be agreed in writing between the Company and the Warrant Agent.~~†~~[†]

~~†-NTD: Fees to be discussed.~~

EXHIBIT E

INITIAL CASH-OUT WARRANTHOLDERS

<u>Name</u>	<u>No. of 4-Year Warrants</u>	<u>No. of 5-Year Warrants</u>
<u>Ambrosiani Pastore Foundation, Inc.</u>	<u>9,695</u>	<u>9,695</u>
<u>Restated Jack & Mary Jo Ambrosiani Family Trust u/a July 18, 1997, Jack Ambrosiani, Trustee</u>	<u>9,695</u>	<u>9,695</u>

EXHIBIT F

PRIVATE PLACEMENT LEGEND FOR INDIVIDUAL WARRANT CERTIFICATES

THE SECURITIES REPRESENTED BY THIS CERTIFICATE HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE SECURITIES MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS.

EXHIBIT G

**PRIVATE PLACEMENT LEGEND FOR
CASH-OUT WARRANT SHARES ACQUIRED UPON
EXERCISE OF INDIVIDUAL WARRANT CERTIFICATES**

THE SECURITIES REPRESENTED HEREBY HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OF THE UNITED STATES. THE SECURITIES MAY NOT BE TRANSFERRED EXCEPT PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT UNDER THE SECURITIES ACT AND APPLICABLE STATE SECURITIES LAWS OR PURSUANT TO AN APPLICABLE EXEMPTION FROM THE REGISTRATION REQUIREMENTS OF THE SECURITIES ACT AND SUCH LAWS.

Blackline for Amended Exhibit J to Plan Supplement

List of Reorganized Debtors' Board Members and Officers

In re: Key Energy Services, Inc., et al.
Proposed Directors and Officers of the Reorganized Debtors¹

In accordance with Article IV.W of the Plan and section 1129(a)(5) of the Bankruptcy Code, this Exhibit J lists the identities and affiliations of the individuals who have been proposed as of the date hereof to serve as directors and officers of the Reorganized Debtors.

1. Directors of Reorganized Key²

Jacob Kotzubei: Mr. Kotzubei joined Platinum Equity in 2002 and is a Partner at the firm and a member of the firm's Investment Committee. Mr. Kotzubei serves as an officer and/or director of a number of Platinum's portfolio companies. Prior to joining Platinum in 2002, Mr. Kotzubei worked for 4 1/2 years for Goldman Sachs' Investment Banking Division in New York City. Previously, he was an attorney at Sullivan & Cromwell LLP in New York City, specializing in mergers and acquisitions. Mr. Kotzubei received a Bachelor's degree from Wesleyan University and holds a Juris Doctor from Columbia University School of Law where he was elected a member of the Columbia Law Review. Mr. Kotzubei shall be a Designated Platinum Director and shall have two (2) votes on the New Key Board.

Philip E. Norment: Mr. Norment is a partner at Platinum Equity and a member of Platinum Equity's Investment Committee and is a senior advisor on specific operational initiatives throughout the portfolio. He is also the senior operations executive responsible for evaluating acquisition opportunities and integrating new acquisitions into the portfolio. Prior to joining Platinum Equity in 1997, Mr. Norment served in a variety of management positions at Pilot. Over the course of 12 years he worked in the areas of global support, operations, consultative services and sales support, achieving the position of Chief Operating Officer. Mr. Norment earned a Bachelor's degree in Economics and an MBA from the University of Massachusetts, Amherst. Mr. Norment shall be a Designated Platinum Director and shall have two (2) votes on the New Key Board.

Mary Ann Sigler: Ms. Sigler is the Chief Financial Officer of Platinum Equity. Ms. Sigler joined Platinum Equity in 2004 and is responsible for overall accounting, tax, and financial reporting as well as managing strategic planning projects for the firm. Prior to joining Platinum Equity, Ms. Sigler was with Ernst & Young LLP for 25 years where she was a partner. Ms. Sigler has a B.A. in Accounting from California State University Fullerton and a Masters in Business Taxation from the University of Southern California. Ms. Sigler is a Certified Public Accountant in California, as well as a member of the American Institute of Certified Public Accountants and the California Society of Certified Public Accountants. Ms. Sigler shall be a Designated Platinum Director and shall have one (1) vote on the New Key Board.

¹ Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Plan.

² Robert Drummond is an "insider" (as such term is defined in the Bankruptcy Code) of the Debtors. It is expected that Mr. Drummond will not receive any separate compensation for serving as a director of Reorganized Key, but instead will be compensated for his service as the President and Chief Executive Officer of the company.

Bryan Kelln: Mr. Kelln is a Partner at Platinum Equity and the President of Portfolio Operations, a group responsible for overseeing business strategy and operations at Platinum Equity's portfolio companies. Mr. Kelln joined Platinum in 2008. He works closely with the firm's Operations Team and portfolio company executive management to drive strategic initiatives and to deploy operational resources. Prior to joining Platinum Equity, Mr. Kelln held senior operations roles at a number of companies including Nortek, Inc, Jacuzzi, Inc., RockShox, Inc. and General Cable Corporation. During a portion of this time, Mr. Kelln was an Operating Executive with The Jordan Company, a private investment firm, where he was involved in acquisitions, divestitures and operations for the firm and served as a board member of various portfolio companies. Mr. Kelln also previously served as a Partner in the Supply Chain Management Practice of Mercer Management Consulting. Mr. Kelln received his bachelor's degree, Summa Cum Laude, from Washington State University and a Masters of Business Administration from The Ohio State University, Fisher College of Business. Mr. Kelln shall be a Designated Platinum Director and shall have two (2) votes on the New Key Board.

Robert Drummond: Mr. Drummond will be Reorganized Key's President and Chief Executive Officer. He joined the Company in June 2015 as President and Chief Operating Officer and has been a member of the Board of Directors since November 2015. He is also a member of the Board's Executive Committee and currently serves as Chair of the Equity Award Committee. Prior to joining the Company, Mr. Drummond served for 31 years at Schlumberger Limited, where he held various executive positions including President North America, Vice President of General Manager US Land, Vice President of Global Sales, Vice President General Manager US Gulf of Mexico, and President North American Offshore and Alaska. Mr. Drummond currently sits on the board of directors of the National Ocean Industries Association and the board of directors for the Petroleum Equipment Suppliers Association. Previously, he served on the board of directors of Houston Offshore Energy Center, Greater Houston Partnership, and as Advisory Board Member of the University of Houston Global Energy Management Institute. Mr. Drummond received a Bachelor's degree in Mineral/Petroleum Engineering from the University of Alabama in 1982 and sits on their College of Engineering Leadership Board. Mr. Drummond shall be a Designated Platinum Director and shall have one (1) vote on the New Key Board.

Sherman K. Edmiston III: Mr. Edmiston is a senior restructuring executive and has over 20 years of experience working with companies in transition. Mr. Edmiston was a Partner and Managing Director at Zolfo Cooper LLC from November 2009 until December 2015. Mr. Edmiston served as Chief Restructuring Officer of Xinergy, Ltd, a Central Appalachian producer of thermal and metallurgical coal, and previously served as Chairman of the Finance and Transaction committee of JL French Automotive Castings, Inc. Mr. Edmiston currently serves on the Board of Directors of Arch Coal, Inc.. Mr. Edmiston received his B.S. in mechanical Engineering from Arizona State University and his MBA from the University of Michigan. Mr. Edmiston shall be a Designated Other Director and shall have one (1) vote on the New Key Board.

Scott D. Vogel: Mr. Vogel was a Managing Director at Davidson Kempner Capital Management investing in distressed debt securities from 2002 to 2016. Previously, Mr. Vogel worked at MFP Investors, investing in special situations and turnaround opportunities. Prior to MFP Investors, he was an investment banker at Chase Securities. Mr. Vogel received his

M.B.A. from The Wharton School at the University of Pennsylvania and his B.S.B.A. from Washington University. Mr. Vogel serves on the Board of Directors of Merrill Corp. and Arch Coal, Inc., and previously on numerous Board of Directors and ad hoc creditor and equity committees throughout his career. Mr. Vogel is a member of the Olin Alumni Board of Washington University, a member of the Advisory Board of Grameen America, and a former member of New Leadership Council of Make-A-Wish Foundation of Metro New York. Mr. Vogel shall be a Designated Other Director and shall have one (1) vote on the New Key Board.

Steven H. Pruett: Mr. Pruett is the President and Chief Executive Officer of Elevation Resources LLC, a Permian Basin focused exploration and production company which he co-founded in 2013. Mr. Pruett was previously senior vice president of corporate development of Concho Resources in 2012-2013. He co-founded and served as president and CFO of Legacy Reserves LP, a public MLP, from 2005-2012. Mr. Pruett has over 30 years of oil and gas operating, financial and management experience, most of which has been in the Permian Basin. Prior to forming Legacy Reserves, Mr. Pruett was a venture partner with Quantum Energy Partners, and was President of Petroleum Place and P2 Energy Solutions. He previously served as president and CEO of First Permian, founded and was president and CEO of First Reserve Oil & Gas Co, and served as a Vice President for First Reserve Corporation originating upstream equity investments. Mr. Pruett began his career as a petroleum engineer for ARCO Oil & Gas and worked in planning and business development for Amoco Production Company. Mr. Pruett received his B.S. in Petroleum Engineering from the University of Texas and graduated with an MBA from the Harvard Business School. Mr. Pruett shall be an Independent Director designated the Other Backstop Parties and shall have one (1) vote on the New Key Board.

C. Christopher Gaut: Mr. Gaut has been the Chief Executive Officer of Forum Energy Technologies, Inc. since August 2010. Mr. Gaut served as the President at Forum Energy Technologies, Inc. from August 2010 to May 18, 2016. He served as Managing Director of SCF Partners. He served as the President of Drilling & Evaluation Division of Halliburton Company from January 2008 to April 8, 2009. He served as an Executive Vice President of Halliburton Company from March 2003 to December 31, 2007. He served as an Executive Vice President of Halliburton Energy Services, Inc. from March 2003 to December 31, 2007 and served as its Chief Financial Officer from March 2003 to April 2009. Prior to joining Halliburton Company in 2003, he served as Member of Office of the President and Chief Operating Officer at Enscopl from January, 2002 to February 2003. Mr. Gaut also served as Senior Vice President and Chief Financial Officer of Enscopl from December 1987 to December 2001. He also served as co-President of Enscopl. Prior to ENSCO, he was a Partner in Pacific Asset Capital. He began his career with Amoco Corporation in 1980 and served various financial management positions. Mr. Gaut served as the President of Dual Drilling Company (formerly Dual Holding Co.). He has been the Chairman of Reservoir Group Ltd. since February 2010 and Forum Energy Technologies, Inc. since August 2010. He has been a Director of Forum Energy Technologies, Inc. (formerly Forum Oilfield Technologies, Inc.) since December 2006. He has been a Non-Executive Director of Enscopl since May 2008. He served as a Director of KBR Inc., since March 2006. Mr. Gaut also served as a Director of Dual Drilling Company. He is a Member of Financial Executives International and is on the Board of Directors of the National Ocean Industries Association. He also serves on the Board of the Houston Museum of Natural Science. Mr. Gaut received his Bachelor of Arts degree in Engineering from Dartmouth College and an M.B.A. from the Wharton School of Business at the University of Pennsylvania. Mr. Gaut shall

be an Independent Director designated and mutually agreed by Platinum and the Other Backstop Parties and shall have one (1) vote on the New Key Board.

H.H. Tripp Wommack, III: Mr. Wommack is currently the Chairman, President and ~~CEO~~Chief Executive Officer of Saber Oil and Gas Ventures, LLC, an oil and gas company that focuses on acquisition and exploitation efforts in the Permian Basin of West Texas and Southeast New Mexico. Mr. Wommack has served in this position since August 2008. Mr. Wommack also serves as the Chairman of Cibolo Creek Partners, LLC, which specializes in commercial real estate investments, ~~and Globe Energy Services, LLC, an energy services company in the Permian Basin~~a position he has held since January 1993. Prior to his current positions, Mr. Wommack was Chairman, President and ~~CEO~~Chief Executive Officer of Southwest Royalties, Inc. from August 1983 to August 2004 and Saber Resources from July 2004 until August 2008. Additionally, Mr. Wommack was the ~~Founder~~founder, Chairman and ~~CEO~~Chief Executive Officer of Basic Energy Services (formerly Sierra Well Services, Inc.), and following its initial public offering, Mr. Wommack continued to serve on the ~~Board~~board of directors of Basic Energy Services through June 2009. Mr. Wommack ~~currently serves on the board~~has served as a member of the C&J Energy Services board of directors since December 2010. Mr. Wommack graduated with a B.A. from the University of North Carolina, Chapel Hill, and earned a J.D. from the University of Texas. Mr. Wommack shall be an Independent Director designated by Platinum and shall have one (1) vote on the New Key Board.

2. Officers of Reorganized Key³

Name	Title	Base Salary ⁴³
Robert Drummond	President and Chief Executive Officer	\$750,000
J. Marshall Dodson	Senior Vice President and Chief Financial Officer	\$375,000
David Brunnert	Senior Vice President and Chief Operating Officer	\$350,000
<u>Katherine I.</u> Katherine Hargis	Vice President, Chief Legal Officer and Secretary	\$275,000
Scott P. Miller	Senior Vice President, Operations Services, and Chief Administrative Officer	\$275,000
Eddie Picard	Vice President and Controller	\$235,000

3. ~~Directors and~~ Officers of Reorganized ~~Debtors other than Reorganized Key~~ Energy Services, LLC⁴

³ ~~Additional Officers of Reorganized Key may be designated prior to the Combined Hearing.~~

⁴³ In addition to the base salary, the officers of Reorganized Key will be eligible to participate in the New MIP (as defined in the Plan).

~~The directors and officers of the Reorganized Debtors other than Reorganized Key, if any, will be appointed as of the Effective Date and are expected to be comprised of certain officers and members of the board of Reorganized Key. The identity and affiliations of such proposed directors and officers, if any, shall be disclosed in the Plan Supplement on or before the Effective Date.~~

<u>Name</u>	<u>Title</u>
<u>Robert Drummond</u>	<u>President (Chief Operating Officer in California Only)</u>
<u>J. Marshall Dodson</u>	<u>Senior Vice President, Chief Financial Officer, and Treasurer</u>
<u>David Brunnert</u>	<u>Senior Vice President and Chief Operating Officer</u>
<u>Katherine I. Hargis</u>	<u>Vice President, Chief Legal Officer and Secretary</u>
<u>Scott P. Miller</u>	<u>Senior Vice President, Operations Services, and Chief Administrative Officer</u>
<u>Eddie Picard</u>	<u>Vice President and Controller</u>

4. Officers of Reorganized Misr Key Energy Investments, LLC

<u>Name</u>	<u>Title</u>
<u>Robert Drummond</u>	<u>President and Chief Executive Officer</u>
<u>J. Marshall Dodson</u>	<u>Senior Vice President and Chief Financial Officer</u>
<u>David Brunnert</u>	<u>Senior Vice President and Chief Operating Officer</u>
<u>Katherine I. Hargis</u>	<u>Vice President, Chief Legal Officer and Secretary</u>
<u>Scott P. Miller</u>	<u>Senior Vice President, Operations Services, and Chief Administrative Officer</u>
<u>Eddie Picard</u>	<u>Vice President and Controller</u>

5. Officers of Reorganized Misr Key Energy Services, LLC

<u>Name</u>	<u>Title</u>
-------------	--------------

⁴ Officers of the Reorganized Debtors other than Reorganized Key (the “Reorganized Subsidiary Debtors”) receive no additional compensation beyond what is set forth in the chart above on account of serving as an officer of one or more Reorganized Subsidiary Debtors.

<u>Robert Drummond</u>	<u>President and Chief Executive Officer</u>
<u>J. Marshall Dodson</u>	<u>Senior Vice President and Chief Financial Officer</u>
<u>David Brunnert</u>	<u>Senior Vice President and Chief Operating Officer</u>
<u>Katherine I. Hargis</u>	<u>Vice President, Chief Legal Officer and Secretary</u>
<u>Scott P. Miller</u>	<u>Senior Vice President, Operations Services, and Chief Administrative Officer</u>
<u>Eddie Picard</u>	<u>Vice President and Controller</u>

Exhibit M-3 to Plan Supplement

New ABL Credit Agreement

LOAN AND SECURITY AGREEMENT

Dated as of [●], 201[●]

**KEY ENERGY SERVICES, INC., and
KEY ENERGY SERVICES, LLC,**
as Borrowers

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

and

BANK OF AMERICA, N.A.
and
WELLS FARGO BANK, NATIONAL ASSOCIATION
as Co-Collateral Agents

and

CERTAIN FINANCIAL INSTITUTIONS,
as Lenders

BANK OF AMERICA, N.A.
and
WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Joint Lead Arrangers and Joint Bookrunners

and

WELLS FARGO BANK, NATIONAL ASSOCIATION
as Syndication Agent

TABLE OF CONTENTS

	<u>Page</u>
Section 1. DEFINITIONS; RULES OF CONSTRUCTION	1
1.1. Definitions	1
1.2. Accounting Terms.....	37
1.3. Uniform Commercial Code.....	37
1.4. Certain Matters of Construction.....	37
1.5. Pro Forma Calculations	38
Section 2. CREDIT FACILITIES	39
2.1. Revolver Commitment.....	39
2.2. [Reserved].....	41
2.3. Letter of Credit Facility	41
Section 3. INTEREST, FEES AND CHARGES	44
3.1. Interest	44
3.2. Fees.....	46
3.3. Computation of Interest, Fees, Yield Protection.....	46
3.4. Reimbursement Obligations.....	46
3.5. Illegality	47
3.6. Inability to Determine Rates	47
3.7. Increased Costs; Capital Adequacy	47
3.8. Mitigation.....	48
3.9. Funding Losses	48
3.10. Maximum Interest.....	49
Section 4. LOAN ADMINISTRATION	49
4.1. Manner of Borrowing and Funding Revolver Loans.....	49
4.2. Defaulting Lender	50
4.3. Number and Amount of LIBOR Loans; Determination of Rate.....	51
4.4. Borrower Agent	51
4.5. One Obligation.....	52
4.6. Effect of Termination.....	52
Section 5. PAYMENTS	52
5.1. General Payment Provisions	52
5.2. Repayment of Revolver Loans.....	52
5.3. [Reserved].....	52
5.4. Payment of Other Obligations	52
5.5. Marshaling; Payments Set Aside	52
5.6. Application and Allocation of Payments	53
5.7. Dominion and Other Accounts	54
5.8. Account Stated.....	54
5.9. Taxes.....	54
54	
5.10. Lender Tax Information.....	56
5.11. Nature and Extent of Each Borrower's Liability	57
Section 6. CONDITIONS PRECEDENT	60
6.1. Conditions Precedent to Initial Credit Extensions	60
6.2. Conditions Precedent to All Credit Extensions	62
Section 7. COLLATERAL.....	63
7.1. Grant of Security Interest.....	63
7.2. Lien on Deposit Accounts; Securities Accounts; Cash Collateral	63
7.3. Real Estate Collateral, Vehicles and Post Closing Collateral.....	64

7.4.	Other Collateral.....	66
7.5.	Limitations.....	67
7.6.	Further Assurances.....	67
7.7.	Certain Limited Exclusions.....	67
7.8.	Intercreditor Agreement.....	68
Section 8.	COLLATERAL ADMINISTRATION.....	68
8.1.	Borrowing Base Reports.....	68
8.2.	Accounts.....	69
8.3.	Proceeds of the Term Loans.....	69
8.4.	Equipment.....	70
8.5.	Deposit Accounts and Securities Accounts.....	70
8.6.	General Provisions.....	71
8.7.	Power of Attorney.....	72
Section 9.	REPRESENTATIONS AND WARRANTIES.....	72
9.1.	General Representations and Warranties.....	72
9.2.	Complete Disclosure; Financial Statements and Projections.....	80
Section 10.	COVENANTS AND CONTINUING AGREEMENTS.....	81
10.1.	Affirmative Covenants.....	81
10.2.	Negative Covenants.....	87
10.3.	Financial Covenants.....	96
Section 11.	GUARANTY.....	96
11.1.	Guaranty.....	96
11.2.	No Setoff or Deductions; Taxes; Payments.....	97
11.3.	Rights of Secured Parties.....	97
11.4.	Certain Waivers.....	97
11.5.	Obligations Independent.....	98
11.6.	Subrogation.....	98
11.7.	Termination; Reinstatement.....	98
11.8.	Subordination.....	98
11.9.	Stay of Acceleration.....	99
11.10.	Expenses.....	99
11.11.	Miscellaneous.....	99
11.12.	Condition of Borrowers.....	99
11.13.	Additional Guarantors.....	99
Section 12.	EVENTS OF DEFAULT; REMEDIES ON DEFAULT.....	99
12.1.	Events of Default.....	99
12.2.	Remedies upon Default.....	101
12.3.	License.....	101
12.4.	Setoff.....	102
12.5.	Remedies Cumulative; No Waiver.....	102
Section 13.	AGENTS.....	102
13.1.	Appointment, Authority and Duties of Agents.....	102
13.2.	Agreements Regarding Collateral and Borrower Materials.....	104
13.3.	Reliance By Administrative Agent.....	104
13.4.	Action Upon Default.....	104
13.5.	Ratable Sharing.....	105
13.6.	Indemnification.....	105
13.7.	Limitation on Responsibilities of Administrative Agent.....	105
13.8.	Successor Administrative Agent and Co-Agents.....	105
13.9.	Due Diligence and Non-Reliance.....	106
13.10.	Remittance of Payments and Collections.....	106
13.11.	Individual Capacities.....	107

13.12.	Titles	107
13.13.	Bank Product Providers	107
13.14.	Co-Collateral Agents	107
13.15.	No Third Party Beneficiaries	108
Section 14.	BENEFIT OF AGREEMENT; ASSIGNMENTS.....	108
14.1.	Successors and Assigns	108
14.2.	Participations	108
14.3.	Assignments.....	109
14.4.	Replacement of Certain Lenders.....	110
Section 15.	MISCELLANEOUS	110
15.1.	Consents, Amendments and Waivers	110
15.2.	Indemnity	111
15.3.	Notices and Communications	112
15.4.	Performance of Borrowers' Obligations.....	113
15.5.	Credit Inquiries	113
15.6.	Severability	113
15.7.	Cumulative Effect; Conflict of Terms	113
15.8.	Counterparts; Execution	113
15.9.	Entire Agreement.....	114
15.10.	Relationship with Lenders	114
15.11.	No Advisory or Fiduciary Responsibility.....	114
15.12.	Confidentiality	114
15.13.	[Reserved.].....	115
15.14.	GOVERNING LAW.....	115
15.15.	Consent to Forum; Bail-In of EEA Financial Institutions	115
15.16.	Waivers by Borrowers	116
15.17.	PATRIOT Act Notice.....	116
15.18.	NO ORAL AGREEMENT	116

LIST OF EXHIBITS AND SCHEDULES

Exhibit A	Form of Assignment
Exhibit B	Form of Compliance Certificate
Schedule 1.1	Commitments of Lenders
Schedule 1.1(A)	Closing Date Unrestricted Subsidiaries
Schedule 1.1(B)	Closing Date Immaterial Domestic Subsidiaries
Schedule 1.1(C)	Mortgaged Real Property as of the Closing Date
Schedule 1.1(D)	Specified Account Debtors
Schedule 2.3	Existing Letters of Credit
Schedule 7.4.1	Commercial Tort Claims
Schedule 8.5	Deposit Accounts
Schedule 9.1.4	Existing Liabilities
Schedule 9.1.16	Restrictive Agreements
Schedule 9.1.18	Names and Capital Structure
Schedule 9.1.19	Locations of Offices
Schedule 9.1.21	Intellectual Property
Schedule 9.1.24	Hedging Agreements
Schedule 9.1.25(a)	Filing Offices
Schedule 10.2.1(k)	Closing Date Borrowed Money
Schedule 10.2.4	Investments

LOAN AND SECURITY AGREEMENT

THIS LOAN AND SECURITY AGREEMENT is dated as of [●], 201[●] (this “Agreement”), among **KEY ENERGY SERVICES, INC.**, a Delaware corporation (the “Company”), **KEY ENERGY SERVICES, LLC**, a Texas limited liability company (“Key Energy LLC”, and together with the Company, collectively, “Borrowers” or “Borrower”), certain subsidiaries of Borrowers named as guarantors herein, the financial institutions party to this Agreement from time to time as Lenders, **BANK OF AMERICA, N.A.**, a national banking association, as administrative agent for the Lenders (in such capacity, “Administrative Agent”) and **BANK OF AMERICA, N.A.**, a national banking association, and **WELLS FARGO BANK, NATIONAL ASSOCIATION**, as co-collateral agents for the Lenders (in such capacity, “Co-Collateral Agents”).

RECITALS:

WHEREAS, Borrowers, certain subsidiaries of the Borrowers party thereto as guarantors, the Administrative Agent, the Co-Collateral Agents and certain financial institutions or entities party thereto as lenders were party to that certain Loan and Security Agreement (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the “Original Credit Agreement”), dated as of June 1, 2015, pursuant to which the lenders party thereto extended credit and other accommodations to Borrowers in an aggregate principal amount of up to \$100,000,000;

WHEREAS, on October 24, 2016, Borrowers and certain of their Subsidiaries commenced voluntary cases under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), which cases are being jointly administered under Case No. 16-12306 (the “Chapter 11 Cases”);

WHEREAS, on December 6, 2016, the Bankruptcy Court entered the Confirmation Order confirming the Prepackaged Plan (as defined below); and

WHEREAS, Borrowers have requested that Lenders provide, substantially concurrently with the effective date of the Prepackaged Plan and pursuant to the Prepackaged Plan, a credit facility to finance their mutual and collective business enterprise; and

WHEREAS, Lenders are willing to provide the credit facility on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, for valuable consideration hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1. Definitions. As used herein, the following terms have the meanings set forth below:

ABL Priority Collateral: as defined in the Intercreditor Agreement.

Account: as defined in the UCC, including all rights to payment for goods sold or leased, or for services rendered.

Account Debtor: a Person obligated under an Account, Chattel Paper or General Intangible.

Accounts Formula Amount: (a) 85% of the Value of Eligible Accounts; *provided, however*, that such percentage shall be reduced by 1.0% for each percentage point (or portion thereof) that the Dilution Percent exceeds 5% plus (b) the lesser of (i) the greater of (x) \$35,000,000 and (y) 25.0% of the aggregate

amount of Revolver Commitments then in effect, and (ii) 80% of the Value of Eligible Unbilled Accounts; *provided, however*, that such percentage shall be reduced by 1.0% for each percentage point (or portion thereof) that the Dilution Percent exceeds 5%.

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

Additional Issuing Bank: any financial institution that is a Lender selected by the Borrower Agent and approved by Administrative Agent (which approval shall not be unreasonably withheld or delayed) to issue one or more Letters of Credit hereunder, provided that such financial institution consents to becoming an Additional Issuing Bank and provided further that such financial institution shall become a party to this Agreement in the capacity as an Issuing Bank by executing a joinder agreement in form and substance reasonably satisfactory to the Administrative Agent and signed by the Borrower, the Additional Issuing Bank and Administrative Agent.

Advisory Agreement: the Corporate Advisory Services Agreement, dated as of the Closing Date, by and between Platinum and the Company, as amended, restated, modified or replaced from time to time.

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

Affiliate Transaction: as defined in **Section 10.2.10**.

Agent: each of Administrative Agent and each Co-Collateral Agent.

Agent Excluded Real Property: any Real Estate (including any Material Real Property) as to which (a) the Co-Collateral Agents have elected in their sole discretion not to require to be subject to a Mortgage or not be transferred to the SPV (in each case, as provided in **Section 7.3.1** or **7.3.3**) or (b) the Co-Collateral Agents have elected in their sole discretion to require to be subject to a Mortgage or transferred to the SPV at a later date (in each case, as provided in **Section 7.3.1** or **7.3.3**).

Agent Fee Letter: a letter agreement dated November 20, 2016 among the Company, Bank of America and Merrill Lynch, Pierce, Fenner & Smith Incorporated.

Agent Indemnitees: each Agent and its officers, directors, employees, Affiliates, agents and attorneys.

Agent Professionals: attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by any Agent.

Agreement: as defined in the preamble hereto.

Allocable Amount: as defined in **Section 5.11.3(b)**.

Anti-Corruption Laws: all laws, rules and regulations of any jurisdiction applicable to the Borrowers or their Subsidiaries from time to time concerning or relating to bribery or corruption, including, without limitation, the U.S. Foreign Corrupt Practices Act (FCPA) and the U.K. Bribery Act.

Anti-Terrorism Law: any law relating to terrorism or money laundering, including the PATRIOT

Act.

Applicable Law: all laws, rules, regulations and binding governmental guidelines applicable to the Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

Applicable Margin: with respect to LIBOR Revolver Loans or Base Rate Loans, as applicable, the per annum margin set forth below, based upon the Fixed Charge Coverage Ratio for the four-Fiscal Quarter period ended on the last day of the applicable first three Fiscal Quarters of each Fiscal Year or for each Fiscal Year, as applicable:

<u>Level</u>	<u>Fixed Charge Coverage Ratio</u>	<u>Base Rate Loans</u>	<u>LIBO Rate Loans</u>
<u>I</u>	<u>> 1.50:1</u>	<u>1.50%</u>	<u>2.50%</u>
<u>II</u>	<u>>1.00:1 but ≤ 1.50:1</u>	<u>2.50%</u>	<u>3.50%</u>
<u>III</u>	<u>≤ 1.00:1</u>	<u>3.50%</u>	<u>4.50%</u>

Until receipt by Administrative Agent of the financial statements and corresponding Compliance Certificate for the Fiscal Quarter ended March 31, 2017 pursuant to **Section** 10.1.2, Applicable Margin shall be determined as if Level II were applicable. Upon receipt thereof, any increase or decrease in Applicable Margin shall be effective on the first day of the calendar month following receipt. Thereafter, the Applicable Margins shall be subject to increase or decrease upon receipt by Administrative Agent pursuant to **Section** 10.1.2 of the financial statements and corresponding Compliance Certificate for the most recent Fiscal Quarter or Fiscal Year completed, as the case may be, whereupon the Applicable Margins shall be adjusted by the Administrative Agent based on the information contained in the Compliance Certificate, which change shall be effective on the first day of the calendar month following receipt. If by the first day of the a month any financial statements and Compliance Certificate due in the preceding month have not been received, then, at the option of Required Lenders, the Applicable Margins shall be determined as if Level III were applicable, from such day until the first day of the calendar month following actual receipt.

Approved Fund: any Person (other than a natural Person) engaged in making, purchasing, holding or otherwise investing in commercial loans in its ordinary course of activities and that is administered or managed by a Lender, an entity that administers or manages a Lender or an Affiliate of either.

Asset Coverage Ratio: has the meaning assigned to such term in the Term Loan Credit Agreement as in effect on the Closing Date.

Asset Disposition: a sale, lease, license, consignment, transfer or other disposition of Property of any Obligor or any Restricted Subsidiary, including any disposition in connection with a sale-leaseback transaction or synthetic lease.

Assignment: an assignment and acceptance agreement between a Lender and Eligible Assignee, in the form of **Exhibit A** or otherwise reasonably satisfactory to Administrative Agent.

Arranger Fee Letter: that certain letter agreement dated November 20, 2016 between the Company and Wells Fargo.

Availability: the Borrowing Base minus Revolver Usage.

Availability Reserve: the sum (without duplication) of (a) the Bank Product Reserve; (b) the aggregate amount of liabilities secured by Liens upon the ABL Priority Collateral that are senior to Administrative Agent's Liens (but imposition of any such reserve shall not waive an Event of Default arising therefrom); and (c) such additional reserves, in such amounts and with respect to such matters, as Co-Collateral Agents in their Permitted Discretion may elect to impose from time to time.

Bank of America: Bank of America, N.A., a national banking association, and its successors and assigns.

Bail-In Action: 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: 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.

Bank of America Indemnites: Bank of America and its officers, directors, employees, Affiliates, agents and attorneys.

Bank Product: any of the following products, services or facilities extended to any Borrower or Affiliate of a Borrower by a Lender, an Affiliate of a Lender or any Person who, at the time of establishing any of the following was a Lender or an Affiliate of a Lender: (a) Cash Management Services; (b) products under Hedging Agreements; (c) commercial credit card, purchase cards and merchant card services; and (d) other banking products or services, other than Letters of Credit.

Bank Product Reserve: the aggregate amount of reserves established by Co-Collateral Agents from time to time in their Permitted Discretion in respect of Secured Bank Product Obligations.

Bankruptcy Code: as defined in the recitals hereto.

Bankruptcy Court: as defined in the recitals hereto.

Base Rate: for any day, a per annum rate equal to the greatest of (a) the Prime Rate for such day; (b) the Federal Funds Rate for such day, plus 0.50%; or (c) LIBOR for a 30 day interest period as of such day, plus 1.0%; provided, that in no event shall such rate be less than zero.

Base Rate Loan: any Loan that bears interest based on the Base Rate.

Base Rate Revolver Loan: a Revolver Loan that bears interest based on the Base Rate.

Board of Governors: the Board of Governors of the Federal Reserve System.

Borrowed Money: with respect to any Obligor, without duplication, its (a) Debt that (i) arises from the lending of money by any Person to such Obligor or (ii) is evidenced by notes, drafts, bonds, debentures, credit documents or similar instruments; (b) Capital Leases; (c) reimbursement obligations with respect to drawn letters of credit; and (d) guaranties of any Debt of the foregoing types owing by another Person.

Borrower Agent: as defined in **Section 4.4**.

Borrower Materials: Borrowing Base Reports, Compliance Certificates, Payment Conditions

Certificate and other information, reports, financial statements (other than projections and any other forward-looking statements) and other materials delivered by Borrowers hereunder, as well as other Reports and information provided by any Agent to Lenders.

Borrowing: a group of Loans that are made or converted together on the same day and have the same interest option and, if applicable, Interest Period.

Borrowing Base: on any date of determination, an amount equal to (a) the lesser of (i) the aggregate Revolver Commitments; or (ii) the sum of the Accounts Formula Amount plus the Segregated Account Cash Balance, minus (b) the Availability Reserve.

Borrowing Base Report: a report of the Borrowing Base by Borrowers, in form and substance satisfactory to Administrative Agent.

Business Day: 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, North Carolina and New York, and if such day relates to a LIBOR Loan, any such day on which dealings in Dollar deposits are conducted in the London interbank market.

Capital Expenditures: all expenditures made by a Borrower or Restricted Subsidiary for the acquisition of fixed assets, or any improvements, replacements, substitutions or additions thereto with a useful life of more than one year and which are accounted for as “capital expenditures” in accordance with GAAP.

Capital Lease: any lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

Cash Collateral: cash, and any interest or other income earned thereon, that is delivered to Administrative Agent to Cash Collateralize any Obligations.

Cash Collateral Account: a demand deposit, money market or other account established by Administrative Agent at such commercial bank as Administrative Agent may select in its Permitted Discretion, which account shall be subject to a Lien in favor of Administrative Agent for the benefit of Secured Parties.

Cash Collateralize: the delivery of cash to Administrative Agent, as security for the payment of Obligations, in an amount equal to (a) with respect to LC Obligations, 105% of the aggregate LC Obligations, and (b) with respect to any inchoate, contingent or other Obligations (including Secured Bank Product Obligations), in an amount equal to Administrative Agent’s good faith estimate of the amount due or to become due, including fees, expenses and indemnification hereunder. “Cash Collateralization” has a correlative meaning.

Cash Equivalents: (a) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof, in each case maturing within one (1) year from the date of creation thereof; (b) deposits maturing within one (1) year from the date of creation thereof with, including certificates of deposit issued by, any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof, having capital, surplus and undivided profits aggregating at least \$100,000,000 (as of the date of such bank or trust company’s most recent financial reports) and a short term deposit rating of no lower than A2 or P2, as such rating is set forth from time to time, by S&P or Moody’s, respectively or, in the case of any Foreign Subsidiary, a bank organized in a jurisdiction in which the Foreign Subsidiary conducts operations having assets in excess of \$500,000,000; (c) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) hereof, having a term of not more than 30 days

with respect to securities issued or fully guaranteed or insured by the United States government; (d) commercial paper maturing within one year from the date of creation thereof rated in the highest grade by S&P or Moody's; (e) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) hereof; (f) deposits in money market funds investing exclusively in Investments described in clauses (a) through (e) hereof; and (g) instruments equivalent to those referred to in clauses (a) through (f) above of comparable tenor to those referred to above, (i) denominated in Canadian dollars, pounds sterling, euros, the national currency of any participating member state of the European Union or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business, and (ii) used in the ordinary course of business of the Company and its Subsidiaries for cash management purposes in any jurisdiction outside the United States of America to the extent reasonably required or advisable in connection with any business conducted by the Company or any Subsidiary.

Cash Management Services: services relating to operating, cash management, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, treasury services, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

CERCLA: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.).

CFC: as defined in the definition of "Foreign Subsidiary".

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, however, that "Change in Law" shall include, regardless of the date enacted, adopted or issued, all requests, rules, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

Change of Control: the occurrence of one or more of the following events:

(a) any sale, lease, transfer, conveyance or other disposition (in one transaction or a series of related transactions) of all or substantially all of the properties or assets of the Company and its Restricted Subsidiaries taken as a whole to any Person or group of related Persons for purposes of Section 13(d) of the Exchange Act (a "Group") together with any Affiliates thereof (whether or not otherwise in compliance with the provisions of this Agreement) unless immediately following such sale, lease, transfer, conveyance or other disposition in compliance with this Agreement such properties or assets are owned, directly or indirectly, by (i) the Company or a Subsidiary of the Company or (ii) a Person controlled by the Company or a Subsidiary of the Company;

(b) the approval by the holders of Equity Interests of the Company of any plan or proposal for the liquidation or dissolution of the Company;

(c) the acquisition, in one or more transactions, of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of the Equity Interests of the Company by any Person or Group (other than Permitted Holders) that, as a result of such acquisition, either (i) beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, 50.1% or more of the Company's then outstanding Equity Interests or Voting Stock or (ii) otherwise has the ability to elect, directly or indirectly, a majority of the members of the board of directors of the Company, including, without

limitation, by the acquisition of revocable proxies for the election of directors;

(d) a “change in control”, “change of control offer” or any comparable term under, and as defined in the Term Loan Credit Agreement (to the extent then in effect); or

(e) (i) the Company ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests in Key Energy LLC or any other Borrower or (ii) the sale or transfer of all or substantially all assets of a Borrower, except to another Borrower;

provided, that, none of the transactions contemplated or expressly authorized by the Prepackaged Plan shall constitute, or be deemed to constitute, a Change of Control.

Chapter 11 Cases: as defined in the recitals hereto.

Claims: all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys’ fees and Extraordinary Expenses) at any time (including after Full Payment of the Obligations or replacement of any Agent or any Lender) incurred by any Indemnitee or asserted against any Indemnitee by any Obligor or other Person, in any way relating to (a) any Loans, Letters of Credit, Loan Documents, Borrower Materials, or the use thereof or transactions relating thereto, (b) any action taken or omitted to be taken by any Indemnitee in connection with any Loan Documents, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law, or (e) failure by any Obligor to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnitee is a party thereto.

Closing Date: as defined in **Section 6.1**.

Closing Date Mortgaged Real Property: as defined in **Section 7.3.3(a)**.

Co-Collateral Agent: has the meaning assigned to such term in the preamble hereto.

Code: the Internal Revenue Code of 1986, as amended.

Collateral: all Property described in **Section 7.1** (and not excluded by **Section 7.7**), all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

Commitment: for any Lender, the aggregate amount of such Lender’s Revolver Commitment. “Commitments” means the aggregate amount of all Revolver Commitments.

Commitment Termination Date: the earliest to occur of (a) the Revolver Termination Date; (b) the date on which Borrowers terminate the Revolver Commitments pursuant to **Section 2.1.4**; or (c) the date on which the Revolver Commitments are terminated pursuant to **Section 12.2**.

Commodity Exchange Act: the Commodity Exchange Act (7 U.S.C. § 1 *et seq.*).

Company: as defined in the introductory paragraph hereto.

Compliance Certificate: a certificate, substantially the form attached hereto as **Exhibit B** or such other form reasonably satisfactory to Administrative Agent, by which Borrowers (a) certify compliance with **Section 10.3**, (b) calculate the Fixed Charge Coverage Ratio for the applicable date (regardless of whether compliance with the Fixed Charge Coverage Ratio for the applicable date is tested for such

period), including for the purposes of determining the Applicable Margin, (c) to the extent applicable, attach related consolidating financial statements reflecting the adjustments necessary to eliminate (1) the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements and (2) the financial and other operational results of Unrestricted Subsidiaries (if any), (d) sets forth reasonably detailed calculations satisfactory to the Administrative Agent demonstrating that the aggregate value of the Excluded Property designated under clause (i) of the definition thereof as of the last day of the period covered by such Compliance Certificate does not exceed \$5,000,000, and (e) lists any office or place of business that was opened or was closed during the period covered by the certificate.

Confirmation Order: as defined in **Section 6.1(f)**.

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

Consolidated Cash Interest Expense: Consolidated Interest Expense excluding any amount described in clause (a) of the definition thereof and any amount not payable in cash (including any interest payable-in-kind).

Consolidated Depreciation and Amortization Expense: with respect to the Company, for any period, the total amount of depreciation and amortization expense, including (i) amortization of deferred financing fees and debt issuance costs, commissions, fees and expenses, (ii) amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits and (iii) amortization of intangibles (including goodwill and organizational costs) (excluding any such adjustment to the extent that it represents an accrual of or reserve for cash expenditures in any future period except to the extent such adjustment is subsequently reversed), in each case of the Company and its Consolidated Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

Consolidated Interest Expense: for any period, the sum (determined without duplication) of the aggregate gross interest expense of the Company and the Consolidated Subsidiaries for such period, whether paid or accrued, including to the extent included in interest expense under GAAP: (a) amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, commissions, discounts and other fees (excluding expenses resulting from the discounting of any outstanding Debt in connection with the application of fresh start accounting in relation to the Prepackaged Plan or transactions related thereto) and charges incurred in respect of letter of credit or bankers' acceptance financings, and net payments (if any) pursuant to Hedging Agreement; (b) any interest expense on Debt of another Person that is guaranteed by the Company or any Consolidated Subsidiary or secured by a Lien on assets of the Company or any Consolidated Subsidiary (whether or not such guarantee or Lien is called upon); (c) capitalized interest and (d) the portion of any payments or accruals under Capital Leases allocable to interest expense, *plus* the portion of any payments or accruals under synthetic leases allocable to interest expense whether or not the same constitutes interest expense under GAAP.

Consolidated Net Income: with respect to the Company for any period, the aggregate of the net income (loss) of the Company and its Consolidated Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; provided that (without duplication):

- (i) any after-tax effect of all extraordinary, nonrecurring or unusual gains or losses or income or expenses (including related to the Transactions on the Closing Date) or any restructuring charges or reserves, including, without limitation, any expenses related to any reconstruction, recommissioning or reconfiguration of fixed assets for alternate uses, retention, severance, system establishment cost, contract termination costs, costs to consolidate facilities and relocate

- employees, advisor fees and other out of pocket costs and non-cash charges to assess and execute operational improvement plans and restructuring programs, will be excluded;
- (ii) any expenses, costs or charges incurred, or any amortization thereof for such period, in connection with any equity issuance, Investment, acquisition, disposition, recapitalization or incurrence or repayment of Debt, including a refinancing thereof (in each case whether or not consummated) (including any such costs and charges incurred in connection with the Transactions on the Closing Date and the Chapter 11 Cases), and all gains and losses realized in connection with any business disposition or any disposition of assets outside the ordinary course of business or the disposition of securities or the early extinguishment of Debt, together with any related provision for taxes on any such gain, loss, income or expense will be excluded;
 - (iii) the net income (or loss) of any Person that is not a Consolidated Subsidiary or that is accounted for by the equity method of accounting will be excluded, provided that the income of the Company will be included to the extent of the amount of dividends or similar distributions paid in cash (or converted to cash) to the specified Person or a Consolidated Subsidiary of the Person;
 - (iv) effects of non-cash adjustments (including the effects of such adjustments pushed down to the Company and its Consolidated Subsidiaries) in the Company's consolidated financial statements (including to property, equipment, inventory and other assets) pursuant to GAAP resulting from the application of purchase accounting and/or fresh start accounting in relation to the Transactions on the Closing Date, the Prepackaged Plan, the Chapter 11 Cases or any consummated acquisition or the amortization or write-off of any amounts thereof (including the impact on net income (or loss) arising from mark-to-market adjustments with respect to earn-outs), net of taxes, will be excluded;
 - (v) the net income (or loss) of the Company and its Consolidated Subsidiaries will be calculated without deducting the income attributed to, or adding the losses attributed to, the minority equity interests of third parties in any non-wholly-owned Consolidated Subsidiary except to the extent of the dividends paid in cash (or convertible into cash) during such period on the shares of Equity Interests of such Consolidated Subsidiary held by such third parties;
 - (vi) the cumulative effect of any change in accounting principles will be excluded;
 - (vii) (a) any non-cash expenses resulting from the grant or periodic remeasurement of stock options, restricted stock grants or other equity incentive programs (including any stock appreciation and similar rights) and (b) any costs or expenses incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent, in the case of clause (b), that such costs or expenses are funded with cash proceeds contributed to the common equity capital of the Company or a Consolidated Subsidiary of the Company, will be excluded;
 - (viii) the effect of any non-cash impairment charges or write-ups, write-downs or write-offs of assets or liabilities resulting from the application of GAAP and the amortization of intangibles arising from the application of GAAP, including pursuant to ASC 805, Business Combinations, ASC 350, Intangibles-Goodwill and Other, or ASC 360, Property, Plant and Equipment, as applicable, will be excluded;
 - (ix) any net after-tax income or loss from disposed, abandoned or discontinued operations or assets and any net after-tax gains or losses on disposed, abandoned or discontinued, transferred or closed operations or assets will be excluded;
 - (x) any increase in amortization or depreciation, or effect of any adjustments to inventory, property, plant or equipment, software, goodwill and other intangibles, debt line items, deferred revenue or rent expense, any one time cash charges (such as purchased in process research and development or capitalized manufacturing profit in inventory) or any other effects, in each case, resulting from purchase accounting in connection with the Transactions on the Closing Date or any other acquisition prior to or following the Closing Date will be excluded;

- (xi) unrealized gains and losses relating to foreign currency transactions, including those relating to mark-to-market of Debt resulting from the application of GAAP, including pursuant to ASC 830, Foreign Currency Matters (including any net loss or gain resulting from hedge arrangements for currency exchange risk) will be excluded;
- (xii) any net gain or loss from Obligations or in connection with the early extinguishment of obligations under Hedging Agreements (including of ASC 815, Derivatives and Hedging) shall be excluded;
- (xiii) subject to the Cost Savings Cap, the amount of any costs and charges related to restructuring, business optimization, acquisition and integration (including, without limitation, retention, severance, systems establishment costs, excess pension charges, information technology costs, rebranding costs, contract termination costs, including future lease commitments, costs related to the start-up, closure or relocation or consolidation of facilities and costs to relocate employees) shall be excluded;
- (xiv) costs, charges and expenses related to the closure, disposition or wind-down of any operations or assets located or conducted outside of the United States, including severance and contract termination costs, shall be excluded as long as the aggregate amount excluded pursuant this clause (xiv) does not exceed \$5,000,000; and
- (xv) accruals and reserves that are established or adjusted within 12 months after the Closing Date that are so required to be established as a result of the Transactions on the Closing Date in accordance with GAAP shall be excluded.

Consolidated Subsidiaries: each Restricted Subsidiary of the Company (whether now existing or hereafter created or acquired) the financial statements of which shall be consolidated with the financial statements of the Company in accordance with GAAP.

Contingent Obligation: any obligation of a Person arising from a guaranty, indemnity or other assurance of payment or performance of any Debt, lease, dividend or other obligation (“primary obligations”) of another obligor (“primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty, endorsement, co-making or sale with recourse of an obligation of a primary obligor; (b) obligation to make take-or-pay or similar payments regardless of nonperformance by any other party to an agreement; and (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase Property or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

“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 correlative meanings.

Covenant Trigger Period: the period (a) commencing on the day that Availability is less than the greater of (X) \$20,000,000 and (Y) 20.0% of the Line Cap on such day; and (b) continuing until the day (1) Availability has been greater than the greater of (X) \$20,000,000 and (Y) 20.0% of the Line Cap and (2) no Default has occurred and is continuing, in the case of each of the clauses (b)(1)(X), (b)(1)(Y) and (b)(2), for a period of 90 consecutive calendar days.

Cost Savings Cap: as defined in the definition of the term “Pro Forma Cost Savings.”

CWA: the Clean Water Act (33 U.S.C. §§ 1251 et seq.).

Debt: for any Person, the sum of the following (without duplication): (a) all obligations of such Person for Borrowed Money; (b) all accounts payable and all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services; (c) all obligations under synthetic leases; (d) all Debt (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Debt is assumed by such Person; (e) all Debt (as defined in the other clauses of this definition) of others guaranteed by such Person or in which such Person otherwise assures a creditor against loss of the Debt (howsoever such assurance shall be made) to the extent of the lesser of the amount of such Debt and the maximum stated amount of such guarantee or assurance against loss; (f) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others or to purchase the Debt or Property of others; (g) obligations to pay for goods or services even if such goods or services are not actually received or utilized by such Person; (h) any Debt of a partnership for which such Person is liable either by agreement or by Applicable Law but only to the extent of such liability; and (i) Disqualified Capital Stock; provided that Debt shall not include (i) prepaid or deferred revenue arising in the ordinary course of business and not overdue for more than 60 days, (ii) purchase price holdbacks arising in the Ordinary Course of Business in respect of a portion of the purchase price of an asset to satisfy unperformed obligations of the seller of such asset so long as such holdbacks are not carried as a liability on the balance sheet of such Person or (iii) earn-out obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP.

Debtor Relief Laws: as defined in **Section 11.1**.

Debtors: as defined in the Prepackaged Plan.

Deemed Cash Equivalents: each of the following:

(a) the assumption of any liabilities (as shown on the Company's or the Restricted Subsidiary's most recent balance sheet) of the Company or any Restricted Subsidiary of the Company (other than liabilities that are by their terms subordinated to Loans or any Guaranty) by the transferee of any such assets pursuant to a customary novation agreement that releases the Company or the Restricted Subsidiary from further liability;

(b) any securities, notes or other obligations received by the Company or any such Restricted Subsidiary from such transferee that are converted by the Company or the Restricted Subsidiary into cash or Cash Equivalents within 180 days following their receipt (to the extent of cash or Cash Equivalents received); and

(c) accounts receivable of a business retained by the Company or any of its Restricted Subsidiaries following the sale of such business; provided, that such accounts receivable (i) are not past due more than 60 days and (ii) do not have a payment date greater than 90 days from the date of the invoice creating such accounts receivable.

Default: any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

Default Rate: for any Obligation (including, to the extent permitted by law, interest not paid when due), 2% plus the interest rate otherwise applicable thereto, and with respect to the fee payable pursuant to **Section 3.2.2** herein as provided in the last sentence thereof.

Defaulting Lender: any Lender that (a) has failed to comply with its funding obligations

hereunder, and such failure is not cured within two Business Days; (b) has notified Administrative Agent or any Borrower that such Lender does not intend to comply with its funding obligations hereunder or under any other credit facility, or has made a public statement to that effect; (c) has failed, within three Business Days following request by Administrative Agent or any Borrower, to confirm in a manner satisfactory to Administrative Agent and Borrowers that such Lender will comply with its funding obligations hereunder; or (d) has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority) or Bail-In Action; provided, however, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent company unless the ownership provides immunity for such Lender from jurisdiction of courts within the United States or from enforcement of judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate or otherwise to reject such Lender's agreements.

Deposit Account Control Agreement: control agreement satisfactory to Administrative Agent executed by an institution maintaining a Deposit Account for an Obligor, to perfect Administrative Agent's Lien on such account.

Designated Jurisdiction: a country or territory that is the subject of a Sanction.

Dilution Percent: the percent, determined for Borrowers' most recent Fiscal Quarter, equal to (a) bad debt write-downs or write-offs, discounts, returns, promotions, credits, credit memos and other dilutive items with respect to Accounts, divided by (b) gross sales.

Discharge of Term Obligations: as defined in the Intercreditor Agreement.

Disqualified Capital Stock: 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, matures or is mandatorily redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is convertible or exchangeable for Debt or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, on or prior to the date that is one year after the later of (a) the Revolver Termination Date and (b) the latest maturity of the Term Loans at the date of issuance of such Equity Interest.

Disqualified Institutions: (a) (i) persons identified by name in writing to the Administrative Agent by the Borrower Agent on or prior to the date of this Agreement and (ii) any strategic competitor of the Borrowers or any of their Subsidiaries, in each case of this clause (a)(ii), identified by name in writing to Administrative Agent by the Borrower Agent from time to time and (b) any Affiliate of a person identified pursuant to clause (a) that is either (x) identified in writing by the Borrower Agent to the Administrative Agent or (y) readily identifiable by the Lenders or the Administrative Agent by name (excluding in the case of clauses (x) and (y), Affiliates that are bona fide debt funds or investment vehicles that purchase commercial loans in the ordinary course of business and with respect to which none of the persons identified in clauses (a) or (b) (other than such debt fund affiliates or investment vehicles) makes investment decisions or has the power, directly or indirectly, to direct or cause the direction of such debt fund affiliate's or investment vehicle's investment decisions); it being understood and agreed that the term "Disqualified Institutions" shall not include the lenders under the Original Credit Agreement as of the date hereof (or any of their Affiliates) (it being understood and agreed that (x) the Administrative Agent (a) shall not have any responsibility or obligation to determine, monitor or inquire as to whether any person or any potential assignee (or any Affiliate thereof) is a Disqualified Institution and (b) shall not have any liability with respect to any assignment or participation of any Loan or Commitment made to a Disqualified Institution and (y) no action or inaction by the Administrative Agent shall be deemed to alter the persons constituting Disqualified Institutions).

Distribution: any payment of a distribution, interest or dividend on any Equity Interest (other than payment-in-kind); distribution, advance or repayment of Debt to a holder of Equity Interests; or purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

Dollars: lawful money of the United States.

Domestic Subsidiary: any Subsidiary that is organized under the laws of the United States of America or any state thereof or the District of Columbia.

Dominion Account: a special account established by Borrowers at Bank of America or another bank acceptable to Administrative Agent, over which Administrative Agent has control (and either has or may obtain exclusive control for withdrawal purposes).

Drawing Document: any Letter of Credit or other document presented for purposes of drawing under any Letter of Credit.

EBITDA: with respect to the Company for any period, Consolidated Net Income of the Company for such period; plus (without duplication)

- (i) provision for taxes based on income, profits or capital (including state, franchise, excise and similar taxes in the nature of income taxes) of the Company and its Consolidated Subsidiaries for such period, franchise taxes and foreign withholding taxes; plus
- (ii) Consolidated Depreciation and Amortization Expense (as defined below) of the Company and its Consolidated Subsidiaries for such period, to the extent such expenses were deducted in computing such Consolidated Net Income; plus
- (iii) the Consolidated Interest Expense of the Company and its Consolidated Subsidiaries for such period, to the extent that such Consolidated Interest Expense was deducted in computing such Consolidated Net Income; plus
- (iv) any other consolidated non-cash charges of the Company and its Consolidated Subsidiaries for such period, to the extent that such consolidated non-cash charges were included in computing such Consolidated Net Income; provided that if any such non-cash charge represents an accrual or reserve for anticipated cash charges in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period; plus
- (v) any losses from foreign currency transactions (including losses related to currency remeasurements of Debt) of the Company and its Consolidated Subsidiaries for such period, to the extent that such losses were taken into account in computing such Consolidated Net Income; plus
- (vi) any (a) salary, benefit and other direct savings resulting from workforce reductions or shutdown of operations by the Company implemented during or reasonably expected to be implemented within the 12 months following such period, (b) severance or relocation costs or expenses of the Company during such period and (c) costs and expenses incurred after the Closing Date related to employment of terminated employees incurred by the Company during such period; in each case to the extent that such costs and expenses were deducted in computing such Consolidated Net Income and, in each case, subject to the "Cost Savings Cap" (as defined in the definition of "Pro Forma Cost Savings"); plus
- (vii) losses in respect of post-retirement benefits of the Company, as a result of the application of ASC 715, Compensation-Retirement Benefits, to the extent that such losses were deducted in computing such Consolidated Net Income; plus

- (viii) the amount of management, monitoring, consulting and advisory fees and related indemnities, charges and expenses paid or accrued to or on behalf of any of the Permitted Holders (as defined below), in each case, to the extent permitted hereunder and, in any event, the amount added back pursuant to this clause (viii) shall not exceed \$3,500,000 in any Fiscal Year; plus
- (ix) any proceeds from business interruption insurance received by the Company during such period, to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income; plus
- (x) expenses incurred prior to the Closing Date in connection with the matters that are subject to the FCPA Settlement not to exceed \$6,000,000 in the aggregate and the amount of the FCPA Settlement not to exceed \$5,000,000 in the aggregate; plus
- (xi) costs, charges and expenses relating to rig mobilization as long as the total amount added back pursuant to this clause (xi) does not exceed \$3,000,000 in any period of trailing 12 months; plus
- (xii) fees, costs, charges, commissions, operating losses, write-downs and expenses (including (i) fees, costs and expenses related to legal, financial, restructuring and other advisors, auditors and accountants, (ii) printer costs and expenses, (iii) Securities and Exchange Commission and other filing fees and (iv) underwriting, arrangement, syndication, issuance backstop and placement premiums, discounts, fees, costs and expenses) paid, reimbursed or incurred during such period in connection with the Chapter 11 Cases, the Transactions, obtaining confirmation, effectiveness and implementation of the Prepackaged Plan, negotiation and execution of the Loan Documents (and any Refinancing Debt with respect to the foregoing), and, in each case, any transaction (including any financing, acquisition or disposition, whether or not consummated) or litigation related thereto or contemplated by any of the foregoing, in each case, regardless of whether initially incurred by the Company or paid by the Company to reimburse others for such fees, costs and expenses, in each case incurred prior to December 31, 2017 as long as the total amount added back pursuant to this clause (xii) does not exceed \$50,000,000 in the aggregate; minus
- (xiii) the amount of any gain in respect of post-retirement benefits as a result of the application of ASC 715, to the extent such gains were taken into account in computing such Consolidated Net Income; minus
- (xiv) any gains from foreign currency transactions (including gains related to currency remeasurements of Debt) of the Company and its Consolidated Subsidiaries for such period, to the extent that such gains were taken into account in computing such Consolidated Net Income; minus
- (xv) non-cash gains increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business and other than reversals of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period,
in each case, on a consolidated basis and determined in accordance with GAAP.

Notwithstanding any of the foregoing to the contrary, for purposes of calculating all financial ratios and tests for any four-Fiscal Quarter period that includes the Fiscal Quarter ending March 31, 2016, June 30, 2016 and September 30, 2016, EBITDA shall be based on the sum of (a) the applicable amounts specified below for such Fiscal Quarter, and (b) EBITDA for the portion of such four-Fiscal Quarter period not including such Fiscal Quarter:

<u>Fiscal Quarter Ending</u>	<u>EBITDA</u>
March 31, 2016	\$2,823,000
June 30, 2016	\$(10,646,000)

September 30, 2016	\$(4,002,000)
--------------------	---------------

Eligible Account: an Account owing to a Borrower that arises in the Ordinary Course of Business from the sale of goods or rendition of services, is payable in Dollars and is deemed by Co-Collateral Agents, in their Permitted Discretion, to be an Eligible Account. Without limiting the foregoing, no Account shall be an Eligible Account if (a) it is unpaid for more than 60 days after the original due date, or more than 90 days after the original invoice date; (b) 50% or more of the Accounts owing by the Account Debtor are not Eligible Accounts under the foregoing clause; (c) when aggregated with other Accounts owing by the Account Debtor, it exceeds 20% (or 30% for any Account Debtor listed on **Schedule 1.1(D)**) (each such Account Debtor, together with any additional Account Debtor that may be approved by Co-Collateral Agents from time to time in their discretion in writing, a “Specified Account Debtor”) for so long as such Specified Account Debtor has and maintains Investment Grade Rating) of the aggregate Eligible Accounts (or such higher percentage as Co-Collateral Agents may establish for the Account Debtor from time to time) (provided that only the amount in excess of 20% (or in excess of 30% for the Specified Account Debtor that has and maintains Investment Grade Rating (or in excess of such higher percentage as Co-Collateral Agents may establish for the Account Debtor from time to time) shall be deemed ineligible); (d) it does not conform in any material respect with a covenant or representation herein; (e) it is owing by a creditor or supplier who has not entered into an agreement reasonably satisfactory to Co-Collateral Agents waiving applicable rights of setoff, or is otherwise reasonably determined to be subject to a potential offset, counterclaim, dispute, deduction, discount, recoupment, reserve, defense, chargeback, credit or allowance (but ineligibility shall be limited to the amount thereof); (f) an Insolvency Proceeding has been commenced by or against the Account Debtor; or the Account Debtor has failed, has suspended or ceased doing business, is liquidating, dissolving or winding up its affairs, is not Solvent (other than Accounts approved by Co-Collateral Agents in their Permitted Discretion owing to a Borrower pursuant to an order granting critical vendor status to a Borrower), or is subject to any Sanction or on any specially designated nationals list maintained by OFAC; or the Borrowers are not able to bring suit or enforce remedies against the Account Debtor through judicial process (unless such Account is guaranteed or supported by a guarantor or support provider reasonably acceptable to Co-Collateral Agents, on such terms as a reasonably acceptable to Co-Collateral Agents); (g) the Account Debtor is organized or has its principal offices or 50% or more of its assets outside the United States or Canada unless Co-Collateral Agents have consented to such Account Debtor in their Permitted Discretion or the Account is supported by a letter of credit (delivered to and directly drawable by Administrative Agent) or credit insurance reasonably satisfactory in all respects to Co-Collateral Agents; (h) it is owing by a Governmental Authority, unless the Account Debtor is the United States or any department, agency or instrumentality thereof and the Account has been assigned to Co-Collateral Agents in compliance with the federal Assignment of Claims Act; (i) it is not subject to a duly perfected, first priority Lien in favor of Administrative Agent, or is subject to any other Lien (other than Liens permitted by clauses (i) or (j) of **Section 10.2.2** and inchoate Liens permitted by **Section 10.2.2** that are at all times junior to Administrative Agent’s Liens); (j) the goods giving rise to it have not been delivered to the Account Debtor, the services giving rise to it have not been accepted by the Account Debtor, or it otherwise does not represent a final sale; (k) it is evidenced by Chattel Paper or an Instrument of any kind, or has been reduced to judgment; (l) its payment has been extended beyond the periods specified in clause (a) above or the Account Debtor has made a partial payment (solely with respect to the invoice relating to such Account); (m) it arises from a sale to an Affiliate, from a sale on a cash-on-delivery, bill-and-hold, sale-or-return, sale-on-approval, consignment, or other repurchase or return basis, or from a sale for personal, family or household purposes; (n) it represents a progress billing or retainage, or relates to services for which a performance, surety or completion bond or similar assurance has been issued; (o) it includes a billing for interest, fees or late charges, but ineligibility shall be limited to the extent thereof; or (p) it has not been billed or is not evidenced by an invoice. In calculating delinquent portions of Accounts under clauses (a) and (b), credit balances more than 90 days old will be excluded.

Eligible Assignee: a Person that is (a) a Lender (except for any Defaulting Lender and its Affiliates), Affiliate of a Lender or Approved Fund; (b) any other assignee approved by (i) Administrative Agent (other than a Disqualified Institution (to the extent a reasonably detailed list of Disqualified Institutions complying with the terms of the definition of the term “Disqualified Institutions” is disclosed by the Borrower Agent to all Lenders)) and (ii) so long as no Event of Default has occurred and is continuing, the Borrower Agent (which approval by the Borrower Agent shall not be unreasonably withheld or delayed and which shall be deemed given if no objection is made within five Business Days after notice of the proposed assignment is given to the Borrower Agent); and (c) during an Event of Default, any Person acceptable to Administrative Agent in its discretion.

Eligible Unbilled Account: an Account which would be Eligible Accounts but for the failure to satisfy the terms of clause (p) of the definition of Eligible Account; provided that any such Account shall cease to be an Eligible Unbilled Account if an invoice with respect thereto shall not be delivered to the applicable Account Debtor within 30 calendar days following the date on which such Account was originally created.

Enforcement Action: any action to enforce any Obligations (other than Secured Bank Product Obligations) or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, action in an Obligor’s Insolvency Proceeding or otherwise).

Environmental Laws: Applicable Laws (including permits and legally-binding guidance promulgated by regulators) relating to public health as it relates to Hazardous Material exposure or the protection or pollution of the environment, including CERCLA, RCRA and CWA.

Environmental Permit: any permit, registration, license, notice, approval, consent, exemption, variance, spill or response plan, or other authorization required under or issued pursuant to applicable Environmental Laws.

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

ERISA: the Employee Retirement Income Security Act of 1974.

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

ERISA Event: (a) a Reportable Event with respect to a Pension Plan; (b) withdrawal of an Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) complete or partial withdrawal by an Obligor or ERISA Affiliate from a Multiemployer Plan; (d) filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 of ERISA, or the institution of proceedings by the PBGC to terminate a Pension Plan; (e) determination that any Pension Plan is considered an at-risk plan or a plan in critical or endangered status under the Code or ERISA; (f) an event or condition that constitutes grounds under Section 4042 of ERISA for termination of, or appointment of a trustee to administer, any Pension Plan; (g) imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or ERISA Affiliate; or (h) failure by an Obligor or ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or to make a required contribution to a Multiemployer Plan.

EU Bail-In Legislation Schedule: the EU Bail-In Legislation Schedule published by the Loan Market Association, as in effect from time to time.

Event of Default: as defined in **Section 12.1**.

Excepted Liens: (a) Liens for Taxes, assessments or other governmental charges or levies which are not delinquent or which are being Properly Contested; (b) Liens in connection with workers' compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being Properly Contested; (c) landlord's liens, maritime liens, liens granted under storage contracts, operators', vendors', carriers', warehousemen's, repairmen's, mechanics', suppliers', workers', materialmen's, construction or other like Liens, in each case arising in the Ordinary Course of Business or incident to the operation and maintenance of Properties each of which is in respect of obligations that are not delinquent or which are being Properly Contested; (d) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution, provided that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board of Governors and no such deposit account is intended by any Borrower or any Restricted Subsidiaries to provide collateral to the depository institution; (e) easements, zoning restrictions, servitudes, permits, conditions, covenants, exceptions or reservations in any Property of any Borrower or any Restricted Subsidiary for the purpose of roads, pipelines, transmission lines, transportation lines or distribution lines, or for the joint or common use of real estate, rights of way, facilities and equipment, that do not secure any monetary obligations and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by any Borrower or any Restricted Subsidiary or materially impair the value of such Property subject thereto; (f) Liens on cash or securities pledged to secure performance of tenders, surety and appeal bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations and other obligations of a like nature, in each case incurred in the Ordinary Course of Business and (g) judgment and attachment Liens not giving rise to an Event of Default, provided that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired and no action to enforce such Lien has been commenced; provided, further that Liens described in clauses (a) through (d), (f) and (g) shall remain "Excepted Liens" only for so long as no action to enforce such Lien has been commenced and no intention to subordinate the first priority Lien granted in favor of the Administrative Agent and the Lenders is to be hereby implied or expressed by the permitted existence of such Excepted Liens (other than such Excepted Liens that have priority by operation of law).

Exchange Act: Securities Exchange Act of 1934 and any successor statute thereto, in each case as amended from time to time.

Excluded Accounts: as defined in **Section 8.3**.

Excluded Property: (i) any Real Estate and Vehicles owned by an Obligor that are designated by such Obligor as Excluded Property (provided that no Obligor may designate any individual Real Property owned as of the Closing Date with a fair market value in excess of \$175,000 or any individual Real Property acquired after the Closing Date with a fair market value in excess of \$500,000 as Excluded Property) and (ii) any asset held by the SPV (but not the Equity Interests issued by the SPV); provided that the aggregate value of all Real Estate and Vehicles owned by Obligors that constitute Excluded Property under clause (i) above may not exceed \$5,000,000 (it being understood and agreed that if the aggregate value of all such Real Estate and Vehicles exceeds \$5,000,000, Obligors shall subject one or more pieces of Real Estate to the Mortgages pursuant to **Section 7.3.1(a)** or **(b)**, as applicable and/or subject one or more Vehicles to the Lien in favor of Agent pursuant to **Section 7.3.2** such that the

aggregate value of all such Real Estate and Vehicles that are not subject to a Mortgage or Lien is less than \$5,000,000); provided further that in no event shall (x) any Specified Vehicle or (y) any Vehicle owned by any Obligor as of the date hereof constitute Excluded Property unless, in the case of clause (y), the Borrower, after use of commercially reasonable efforts, is unable to perfect the Lien thereon. For purposes of calculating the aggregate value of the Property described above, (a) the value assigned to any Real Estate shall be the individual net book value of such Real Estate and (b) the value assigned to any Vehicle shall be the value assigned to such Vehicle in the most recent PP&E Value Report.

Excluded Subsidiary: (a) an Immaterial Domestic Subsidiary, (b) a captive insurance Subsidiary, (c) a Foreign Subsidiary, and (d) an Unrestricted Subsidiary.

Excluded Swap Obligation: with respect to an Obligor, each Swap Obligation as to which, and only to the extent that, such Obligor's guaranty of or grant of a Lien as security for such Swap Obligation is or becomes illegal under the Commodity Exchange Act because the Obligor does not constitute an "eligible contract participant" as defined in the act (determined after giving effect to any keepwell, support or other agreement for the benefit of such Obligor and all guarantees of Swap Obligations by other Obligors) when such guaranty or grant of Lien becomes effective with respect to the Swap Obligation. If a Hedging Agreement governs more than one Swap Obligation, only the Swap Obligation(s) or portions thereof described in the foregoing sentence shall be Excluded Swap Obligation(s) for the applicable Obligor.

Excluded Taxes: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by 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 applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a 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 14.4**) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to **Section 5.9**, amounts with respect to such Taxes were payable either to such Lender's assignor immediately prior to such assignment or to such Lender immediately prior to its change in Lending Office, (c) Taxes attributable to such Recipient's failure to comply with **Section 5.10** and (d) any U.S. federal withholding Taxes imposed under FATCA.

Existing Letters of Credit: the letters of credit previously issued under the Original Credit Agreement that are outstanding as of the Closing Date and listed on **Schedule 2.3** hereto.

Expected Asset Sale Proceeds: any cash proceeds payable in connection with the Specified Asset Sale pursuant to one or more fully-executed purchase agreements which (i) contain no material financial or diligence conditions to closing, and (ii) are contracted to close within 30 calendar days after the effective date of the Prepackaged Plan; provided, however, that, unless Bank of America and Wells Fargo have consented to a waiver of such condition, such cash proceeds must be held in escrow at a nationally chartered U.S. bank pursuant to an escrow agreement requiring payment of such proceeds to the Debtors or reorganized Debtors upon the closing of the Specified Asset Sale within 30 calendar days after the effective date of the Prepackaged Plan, subject only to a failure to obtain the approval of any governmental entity on the basis of any applicable antitrust laws.

Extraordinary Expenses: all reasonable and documented costs, expenses or advances that Administrative Agent may incur during an Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other

preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Administrative Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of 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 of any rights or remedies of Administrative Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; and (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and reasonable and documented standby fees, legal fees, appraisal fees, brokers' and auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses.

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.

FATCA: Sections 1471 through 1474 of the Code (including any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

FCPA Settlement: the cease and desist order entered by the SEC with respect to the Company on August 11, 2016 and effective as of August 11, 2016.

Federal Funds Rate: (a) the weighted average of interest rates on overnight federal funds transactions with members of the Federal Reserve System on the applicable Business Day (or on the preceding Business Day, if the applicable day is not a Business Day), as published by the Federal Reserve Bank of New York on the next Business Day; or (b) if no such rate is published on the next Business Day, the average rate (rounded up, if necessary, to the nearest 1/8 of 1%) charged to Bank of America on the applicable day on such transactions, as determined by Administrative Agent; provided, that in no event shall such rate be less than zero.

Fee Letters: as defined in **Section 3.2.3**.

Final: an order or judgment of the Bankruptcy Court, or other court of competent jurisdiction with respect to the subject matter, which has not been reversed, stayed, modified or amended, and as to which (i) the time to appeal, petition for certiorari, or move for reargument or rehearing (other than a request for rehearing under Federal Rule of Civil Procedure 60(b), which shall not be considered for purposes of this definition) has expired and no appeal or petition for certiorari has been timely taken, or (ii) any timely appeal that has been taken or any petition for certiorari that has been or may be timely filed has been resolved by the highest court to which the order or judgment was appealed or from which certiorari was sought or has otherwise been dismissed with prejudice).

Fiscal Quarter: each period of three months, commencing on the first day of a Fiscal Year.

Fiscal Year: the fiscal year of Borrowers and Restricted Subsidiaries for accounting and tax purposes, ending on December 31 of each year.

Fixed Charge Coverage Ratio: the ratio, determined on a consolidated basis for the Company and

its Consolidated Subsidiaries for the most recently completed 12-month period or, if applicable, for the most recently completed four-Fiscal Quarter period, of (a) EBITDA minus Capital Expenditures (and, in any event, including amounts added back to EBITDA for costs, charges and expenses relating to rig mobilization pursuant to clause (xi) of the definition of “EBITDA” for such period but excluding (i) those financed or funded with Borrowed Money (other than Revolver Loans), (ii) the portion thereof funded with the Net Proceeds from Asset Dispositions of Equipment or Real Estate which Borrowers are permitted to use to purchase assets pursuant to **Section 8.6.2(c)** and (iii) the portion thereof funded with the proceeds of casualty insurance or condemnation awards in respect of any Equipment and Real Estate which Borrowers are not required to use to prepay the Loans pursuant to **Section 8.6.2(b)** or with the proceeds of casualty insurance or condemnation awards in respect of any other Property) and (iv) cash taxes paid (net of cash tax refunds received during such period), to (b) Fixed Charges.

Fixed Charges: the sum of Consolidated Cash Interest Expense, scheduled principal payments made on Borrowed Money, and Distributions (other than Upstream Payments) paid in cash.

Flood Laws: (a) the National Flood Insurance Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (b) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto, (c) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto, and (d) all other Applicable Laws relating to policies and procedures that address requirements placed on federally regulated lenders relating to flood matters, in each case, as now or hereafter in effect or any successor statute thereto.

FLSA: the Fair Labor Standards Act of 1938.

Flood Disaster Protection Act: the federal Flood Disaster Protection Act of 1973.

Foreign Lender: any Lender that is not a U.S. Person.

Foreign Plan: any employee benefit plan or arrangement (a) maintained or contributed to by any Obligor or Subsidiary that is not subject to the laws of the United States; or (b) mandated by a government other than the United States for employees of any Obligor or Subsidiary.

Foreign Subsidiary: a Subsidiary that is a “controlled foreign corporation” under Section 957 of the Code (a “CFC”).

Fronting Exposure: a Defaulting Lender’s interest in LC Obligations, Swingline Loans and Protective Advances, except to the extent Cash Collateralized by the Defaulting Lender or allocated to other Lenders hereunder.

Full Payment: with respect to any Obligations or Guaranteed Obligations, as applicable, (a) the full cash payment thereof (other than inchoate or contingent or reimbursable obligations for which no claim has been asserted), including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); and (b) if such Obligations or Guaranteed Obligations are LC Obligations or inchoate or contingent in nature (other than inchoate or contingent or reimbursable obligations for which no claim has been asserted), Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Administrative Agent in its Permitted Discretion, in the amount of required Cash Collateral). No Loans shall be deemed to have been paid in full unless all Commitments related to such Loans have expired or been terminated.

GAAP: generally accepted accounting principles in effect in the United States from time to time.

Governmental Approvals: all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority: the government of the United States of America, any other nation or 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 supranational bodies, such as the European Union or the European Central Bank).

Group: as defined in the definition of “Change of Control”.

Guaranteed Obligations: as defined in **Section 11.1**.

Guarantor Payment: as defined in **Section 5.11.3(b)**.

Guarantors: each Domestic Subsidiary and each other Person that guarantees payment or performance of the Obligations, provided that the Excluded Subsidiaries, any Borrower and the SPV shall not be Guarantors (it being understood and agreed that nothing in this definition shall affect or detract from the joint and several liability of the Borrowers pursuant to the terms of this Agreement).

Guaranty: the guaranty of each Guarantor set forth in **Section 11**.

Hazardous Material: any substance regulated or as to which liability might arise under any applicable Environmental Law including: (a) any chemical, compound, material, product, byproduct, substance or waste defined as or included in the definition or meaning of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic waste,” “extremely hazardous substance,” “toxic substance,” “contaminant,” “pollutant,” or words of similar meaning or import found in any applicable Environmental Law; (b) hydrocarbons, petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and (c) radioactive materials, explosives, asbestos or asbestos containing materials, polychlorinated biphenyls, radon, infectious or medical wastes, to the extent any of the foregoing are present in quantities or concentrations prohibited under applicable Environmental Laws.

Hedging Agreement: a “swap agreement” as defined in Section 101(53B)(A) of the Bankruptcy Code.

Hedging Termination Value: in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined by the counterparties to such Hedging Agreements.

Immaterial Domestic Subsidiary: any Domestic Subsidiary of the Company (other than a Subsidiary that is a Borrower or a Subsidiary that is a Guarantor on the Closing Date) designated by Borrower Agent in writing as an Immaterial Domestic Subsidiary which has assets with a net book value of \$1,000,000 or less and annual revenues of \$1,000,000 or less; provided that all Domestic Subsidiaries so designated as Immaterial Domestic Subsidiary may not have at any time, in the aggregate, assets with a net book value exceeding \$5,000,000 or annual revenues exceeding \$5,000,000; and in the event such thresholds are exceeded at any time, and Borrower Agent does not promptly deliver to Administrative Agent a written notice asserting that such Domestic Subsidiary shall no longer be deemed an Immaterial Domestic Subsidiary, then the most recently designated Immaterial Domestic Subsidiary shall no longer be deemed an Immaterial Domestic Subsidiary and shall comply with the provisions of **Section 10.1.13** to become a Guarantor. All of the Immaterial Domestic Subsidiaries as of the Closing Date are listed on **Schedule 1.1(B)** and designated thereon as Immaterial Domestic Subsidiaries.

Indemnified Taxes: (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment on account of an Obligation; and (b) to the extent not otherwise described in clause (a), Other Taxes.

Indemnitees: Agent Indemnitees, Lender Indemnitees, Issuing Bank Indemnitees and Bank of America Indemnitees.

Information: as defined in **Section 15.12**.

Insolvency Proceeding: any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

Intellectual Property Claim: any claim or assertion (whether in writing, by suit or otherwise) that a Borrower's or Restricted Subsidiary's ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person's Intellectual Property.

Intercreditor Agreement: the intercreditor agreement of even date herewith, between the Term Loan Agent and Administrative Agent.

Intercompany Note: as defined in **Section 10.2.1(e)**.

Interest Period: as defined in **Section 3.1.3**.

Inventory: as defined in the UCC, including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in a Borrower's business (but excluding Equipment).

Investment: with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Debt, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If any Borrower or any Restricted Subsidiary of the Borrowers sells or otherwise disposes of less than all of the Equity Interests of any direct or indirect Restricted Subsidiary of the Borrowers such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Borrowers, Borrowers will be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Borrowers' Investments in such Subsidiary that were not disposed of or sold.

Investment Grade Rating: short-term unsecured debt ratings equal to or higher than P-3 (or equal to or higher than Baa3 long term unsecured senior debt ratings) assigned by Moody's and short-term unsecured debt ratings equal to or higher than A-3 (or equal to or higher than BBB- long term unsecured senior debt ratings) assigned by S&P.

IP Assignment: a collateral assignment or security agreement pursuant to which an Obligor grants a Lien on its Intellectual Property to Administrative Agent, as security for its Obligations.

IRS: the United States Internal Revenue Service.

Issuing Bank: as the context may require, (a) Bank of America (including any Lending Office of Bank of America), (b) Wells Fargo (provided, however, that Wells Fargo shall be an Issuing Bank only with respect to those Existing Letters of Credit as to which it is the issuer, and any renewals and extensions thereof (so long as all applicable conditions precedent to the issuance or effectiveness of any such renewal or extension, as set forth in this Agreement and the other Loan Documents, have been satisfied or waived in the manner described herein)), (c) any Additional Issuing Bank, (d) any replacement issuer appointed pursuant to **Section 2.3.4**, or (e) collectively, all of the foregoing. For the avoidance of doubt, the reference to “Issuing Bank” in **Section 15.1** shall have the meaning specified in clause (e) of the foregoing sentence. Except as provided in the immediately preceding sentence, any reference to “Issuing Bank” herein shall be to the applicable Issuing Bank, as appropriate..

Issuing Bank Indemnitees: any Issuing Bank and its officers, directors, employees, Affiliates, agents and attorneys.

Key Energy LLC: as defined in the introductory paragraph hereto.

LC Application: an application by Borrower Agent to Issuing Bank for issuance of a Letter of Credit, in form and substance reasonably satisfactory to Issuing Bank and Administrative Agent. In the event of any conflict between the terms of any LC Application and this Agreement, the terms of this Agreement shall govern.

LC Conditions: the following conditions necessary for issuance of a Letter of Credit: (a) each of the conditions set forth in **Section 6.2**; (b) after giving effect to such issuance, total LC Obligations do not exceed the Letter of Credit Subline, no Overadvance exists and Revolver Usage does not exceed the Borrowing Base; (c) the Letter of Credit and payments thereunder are denominated in Dollars or other currency satisfactory to Administrative Agent and the applicable Issuing Bank; and (d) the purpose and form of the proposed Letter of Credit are reasonably satisfactory to Administrative Agent and Issuing Bank. Additionally, no Issuing Bank shall have any obligation to issue a Letter of Credit if (i) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit or request that such Issuing Bank refrain from the issuance of letters of credit generally or such Letter of Credit in particular or (ii) the issuance of such Letter of Credit would violate one or more policies of such Issuing Bank applicable to letters of credit generally.

LC Documents: all documents, instruments and agreements (including LC Requests and LC Applications) delivered by Borrowers or any other Person to an Issuing Bank or Administrative Agent in connection with any Letter of Credit.

LC Obligations: the sum (without duplication) of (a) all amounts owing by Borrowers for drawings under Letters of Credit; and (b) the Stated Amount of all outstanding Letters of Credit.

LC Request: a request for issuance of a Letter of Credit, to be provided by Borrower Agent to Issuing Bank, in form satisfactory to Administrative Agent and Issuing Bank.

Lender Indemnitees: Lenders and Secured Bank Product Providers, and their officers, directors, employees, Affiliates, agents and attorneys.

Lenders: lenders party to this Agreement (including Administrative Agent in its capacity as provider of Swingline Loans) and any Person who hereafter becomes a “Lender” pursuant to an Assignment, other than any Person that shall have ceased to be a party hereto pursuant to an Assignment.

Lending Office: the office (including any domestic or foreign Affiliate or branch) designated as such by a Lender or Issuing Bank by notice to Administrative Agent and Borrower Agent.

Letter of Credit: each Existing Letter of Credit and any standby or documentary letter of credit, foreign guaranty, documentary bankers’ acceptance or similar instrument issued by Issuing Bank for the account or benefit of a Borrower or Affiliate of a Borrower.

Letter of Credit Subline: \$55,000,000.

LIBOR: the per annum rate of interest (rounded up to the nearest 1/8th of 1% and in no event less than zero) determined by Administrative Agent at or about 11:00 a.m. (London time) two Business Days prior to an interest period, for a term equivalent to such period, equal to the London Interbank Offered Rate, or comparable or successor rate approved by Administrative Agent, as published on the applicable Reuters screen page (or other commercially available source designated by Administrative Agent from time to time); provided, that (a) any comparable or successor rate shall be applied by Administrative Agent, if administratively feasible, in a manner consistent with market practice and (b) if LIBOR shall be less than zero, such rate shall be deemed zero for purposes of this Agreement.

LIBOR Loan: each set of LIBOR Revolver Loans having a common length and commencement of Interest Period.

LIBOR Revolver Loan: a Revolver Loan that bears interest based on LIBOR.

License: any license or agreement under which an Obligor is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor: any Person from whom an Obligor obtains the right to use any Intellectual Property.

Lien: a Person’s interest in Property securing an obligation owed to, or a claim by, such Person, including any lien, security interest, pledge, hypothecation, assignment, trust, reservation, encroachment, easement, right-of-way, covenant, condition, restriction, lease, or other title exception or encumbrance.

Lien Waiver: an agreement, in form and substance reasonably satisfactory to Administrative Agent, by which (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit 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 Administrative Agent, and agrees to deliver the Collateral to Administrative Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges 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 Intellectual Property rights, the Licensor grants to Administrative Agent the right, vis-à-vis such Licensor, to enforce 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 Cap: as of any time or date of determination, the lesser of the (i) the Borrowing Base then in effect and (ii) the aggregate amount of Revolver Commitments then in effect.

Loan: a Revolver Loan.

Loan Documents: this Agreement, Other Agreements and Security Documents.

Loan Year: each 12 month period commencing on the Closing Date and on each anniversary of the Closing Date.

Management Fees: as defined in **Section 10.2.10(b)**.

Margin Stock: as defined in Regulation U of the Board of Governors.

Material Adverse Effect: a material adverse effect on (a) the business, Properties, condition (financial or otherwise) or results of operations of the Borrowers and their Subsidiaries, taken as a whole; (b) the rights and remedies of Administrative Agent or any Lender under the Loan Documents, or of the ability of Obligors to perform their respective obligations under the Loan Documents, in each case, taken as a whole; or (c) the validity or enforceability against any Obligor of any Loan Document to which it is a party; provided, that, the Chapter 11 Cases and the events leading up to and following the commencement of the Chapter 11 Cases and any actions taken pursuant to the Prepackaged Plan shall not constitute a Material Adverse Effect.

Material Contract: any agreement or arrangement to which a Borrower or Restricted Subsidiary is party (other than the Loan Documents) (a) that is deemed to be a material contract under the Securities Act of 1933; (b) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (c) that relates to Material Debt.

Material Debt: Debt (other than the Loans and Letters of Credit), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrowers and their Restricted Subsidiaries in an aggregate principal amount exceeding \$30,000,000. For purposes of determining Material Debt, the "principal amount" of the obligations of the Borrowers or any Restricted Subsidiary in respect of any Hedging Agreement at any time shall be the Hedging Termination Value.

Material Real Property: any owned Real Estate with a net book value greater than \$250,000 located in any Mortgage State.

Maximum Rate: as defined in **Section 3.10**.

Moody's: Moody's Investors Service, Inc., and its successors.

Mortgage: a mortgage or deed of trust in which an Obligor grants a Lien on its Real Estate to Administrative Agent, as security for its Obligations.

Mortgage State: each of the following states: California, Louisiana, New Mexico, North Dakota, Oklahoma and Texas.

Mortgaged Property: any Real Estate owned by any Obligor that is subject to a Mortgage.

Multiemployer Plan: any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which an Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

Net Proceeds: with respect to an Asset Disposition, proceeds (including, when received, any deferred or escrowed payments) received by a Borrower or Restricted Subsidiary in cash from such disposition, net of (a) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (b) amounts applied to repayment of Debt secured

by a Permitted Lien senior to Administrative Agent's Liens on Collateral sold; (c) transfer or similar taxes; and (d) reserves for indemnities, until such reserves are no longer needed.

Non-Recourse Debt: Debt (a) as to which neither the Company nor any of its Restricted Subsidiaries, (i) provides any guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Debt) or (ii) is directly or indirectly liable (as a guarantor or otherwise); (b) the incurrence of which will not result in any recourse against any of the assets of the Company or its Restricted Subsidiaries; and (c) no default with respect to which would permit (upon notice, lapse of time or both) any holder of any other Debt ("Other Debt") of the Company or any of its Restricted Subsidiaries to declare pursuant to the express terms governing such Debt a default on such Other Debt or cause the payment thereof to be accelerated or payable prior to its stated maturity.

Notice of Borrowing: a request by Borrower Agent of a Borrowing of Revolver Loans, in form satisfactory to Administrative Agent.

Notice of Conversion/Continuation: a request by Borrower Agent of a conversion or continuation of any Loans as LIBOR Loans, in form reasonably satisfactory to Administrative Agent.

Obligations: all (a) principal of and premium, if any, on the Loans, (b) LC Obligations and other obligations of Obligors with respect to Letters of Credit, (c) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under Loan Documents, (d) Secured Bank Product Obligations, and (e) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several; provided, that Obligations of an Obligor shall not include its Excluded Swap Obligations.

Obligor: each Borrower, Guarantor or other Person that is liable for payment of any Obligations or that has granted a Lien on its assets in favor of Administrative Agent to secure any Obligations.

OFAC: Office of Foreign Assets Control of the U.S. Treasury Department.

Ordinary Course of Business: the ordinary course of business of any Borrower or Restricted Subsidiary, undertaken in good faith and consistent with Applicable Law and past practices.

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability company agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

Original Credit Agreement: as defined in the recitals hereto.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: each LC Document, Fee Letters, the Intercreditor Agreement, Borrower Materials, promissory note or Intercompany Note now or hereafter delivered by an Obligor or other Person to Administrative Agent or a Lender in connection with any transactions relating hereto.

Other Connection Taxes: Taxes imposed on a Recipient as a result of a present or former connection between the Recipient and the jurisdiction imposing such Tax (other than connections arising from the Recipient having executed, delivered, become a party to, performed obligations or received

payments under, received or perfected a Lien or engaged in any other transaction pursuant to, enforced, or sold or assigned an interest in, any Loan or Loan Document).

Other Taxes: all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a Lien under, or otherwise with respect to, any Loan Document, except Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 14.4(c)**).

Overadvance: as defined in **Section 2.1.5**.

Overadvance Loan: a Base Rate Revolver Loan made when an Overadvance exists or is caused by the funding thereof.

Participant: as defined in **Section 14.2.1**.

PATRIOT Act: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment Conditions: with respect to any applicable payment or transaction, each of the following conditions:

(a) as of the date of any such payment or transaction, and after giving effect thereto, no Default shall exist or has occurred and is continuing,

(b) (i) Availability at any time during the immediately preceding 60 consecutive day period on a pro forma basis shall have been at least 12.5% of the Line Cap and (ii) after giving effect to the payment or transaction, on a pro forma basis using the most recent calculation of the Borrowing Base immediately prior to any such payment or transaction, Availability shall be at least 12.5% of the Line Cap,

(c) as of the date of any such payment or transaction, and after giving effect thereto, on a pro forma basis (including with respect to periods prior to the Closing Date), the Fixed Charge Coverage Ratio (x) for the four-Fiscal Quarter period ending on the last day of the most recent Fiscal Quarter for which Administrative Agent has received financial statements in accordance with **Section 10.1.2(a)** or **10.1.2(b)** or (y) during the Reporting Trigger Period, for the 12-month period ending on the last day of the most recently completed month (on the basis of internally prepared monthly financial statements for the 12-month period then ended), prior to the date of such payment or transaction shall be at least 1.00 to 1, and

(d) receipt by Administrative Agent of a certificate of a Senior Officer of the Borrower Agent certifying as to compliance with the preceding clauses and demonstrating (in reasonable detail) the calculations required thereby (each, a "Payment Conditions Certificate").

Payment Item: each check, draft or other item of payment payable to a Borrower, including those constituting proceeds of any Collateral.

PBGC: the Pension Benefit Guaranty Corporation.

Pension Funding Rules: Code and ERISA rules regarding minimum required contributions (including installment payments) to Pension Plans set forth in, for plan years ending prior to the Pension Protection Act of 2006 effective date, Section 412 of the Code and Section 302 of ERISA, both as in effect prior to such act, and thereafter, Sections 412, 430 and 436 of the Code and Sections 302 and 303 of ERISA.

Pension Plan: any employee pension benefit plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by an Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

Permitted Acquisition: an Acquisition by any Borrower or any of its Restricted Subsidiaries, provided that (a) the Person to be (or the property of which is to be) so purchased or otherwise acquired shall be engaged in substantially the same lines of business as one or more of the businesses of the Borrowers and their Restricted Subsidiaries or in a business or businesses reasonably related thereto; (b) immediately before giving effect to such Acquisition, no Event of Default shall have occurred and be continuing; (c) at the time of such Acquisition and immediately thereafter, (i) no Default shall have occurred and be continuing, and (ii) the Payment Conditions have been satisfied; (d) if such acquired Person has outstanding Debt at the time of such Acquisition, such Debt is permitted pursuant to **Section 10.2.1**; (e) any such newly-created or acquired Subsidiary shall comply with the requirements of **Section 10.1.13** and (f) with respect to any Acquisition for which the consideration with respect to such Acquisition equals or exceeds \$25,000,000, the Borrowers shall have delivered to Administrative Agent and each Lender, at least five Business Days prior to the date on which such Acquisition is to be consummated, a certificate of a Senior Officer, in form and substance reasonably satisfactory to Administrative Agent, certifying that all of the requirements set forth in this definition have been satisfied or will be satisfied on or prior to the consummation of such Acquisition.

Permitted Contingent Obligations: Contingent Obligations (a) arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business; (b) arising from Hedging Agreements permitted hereunder; (c) existing on the Closing Date, and any extension or renewal thereof that does not increase the amount of such Contingent Obligation when extended or renewed; (d) incurred in the Ordinary Course of Business with respect to surety, appeal or performance bonds, or other similar obligations; (e) arising from customary indemnification obligations in favor of purchasers in connection with dispositions of Equipment and other assets permitted hereunder; (f) arising under the Loan Documents; (g) arising with respect to customary provisions of any contract, customer agreement, purchase order, document or other agreement incurred in the Ordinary Course of Business; (h) arising by operation of law; or (i) in an aggregate amount of \$10,000,000 or less at any time.

Permitted Discretion: a determination made in the exercise, in good faith, of reasonable business judgment (from the perspective of a secured, asset-based lender).

Permitted Holders: (a) Platinum and any affiliate (other than a portfolio company) controlled directly or indirectly by Platinum and (b) any Person that forms a Group with any of the Persons listed in clause (a) or Group consisting of any of the Persons listed in clause (a); provided that the Persons listed in clause (a) beneficially own in the aggregate, directly or indirectly, a majority of the Voting Stock in the Company held by all Persons in such Group (without giving effect to the application of any attribution rules).

Permitted Junior Debt Conditions: of an applicable Debt are that such Debt (i) is not scheduled to mature prior to the date that is 91 days after the latest maturity of the Loans and the Term Loans, (ii) does not mature or have scheduled amortization payments of principal or payments of principal and is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligation (except customary asset sale or change of control provisions that provide for the prior repayment in full of the Loans and all other Obligations), in each case prior to the latest maturity of the Loans and the Term Loans at the time such Debt is incurred, (iii) is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors and the terms of such guarantee shall be no more favorable to the secured parties in respect of such Debt than the terms of the Guaranty, and (iv) has covenants, default and remedy provisions and other terms and conditions (other than interest, fees, premiums and funding discounts) that

are, taken as a whole, substantially identical to, or less favorable to the investors providing such Debt than, those set forth in this Agreement.

Permitted Junior Priority Secured/Unsecured Debt: secured (or, at the election of the Borrower Agent, unsecured) Debt incurred by Obligors in the form of one or more series of junior lien secured (or unsecured) notes or junior lien secured (or unsecured) loans; provided that (i) such Debt is secured by the Collateral (if at all) on a junior priority basis to the Liens in favor of Administrative Agent and the Liens in favor of the Term Loan Agent under security documents substantially similar to the Security Documents and is not secured by any property or assets of any Borrower or any Subsidiary other than the Collateral, (ii) the holders of such Debt (or their representative) and Administrative Agent and the Term Loan Agent shall be party to an intercreditor agreement in form and substance reasonably satisfactory to Administrative Agent, (iii) such Debt has financial covenants that are, taken as a whole, substantially identical to, or less favorable to the investors of such Debt than, those set forth in this Agreement and the Term Loan Credit Agreement, (iv) interest payable thereon may only be made “in-kind” by increasing the outstanding principal amount thereof, (v) such Debt is subordinated in right of payment to the payment in full of the Obligations on customary terms reasonably satisfactory to the Administrative Agent and (vi) such Debt meets the Permitted Junior Debt Conditions.

Permitted Liens: as defined in **Section 10.2.2**.

Permitted Purchase Money Debt: Purchase Money Debt of Borrowers and Restricted Subsidiaries that is unsecured or secured only by a Purchase Money Lien, as long as the aggregate amount does not exceed \$25,000,000 at any time.

Permitted Unsecured Debt: unsecured Debt incurred by Obligors in the form of one or more series of senior unsecured notes or loans; provided that such Debt (i) meets the Permitted Junior Debt Conditions, (ii) has no financial maintenance covenants, and (iii) does not contain any provisions that cross-default to any Default hereunder.

Person: any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Governmental Authority or other entity.

Plan: an employee benefit plan (as defined in Section 3(3) of ERISA) maintained for employees of an Obligor or ERISA Affiliate, or to which an Obligor or ERISA Affiliate is required to contribute on behalf of its employees.

Plan Support Agreement: the Plan Support Agreement (including the term sheets and any other attachments thereto), entered into on August 24, 2016 among the Company and the supporting holders party thereto, as may be amended, modified or supplemented from time to time in accordance with the terms thereof.

Platform: as defined in **Section 15.3.3**.

Platinum: Platinum Equity Advisors, LLC, a Delaware limited liability company, and its managed funds and/or accounts.

Post-Closing Collateral: as defined in **Section 7.3.3**.

Post-Closing Collateral Period: as defined in **Section 7.3.3**.

PP&E Value: has the meaning assigned to such term in the Term Loan Credit Agreement as in effect on the Closing Date.

PP&E Value Report: any report delivered pursuant to **Section 10.1.17**.

Prepackaged Plan: the *Joint Prepackaged Plan of Reorganization of Key Energy Services, Inc. and its Debtor Affiliates pursuant to Chapter 11 of the Bankruptcy Code*, dated September 21, 2016, in the form filed with the Bankruptcy Court (including all annexes, exhibits, schedules and supplements thereto, in each case, as may be amended, modified or supplemented from time to time only in accordance with the terms thereof.

Prime Rate: the rate of interest announced by Bank of America from time to time as its prime rate. Such rate is set by Bank of America on the basis of various factors, including its costs and desired return, general economic conditions and other factors, and is used as a reference point for pricing some loans, which may be priced at, above or below such rate. Any change in such rate publicly announced by Bank of America shall take effect at the opening of business on the day specified in the announcement.

Pro Forma Cost Savings: without duplication of any amounts referenced in **Section 1.5**, an amount equal to the amount of cost savings, operating expense reductions, operating improvements (including the entry into any material contract or arrangement) and acquisition synergies, in each case, projected in good faith to be realized (calculated on a pro forma basis as though such items had been realized on the first day of such period) as a result of actions taken on or prior to, or to be taken by the Borrowers (or any successor thereto) or any Consolidated Subsidiary within 12 months of, the date of such pro forma calculation, net of the amount of actual benefits realized or expected to be realized during such period that are otherwise included in the calculation of EBITDA from such action; provided that (a) such cost savings, operating expense reductions, operating improvements and synergies are factually supportable and reasonably identifiable (as determined in good faith by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Borrowers (or any successor thereto) and are reasonably anticipated to be realized within 12 months after the date of such pro forma calculation and (b) no cost savings, operating expense reductions, operating improvements and synergies shall be added pursuant to this definition to the extent duplicative of any expenses or charges otherwise added to Consolidated Net Income or EBITDA, whether through a pro forma adjustment or otherwise, for such period; provided, further, that (i) the aggregate amount added in respect of the foregoing proviso (or otherwise added to Consolidated Net Income pursuant to clause (xiii) of the definition thereof or added to EBITDA pursuant to clause (vi) of the definition thereof) shall not exceed with respect to any four quarter period 10% of EBITDA for such period (calculated prior to giving effect to any such adjustments) (such limitation, the "Cost Savings Cap") and (ii) the aggregate amount added in respect of the foregoing proviso (or otherwise added to Consolidated Net Income pursuant to clause (xiii) of the definition thereof or added to EBITDA pursuant to clause (vi) of the definition thereof) shall no longer be permitted to be added back to the extent the cost savings, operating expense reductions, operating improvements and synergies have not been achieved within 12 months of the action or event giving rise to such cost savings, operating expense reductions, operating improvements and synergies.

Pro Rata: with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) by dividing the amount of such Lender's Revolver Commitment by the aggregate outstanding Revolver Commitments; or (b) following termination of the Revolver Commitments, by dividing the amount of such Lender's Loans and LC Obligations by the aggregate outstanding Loans and LC Obligations or, if all Loans and LC Obligations have been paid in full and/or Cash Collateralized, by dividing such Lender's and its Affiliates' remaining Obligations by the aggregate remaining Obligations.

Properly Contested: with respect to any obligation of an Obligor, (a) the obligation is subject to a bona fide dispute regarding amount or the Obligor's liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment of which could not have a Material Adverse Effect, nor could such non-payment reasonably likely result in forfeiture or sale of any material assets of the Obligor; (e) no Lien is imposed on assets of the Obligor, unless bonded and stayed to the satisfaction of 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.

Property: any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Protective Advances: as defined in **Section 2.1.6**.

Purchase Money Debt: (a) Debt (other than the Obligations), including Capital Leases, for payment of any of the purchase price of fixed assets; (b) Debt (other than the Obligations), including Capital Leases, incurred within 20 days before or after acquisition of any fixed assets, for the purpose of financing any of the purchase price thereof; and (c) any renewals, extensions or refinancings (but not increases) thereof.

Purchase Money Lien: a Lien that secures Purchase Money Debt, encumbering only the fixed assets acquired with such Debt and constituting a Capital Lease or a purchase money security interest under the UCC.

Qualified ECP: an Obligor with total assets exceeding \$10,000,000, or that constitutes an “eligible contract participant” under the Commodity Exchange Act and can cause another Person to qualify as an “eligible contract participant” under Section 1a(18)(A)(v)(II) of such act.

RCRA: the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon.

Real Property: all right, title and interest in any owned real Property or any buildings, structures, parking areas or other improvements thereon.

Recipient: Administrative Agent, any Issuing Bank, any Lender or any other recipient of a payment to be made by an Obligor under a Loan Document or on account of an Obligation.

Reference Period: as defined in **Section 1.5**.

Refinancing Conditions: the following conditions for Refinancing Debt: (a) it is in an aggregate principal amount that does not exceed the principal amount of the Debt being extended, renewed or refinanced (other than an increase in an aggregate principal amount resulting solely from any capitalized or payment in-kind interest or an increase in the principal amount not in excess of the Term Cap Amount (as defined in the Intercreditor Agreement)); (b) it has a final maturity no sooner than, a weighted average life no less than, and, unless otherwise approved by Administrative Agent, an interest rate no greater than, the Debt being extended, renewed or refinanced; (c) if subordinated, it is subordinated to the Obligations at least to the same extent as the Debt being extended, renewed or refinanced or otherwise on terms and conditions acceptable to Administrative Agent; (d) with respect to Refinancing Debt with a principal amount in excess of \$20,000,000, the representations, covenants and defaults applicable to it are no less favorable (taken as a whole in any material respect) to Borrowers, than those applicable to the Debt being extended, renewed or refinanced, unless otherwise approved by Administrative Agent; (e) no additional Lien is granted to secure it (other than additional Permitted Liens on Property not constituting Collateral); (f) no additional Person is obligated on such Debt; and (g) upon giving effect to it, no Default exists.

Refinancing Debt: Borrowed Money that is the result of an extension, renewal or refinancing of Debt permitted under **Section 10.2.1(g), (k) or (m)**.

Reimbursement Date: as defined in **Section 2.3.2**.

Related Real Estate Documents: with respect to any Real Estate subject to a Mortgage, the following: (a) a mortgagee title policy (or binder therefor) covering the Administrative Agent’s interest

under the Mortgage; (b) assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases with respect to other Persons having an interest in the Real Estate; (c) surveys of the Real Estate; (d) appraisals of the Real Estate; (e) flood hazard information requested by any Lender as needed for a life-of-loan flood hazard determination and, if the Real Estate is located in a special flood hazard zone, flood insurance documentation (including an acknowledged notice to borrower and real property and contents flood insurance by an insurer reasonably acceptable to Co-Collateral Agents) in accordance with the Flood Disaster Protection Act or otherwise reasonably satisfactory to each Lender and other such documents as Administrative Agent or any Lender may reasonably require with respect to flood insurance for the Real Estate, in each case, in form and substance reasonably satisfactory to Administrative Agent and received by Administrative Agent for review at least 15 days (or such shorter period as agreed to by Co-Collateral Agents Agent) prior to the effective date of the Mortgage and (f) environmental site assessments, and other reports, certificates, studies or data with respect to any environmental risks regarding the Real Estate.

Release: any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing in quantities or concentrations prohibited under Environmental Laws. “Released” has a correlative meaning.

Remedial Work: as defined in **Section 10.1.12(a)**.

Report: as defined in **Section 13.2.3**.

Reportable Event: any event set forth in Section 4043(c) of ERISA, other than an event for which the 30 day notice period has been waived.

Reporting Trigger Period: the period (a) commencing on the day that a Default occurs, or Availability is less than the greater of (X) \$20,000,000 and (Y) 20.0% of the Line Cap on such day; and (b) continuing until the day (1) Availability has been greater than the greater of (X) \$20,000,000 and (Y) 20.0% of the Line Cap and (2) no Default has occurred and is continuing, in the case of each of the clauses (b)(1)(X), (b)(1)(Y) and (b)(2), for a period of 90 consecutive calendar days.

Required Lenders: Secured Parties holding (x) if there are two or fewer Lenders, 100% and (y) in all other cases, more than 50% of (A) the aggregate outstanding Revolver Commitments; or (B) following termination of the Revolver Commitments, the aggregate outstanding Loans and LC Obligations or, if all Loans and LC Obligations have been paid in full, the aggregate remaining Obligations; provided, that Commitments, Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation, but any related Fronting Exposure shall be deemed held as a Loan or LC Obligation by the Secured Party that funded the applicable Loan or issued the applicable Letter of Credit.

Restricted Subsidiary: any Subsidiary that is not an Unrestricted Subsidiary or a direct or indirect Subsidiary of an Unrestricted Subsidiary.

Restrictive Agreement: an agreement (other than a Loan Document) that conditions or restricts the right of any Borrower, Restricted Subsidiary or other Obligor to incur or repay Borrowed Money, to grant, convey, create or impose Liens on any assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Borrowed Money, or to repay any intercompany Debt or requires the consent of other Persons in connection with any of the foregoing.

Revolver Commitment: for any Lender, its obligation to make Revolver Loans and to participate in LC Obligations up to the maximum principal amount shown on **Schedule 1.1**, as hereafter modified pursuant to **Section 2.1.7** or an Assignment to which it is a party. “Revolver Commitments” means the aggregate amount of such commitments of all Lenders.

Revolver Loan: a loan made pursuant to **Section 2.1**, and any Swingline Loan, Overadvance Loan or Protective Advance.

Revolver Termination Date: June 15, 2021.

Revolver Usage: (a) the aggregate amount of outstanding Revolver Loans; plus (b) the aggregate Stated Amount of outstanding Letters of Credit, except to the extent Cash Collateralized by Borrowers.

Royalties: all royalties, fees, expense reimbursement and other amounts payable by a Borrower under a License.

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

Sanctions: any sanction administered or enforced by the U.S. government (including OFAC), United Nations Security Council, European Union, Her Majesty's Treasury or other sanctions authority.

SEC: the Securities and Exchange Commission or any successor thereto.

Secured Bank Product Obligations: Debt, obligations and other liabilities with respect to Bank Products (including a purchase card program provided by Bank of America or its Affiliate) owing by a Borrower or Affiliate of a Borrower to a Secured Bank Product Provider; provided, that Secured Bank Product Obligations of an Obligor shall not include its Excluded Swap Obligations.

Secured Bank Product Provider: (a) Bank of America, Wells Fargo or any of their Affiliates; and (b) any other Lender, Affiliate of a Lender or any Person who, at the time of providing any Bank Product, was a Lender or an Affiliate of a Lender, that is providing a Bank Product provided such provider delivers written notice to Administrative Agent, in form and substance reasonably satisfactory to Administrative Agent, within 10 days following the later of the Closing Date or creation of the Bank Product, (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral and the methodology to be used in calculating such amount, and (ii) agreeing to be bound by **Section 13.13**.

Secured Parties: Administrative Agent, Issuing Banks, Lenders and Secured Bank Product Providers.

Security Documents: the Guaranties, Mortgages, IP Assignments, Deposit Account Control Agreements, and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Segregated Account Cash Balance: the aggregate amount of cash and Cash Equivalents credited to or on deposit in a segregated securities or deposit account maintained with Bank of America over which Administrative Agent has exclusive control and which is subject to a control agreement in favor of Administrative Agent, for the benefit of Secured Parties.

Senior Officer: the chairman of the board, president, chief executive officer, chief financial officer, controller, treasurer or any senior vice president of a Borrower or, if the context requires, an Obligor.

Solvent: as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (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. The amount of contingent liabilities at any time shall be computed as the amount that, in light of all the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability.

Specified Asset Sale: a sale of certain assets and/or subsidiaries disclosed in writing and identified as the “Specified Asset Sale” by Borrowers to Administrative Agent prior to November 20, 2016.

Specified Obligor: an Obligor that is not then an “eligible contract participant” under the Commodity Exchange Act (determined prior to giving effect to **Section 5.11**).

Specified Vehicle: any well service rig, contract drilling rig, heavy duty vehicle or coiled tubing unit.

SPV: Key Property Holding Company, LLC, a Delaware limited liability company, which is wholly-owned directly by the Company.

Standard Letter of Credit Practice: means, for Issuing Bank, any domestic or foreign law or letter of credit practices applicable in the city in which Issuing Bank issued the applicable Letter of Credit or, for its branch or correspondent, such laws and practices applicable in the city in which it has advised, confirmed or negotiated such Letter of Credit, as the case may be, in each case, (a) which letter of credit practices are of banks that regularly issue letters of credit in the particular city, and (b) which laws or letter of credit practices are required or permitted under (i) the International Standby Practices 1998 (International Chamber of Commerce Publication No. 590) or (ii) the Uniform Customs and Practice for Documentary Credits 2007 Revision (International Chamber of Commerce Publication No. 600); each of (i) and (ii) above, as adopted by the International Chamber of Commerce and including any subsequent revisions thereof as of the date such Letter of Credit is issued, as chosen in the applicable Letter of Credit.

Stated Amount: the outstanding amount of a Letter of Credit, including any automatic increase or tolerance (whether or not then in effect) provided by the Letter of Credit or related LC Documents.

Subsidiary: any entity more than 50% of whose voting securities or Equity Interests is owned by a Borrower or combination of Borrowers (including indirect ownership through other entities in which a Borrower directly or indirectly owns more than 50% of the voting securities or Equity Interests).

Swap Obligations: with respect to an Obligor, its obligations under a Hedging Agreement that constitutes a “swap” within the meaning of Section 1a(47) of the Commodity Exchange Act.

Sweep Trigger Period: the period (a) commencing on the day that an Event of Default occurs, or Availability is less than the greater of (X) \$20,000,000 and (Y) 20% of the Line Cap on such day; and (b) continuing until the day (1) Availability has been greater than the greater of (X) \$20,000,000 and (Y) 20% of the Line Cap and (2) no Event of Default has occurred and is continuing, in the case of each of the clauses (b)(1)(X), (b)(1)(Y) and (b)(2), for a period of 90 consecutive calendar days.

Swingline Loan: any Borrowing of Base Rate Revolver Loans funded with Administrative Agent’s funds, until such Borrowing is settled among Lenders or repaid by Borrowers.

Taxes: all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority,

including any interest, additions to tax or penalties applicable thereto.

Term Loan Credit Agreement: the Term Loan and Security Agreement, dated as of the Closing Date, among the Company, as borrower, the financial institutions party thereto from time to time as lenders, and the Term Loan Agent, as agent for such lenders.

Term Loan Agent: Cortland Products Corp. a Delaware corporation, and solely with respect to Collateral consisting of Vehicles, Cortland Capital Market Services LLC, a Delaware limited liability company, together with their successors and assigns.

Term Loans: “Loans” under (and as defined) in the Term Loan Credit Agreement.

Term Priority Collateral: as defined in the Intercreditor Agreement.

TL Proceeds and Priority Collateral Account: account #xxxx xx74 at Merrill Lynch, Pierce, Fenner & Smith Incorporated and account #xxxx07 at Bank of America, N.A. and, subject to compliance with the requirements set forth in **Section 8.3**, any other account designated by the Borrowers Agent to Administrative Agent from time to time as the TL Proceeds and Priority Collateral Account.

Transactions: with respect to the Obligors, the execution, delivery and performance by the Obligors of this Agreement and each other Loan Document and the borrowing of Loans by the Borrowers, the use of the proceeds thereof, the issuance of Letters of Credit hereunder, the guarantee of the Obligations and the grant of Liens by the Obligors on Collateral pursuant to the Loan Documents.

Transferee: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

UCC: the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

Unrestricted Subsidiary: (a) any Subsidiary of the Company (including any newly acquired or newly formed Subsidiary of the Company) that is designated by the board of directors of the Company as an Unrestricted Subsidiary pursuant to a resolution of the board of directors of the Company as certified in a certificate delivered to the Administrative Agent by a Senior Officer of the Company; (b) each Subsidiary of an Unrestricted Subsidiary, whenever it shall become such a Subsidiary; and (c) those Subsidiaries listed on **Schedule 1.1(A)** so long as each such Subsidiary satisfies the conditions set forth in clause (A) below.

The board of directors of the Company may designate any Subsidiary of the Company to become an Unrestricted Subsidiary if:

(A) such Subsidiary:

- (1) has no Debt other than Non-Recourse Debt;
- (2) is not party to any agreement, contract, arrangement or understanding with the Company or any Restricted Subsidiary of the Company unless the terms of any such agreement, contract, arrangement or understanding are no less favorable to the Company or such Restricted Subsidiary than those that might be obtained, in light of all the circumstances, at the time from Persons who are not Affiliates of the Company;
- (3) is a Person with respect to which neither the Company nor any of its Restricted Subsidiaries has any direct or indirect contractual obligation (x) to subscribe for additional Equity

Interests or (y) to maintain or preserve such Person's financial condition or to cause such Persons to achieve any specified levels of operating results;

(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Debt of the Company or any of its Restricted Subsidiaries;

(5) does not own any Equity Interest of, or own or hold any Lien on any property of, the Company or any Restricted Subsidiary of the Company; and

(6) would constitute an Investment which the Company could make in compliance with **Section 10.2.4**; and

(B) the Payment Conditions are satisfied.

Notwithstanding the preceding, (a) if, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements in clause (A) as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Debt of such Subsidiary shall be deemed to be incurred as of such date and (b) no Subsidiary may be designated as an Unrestricted Subsidiary hereunder unless such Subsidiary is or contemporaneously herewith becomes designated as an "Unrestricted Subsidiary" under and within the meaning of the Term Loan Credit Agreement (to the extent then in effect).

Unused Line Fee Rate: a per annum rate equal to (a) until April 1, 2017, 1.25%, and (b) commencing on April 1, 2017 and thereafter, subject to increase or decrease based on Revolver Usage for the immediately preceding calendar quarter, which change shall be effective on the first day of the calendar month following such calendar quarter, as follows: (i) 1.25%, if Revolver Usage was 50% or less of the Revolver Commitments during the preceding calendar quarter, or (ii) 1.00%, if Revolver Usage was more than 50% of the Revolver Commitments during such quarter.

Upstream Payment: Distribution by a Restricted Subsidiary made ratably with respect to its Equity Interests and Distributions by a Borrower to another Borrower or made with respect to Debt held by a holder of Equity Interests (other than holders of Equity Interests in the Company); it being understood and agreed that nothing in this definition shall permit or deemed to permit any Distribution by an Obligor with respect to Debt held by a holder of Equity Interest that is not an Obligor.

U.S. Person: "United States Person" as defined in Section 7701(a)(30) of the Code.

U.S. Tax Compliance Certificate: as defined in **Section 5.10.2(b)(iii)**.

Value: for an Account, its face amount, net of any returns, rebates, discounts (calculated on the shortest terms), credits, allowances or Taxes (including sales, excise or other taxes) that have been or could be claimed by the Account Debtor or any other Person.

Vehicles: all cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any state and all tires and other appurtenances to any of the foregoing.

Voting Stock: of any Person as of any date, the Equity Interests of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

Wells Fargo: Wells Fargo Bank, National Association.

Write-Down and Conversion Powers: the write-down and conversion powers of the applicable EEA Resolution Authority from time to time under the Bail-In Legislation for the

applicable EEA Member Country, which powers are described in the EU Bail-In Legislation Schedule.

1.2. Accounting Terms. Under the Loan Documents and the Borrower Materials (except as otherwise specified therein), all accounting terms not specifically defined therein shall be construed in accordance with GAAP. If at any time any change in GAAP or the application thereof would affect the computation of any financial ratio or requirement set forth in any Loan Document or Borrower Material, and either the Company or the Required Lenders shall so request, the Agent, the Lenders and the Company shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP or the application thereof (subject to the approval of the Required Lenders); provided, that, until so amended, (i) such ratio or requirement shall continue to be computed in accordance with GAAP or the application thereof prior to such change therein and (ii) the Borrowers shall provide to the Administrative Agent financial statements and other documents required under this Agreement or as reasonably requested hereunder setting forth a reconciliation between calculations of such ratio or requirement made before and after giving effect to such change in GAAP or the application thereof. All terms of an accounting or financial nature used herein shall be construed, and all computations of amounts and ratios referred to herein shall be made, without giving effect to (A) any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification having a similar result or effect) to value any Debt or other liabilities of the Company or any Subsidiary at "fair value", as defined therein and (B) any treatment of Debt in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification having a similar result or effect) to value any such Debt in a reduced or bifurcated manner as described therein, and such Debt shall at all times be valued at the full stated principal amount thereof). Notwithstanding anything in this **Section 1.2** or in the definition of "Capital Lease" to the contrary, in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that such leases were in existence on the Closing Date) that would constitute Capital Leases in conformity with GAAP 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 or delivered, as applicable, in accordance therewith (provided that together with all financial statements delivered to Administrative Agent in accordance with the terms of this Agreement after the date of any such accounting change, the Company shall deliver a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such accounting change).

1.3. Uniform Commercial Code. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: "Chattel Paper," "Commercial Tort Claim," "Deposit Account," "Document," "Equipment," "General Intangibles," "Goods," "Instrument," "Investment Property," "Letter-of-Credit Right," "Securities Account" and "Supporting Obligation."

1.4. Certain Matters of Construction. The terms "herein," "hereof," "hereunder" and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, "from" means "from and including," and "to" and "until" each mean "to but excluding." The terms "including" and "include" shall mean "including, without limitation" and, for purposes of each Loan Document and the Borrower Materials, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document and the Borrower Materials. All references to (a) laws include all related regulations, interpretations, supplements, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Loan Documents); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include such

Person's successors and assigns; (f) time of day mean time of day at Administrative Agent's notice address under **Section 15.3.1**; or (g) except as expressly provided, discretion of Administrative Agent, any Issuing Bank or any Lender mean the sole and absolute discretion of such Person. All calculations of Value, Borrowing Base components, Loans, Letters of Credit, Obligations and other amounts herein shall be denominated in Dollars, unless expressly provided otherwise, and all determinations (including calculations of Borrowing Base and financial covenants) made from time to time under the Loan Documents shall be made in light of the circumstances existing at such time. Borrowing Base calculations shall be consistent with historical methods of valuation and calculation, and otherwise satisfactory to Co-Collateral Agents (and not necessarily calculated in accordance with GAAP). Borrowers shall have the burden of establishing any alleged negligence, misconduct or lack of good faith by Administrative Agent, any Issuing Bank or any Lender under any Loan Documents. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Reference to a Borrower's "knowledge" or similar concept means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter.

1.5. Pro Forma Calculations: With respect to the calculation of any test, financial ratio, basket or covenant under this Agreement, including the Fixed Charge Coverage Ratio, of any Person and its Consolidated Subsidiaries, as of any date, pro forma effect will be given to the Transactions on the Closing Date, any acquisition, merger, consolidation, Investment, any issuance, incurrence, assumption or repayment or redemption of Debt (including Debt issued, incurred or assumed or repaid or redeemed as a result of, or to finance, any relevant transaction and for which any such test, financial ratio, basket or covenant is being calculated) (but excluding the identifiable proceeds of any Debt being incurred substantially simultaneously therewith or as part of the same transaction or series of related transactions for purposes of netting cash to calculate the applicable ratio), any issuance or redemption of preferred stock, all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division, segment or operating unit, any operational change (including the entry into any material contract or arrangement) or any designation of a Consolidated Subsidiary to an Unrestricted Subsidiary or of an Unrestricted Subsidiary to a Consolidated Subsidiary, in each case that have occurred during the four consecutive fiscal quarter period of the Company being used to calculate such test, financial ratio, basket or covenant (the "Reference Period"), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Consolidated Subsidiary of the subject Person or was merged or consolidated with or into the subject Person or any other Consolidated Subsidiary of the subject Person after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period.

For purposes of making any computation referred to above:

- (1) if any Debt bears a floating rate of interest and is being given pro forma effect, the interest on such Debt shall be calculated as if the rate in effect on the date for which a determination under this definition is made had been the applicable rate for the entire period (taking into account any Hedging Agreements applicable to such Debt if such Hedging Agreements has a remaining term in excess of 12 months);
- (2) interest on a Capital Lease shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Borrower Agent to be the rate of interest implicit in such Capital Lease in accordance with GAAP;
- (3) interest on Debt that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, an eurocurrency interbank offered rate, or other rate, shall be deemed to

have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Borrower Agent may designate; and

- (4) interest on any Debt under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Debt during the applicable period.

Any pro forma calculation may include, without limitation, adjustments calculated in accordance with Regulation S-X under the Securities Act; provided that any such adjustments that consist of reductions in costs and other operating improvements or synergies (whether added pursuant to this definition, the definition “Pro Forma Cost Savings” or otherwise added to Consolidated Net Income or EBITDA) shall be calculated in accordance with, and satisfy the requirements specified in, the definition of “Pro Forma Cost Savings”.

SECTION 2. CREDIT FACILITIES

2.1. Revolver Commitment.

2.1.1. Revolver Loans. Each Lender agrees, severally on a Pro Rata basis up to its Revolver Commitment, on the terms set forth herein, to make Revolver Loans to Borrowers from time to time through the Commitment Termination Date. The Revolver Loans may be repaid and reborrowed as provided herein. In no event shall Lenders have any obligation to honor a request for a Revolver Loan if Revolver Usage at such time plus the requested Loan would exceed the Borrowing Base.

2.1.2. Notes. Loans and interest accruing thereon shall be evidenced by the records of Administrative Agent and the applicable Lender. At the request of a Lender, Borrowers shall deliver promissory note(s) to such Lender, evidencing its Loan(s).

2.1.3. Use of Proceeds. No Borrowings (other than the issuance of any Existing Letters of Credit and other Letters of Credit) shall be made on the Closing Date. Thereafter, the proceeds of Revolver Loans shall be used by Borrowers solely (a) to pay Obligations in accordance with this Agreement; and (b) for ongoing working capital and for other lawful, general corporate, limited liability company or partnership purposes of Borrowers and their Subsidiaries, including without limitation to finance permitted restricted payments, share repurchases, acquisitions, permitted Capital Expenditures and other Investments of Borrowers and their Subsidiaries. Borrowers shall not, directly or indirectly, use any Letter of Credit or Loan proceeds, nor use, lend, contribute or otherwise make available any Letter of Credit or Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of issuance of the Letter of Credit or funding of the Loan, is the subject of any Sanction; (ii) in any manner that would result in a violation of a Sanction by any Person (including any Secured Party or other individual or entity participating in a transaction); or (iii) for any purpose that would violate Anti-Corruption Laws.

2.1.4. Voluntary Reduction or Termination of Revolver Commitments.

(a) The Revolver Commitments shall terminate on the Revolver Termination Date, unless sooner terminated in accordance with this Agreement. Upon at least three (3) Business Days prior written notice to Administrative Agent, Borrowers may, at their option, terminate the Revolver Commitments and this credit facility. Any notice of termination given by Borrowers shall be irrevocable; provided that such notice may state that such notice is conditioned upon the effectiveness of other credit facilities or the consummation of an acquisition or investment, in which case such notice may be revoked by Borrowers (by notice to Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. On the termination date, Borrowers shall make Full Payment of all Obligations.

(b) Borrowers may permanently reduce the Revolver Commitments, on a ratable

basis for all Lenders, upon at least three (3) Business Days prior written notice to Administrative Agent, which notice shall specify the amount of the reduction and shall be irrevocable once given. Each reduction shall be in a minimum amount of \$10,000,000, or an increment of \$5,000,000 in excess thereof.

2.1.5. Overadvances. If Revolver Usage exceeds the Borrowing Base (“Overadvance”) at any time, the excess amount shall be payable by Borrowers **on demand** by Administrative Agent, but all such Revolver Loans shall nevertheless constitute Obligations secured by the Collateral and entitled to all benefits of the Loan Documents. Administrative Agent may require Lenders to honor requests for Overadvance Loans and to forbear from requiring Borrowers to cure an Overadvance, (a) when no other Event of Default is known to Administrative Agent, as long as (i) the Overadvance does not continue for more than 30 consecutive days (and no Overadvance may exist for at least five consecutive days thereafter before further Overadvance Loans are required), and (ii) the Overadvance is not known by Administrative Agent to exceed 5% of the Borrowing Base; and (b) regardless of whether an Event of Default exists, if Administrative Agent discovers an Overadvance not previously known by it to exist, as long as from the date of such discovery the Overadvance is not increased by more than \$2,500,000 and does not continue for more than 30 consecutive days. In no event shall Overadvance Loans be required that would cause Revolver Usage to exceed the aggregate Revolver Commitments. Any funding of an Overadvance Loan or sufferance of an Overadvance shall not constitute a waiver by Administrative Agent or Lenders of the Event of Default caused thereby. In no event shall any Borrower or other Obligor be deemed a beneficiary of this Section nor authorized to enforce any of its terms.

2.1.6. Protective Advances. Administrative Agent shall be authorized, in its discretion, at any time that any conditions in **Section 6** are not satisfied, to make Base Rate Revolver Loans (“Protective Advances”) (a) up to an aggregate amount of the greater of (i) \$10,000,000 and (ii) 10.0% of the aggregate amount of Revolver Commitment outstanding at any time, less, in each case, the amount of Overadvance Loans outstanding pursuant to **Section 2.1.5**, if Administrative Agent deems such Loans necessary or desirable to preserve or protect Collateral, or to enhance the collectability or repayment of Obligations, as long as such Loans do not cause Revolver Usage to exceed the aggregate Revolver Commitments; or (b) to pay any other amounts chargeable to Obligors under any Loan Documents, including interest, costs, fees and expenses. Lenders shall participate on a Pro Rata basis in Protective Advances outstanding from time to time. Required Lenders may at any time revoke Administrative Agent’s authority to make further Protective Advances under clause (a) by written notice to Administrative Agent. Absent such revocation, Administrative Agent’s determination that funding of a Protective Advance is appropriate shall be conclusive.

2.1.7. Increase in Revolver Commitments. Borrowers may request an increase in Revolver Commitments from time to time upon notice to Administrative Agent by adding to this Agreement one or more Eligible Assignees that are not already Lenders hereunder to issue additional Revolver Commitments and become Lenders hereunder that are reasonably satisfactory to Administrative Agent (not to be unreasonably withheld, delayed or conditioned) or by allowing one or more existing Lenders to increase their respective Commitments, as long as (a) the requested increase is in a minimum amount of \$10,000,000 and is offered on the same terms as existing Revolver Commitments, except for a closing fee specified by Borrowers, (b) increases under this Section do not exceed \$30,000,000 in the aggregate and no more than three (3) increases are made, (c) no reduction in Commitments pursuant to **Section 2.1.4** has occurred prior to the requested increase, and (d) the requested increase does not cause the Commitments to exceed 90% of any applicable cap under the Term Loan Credit Agreement or any agreement evidencing or governing Permitted Junior Priority Secured/Unsecured Debt. Administrative Agent shall promptly notify Lenders of the requested increase and, within 10 Business Days thereafter, each Lender shall notify Administrative Agent if and to what extent such Lender commits to increase its Revolver Commitment. Any Lender not responding within such period shall be deemed to have declined an increase. If Lenders fail to commit to the full requested increase, Eligible Assignees may issue additional Revolver Commitments and become Lenders hereunder. Administrative Agent may allocate,

in its discretion, the increased Revolver Commitments among committing Lenders and, if necessary, Eligible Assignees. Total Revolver Commitments shall be increased by the requested amount (or such lesser amount committed by Lenders and Eligible Assignees) on a date agreed upon by Administrative Agent and Borrower Agent, provided (x) the conditions set forth in **Section 6.2** are satisfied at such time, (y) Administrative Agent, Borrowers, and new and existing Lenders shall have executed and delivered such documents and agreements as Administrative Agent deems appropriate to evidence the increase in and allocations of Revolver Commitments and (z) flood hazard diligence and documentation has been completed as required by the Flood Disaster Protection Act or otherwise in a manner satisfactory to all Co-Collateral Agents. On the effective date of an increase, the Revolver Usage and other exposures under the Revolver Commitments shall be reallocated among Lenders, and settled by Administrative Agent if necessary, in accordance with Lenders' adjusted shares of such Commitments.

2.2. [Reserved].

2.3. Letter of Credit Facility.

2.3.1. Issuance of Letters of Credit. From and after the Closing Date, each Existing Letter of Credit shall be deemed, for all purposes of this Agreement, to be a Letter of Credit used for the account of the Borrowers on the Closing Date. The Issuing Banks shall also issue Letters of Credit from time to time until 15 days prior to the Revolver Termination Date (or until the Commitment Termination Date, if earlier), on the terms set forth herein, including the following:

(a) Each Borrower acknowledges that Issuing Bank's issuance of any Letter of Credit is conditioned upon Issuing Bank's receipt of an LC Application with respect to the requested Letter of Credit, as well as such other instruments and agreements as Issuing Bank may customarily require for issuance of a letter of credit of similar type and amount. Each LC Request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be irrevocable and shall be made in writing by an authorized Person and delivered to Issuing Bank via telefacsimile or other electronic method of transmission reasonably acceptable to Issuing Bank. Issuing Bank shall have no obligation to issue any Letter of Credit unless (i) Issuing Bank receives an LC Request and LC Application at least three Business Days prior to the requested date of issuance; (ii) each LC Condition is satisfied; and (iii) if a Defaulting Lender exists, such Lender or Borrowers have entered into arrangements satisfactory to Administrative Agent and Issuing Bank to eliminate any Fronting Exposure associated with such Lender. If, in sufficient time to act, Issuing Bank receives written notice from Administrative Agent or Required Lenders that an LC Condition has not been satisfied, Issuing Bank shall not issue the requested Letter of Credit until such notice is withdrawn in writing or until Required Lenders have waived such condition in accordance with this Agreement. Prior to receipt of any such notice, Issuing Bank shall not be deemed to have knowledge of any failure of LC Conditions.

(b) Letters of Credit may be requested by a Borrower to support obligations incurred in the Ordinary Course of Business, or as otherwise approved by Administrative Agent and the applicable Issuing Bank. Increase, renewal or extension of a Letter of Credit shall be treated as issuance of a new Letter of Credit, except that Issuing Bank may require a new LC Application in its discretion. Any other term or provision of this Agreement to the contrary notwithstanding, an Issuing Bank may, but shall not be obligated to, issue a Letter of Credit that supports the obligations of any Borrower or any Subsidiary in respect of (x) a lease of real property, or (y) an employment contract.

(c) Borrowers assume all risks of the acts, omissions or misuses of any Letter of Credit by the beneficiary. In connection with issuance of any Letter of Credit, none of Administrative Agent, any Issuing Bank or any Lender shall be responsible for the existence, character, quality, quantity, condition, packing, value or delivery of any goods purported to be represented by any Documents; any differences or variation in the character, quality, quantity, condition, packing, value or delivery of any goods from that expressed in any Documents; the form, validity, sufficiency, accuracy, genuineness or

legal effect of any Documents or of any endorsements thereon; the time, place, manner or order in which shipment of goods is made; partial or incomplete shipment of, or failure to ship, any goods referred to in a Letter of Credit or LC Document; any deviation from instructions, delay, default or fraud by any shipper or other Person in connection with any goods, shipment or delivery; any breach of contract between a shipper or vendor and a Borrower; errors, omissions, interruptions or delays in transmission or delivery of any messages, by mail, cable, telegraph, telex, telecopy, e-mail, telephone or otherwise; errors in interpretation of technical terms; the misapplication by a beneficiary of any Letter of Credit or the proceeds thereof; or any consequences arising from causes beyond the control of any Issuing Bank, Administrative Agent or any Lender, including any act or omission of a Governmental Authority. The rights and remedies of any Issuing Bank under the Loan Documents shall be cumulative. Each Issuing Bank shall be fully subrogated to the rights and remedies of each beneficiary whose claims against Borrowers are discharged with proceeds of any Letter of Credit.

(d) In connection with its administration of and enforcement of rights or remedies under any Letters of Credit or LC Documents, each Issuing Bank shall be entitled to act, and shall be fully protected in acting, upon any certification, documentation or communication in whatever form believed by Issuing Bank, in good faith, to be genuine and correct and to have been signed, sent or made by a proper Person. Each Issuing Bank may consult with and employ legal counsel, accountants and other experts to advise it concerning its obligations, rights and remedies, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by such experts. Each Issuing Bank may employ agents and attorneys-in-fact in connection with any matter relating to Letters of Credit or LC Documents, and shall not be liable for the negligence or misconduct of agents and attorneys-in-fact selected with reasonable care.

(e) Borrowers are responsible for preparing or approving the final text of the Letter of Credit as issued by Issuing Bank, irrespective of any assistance Issuing Bank may provide such as drafting or recommending text or by Issuing Bank's use or refusal to use text submitted by Borrowers. Borrowers are solely responsible for the suitability of the Letter of Credit for Borrowers' purposes. With respect to any Letter of Credit containing an "automatic amendment" to extend the expiration date of such Letter of Credit, Issuing Bank, in its sole and absolute discretion, may give notice of nonrenewal of such Letter of Credit and, if Borrowers do not at any time want such Letter of Credit to be renewed, Borrowers will so notify Administrative Agent and Issuing Bank at least 15 calendar days before Issuing Bank is required to notify the beneficiary of such Letter of Credit or any advising bank of such nonrenewal pursuant to the terms of such Letter of Credit.

2.3.2. Reimbursement; Participations.

(a) If Issuing Bank honors any request for payment under a Letter of Credit, Borrowers shall pay to Issuing Bank, on the same day ("Reimbursement Date"), the amount paid by Issuing Bank under such Letter of Credit, together with interest at the interest rate for Base Rate Revolver Loans from the Reimbursement Date until payment by Borrowers. The obligation of Borrowers to reimburse Issuing Bank for any payment made under a Letter of Credit shall be absolute, unconditional, irrevocable, and joint and several, and shall be paid under any and all circumstances whatsoever, including: (i) any lack of validity, enforceability, or legal effect of any Letter of Credit or this Agreement or any term or provision therein or herein; (ii) payment against presentation of any draft, demand or claim for payment under any Drawing Document which proves to be fraudulent, forged, or invalid in any respect or any statement therein being untrue or inaccurate in any respect, or which is signed, issued or presented by a Person or a transferee of such Person purporting to be a successor or transferee of the beneficiary of such Letter of Credit; (iii) Issuing Bank or any of its branches or affiliates being the beneficiary of any Letter of Credit; (iv) Issuing Bank or any correspondent honoring a drawing against a Drawing Document up to the amount available under any Letter of Credit even if such Drawing Document claims an amount in excess of the amount available under the Letter of Credit; (v) the existence of any claim, set-off, defense or other right that any Borrower or any of its Subsidiaries may

have at any time against any beneficiary, any assignee of proceeds, Issuing Bank or any other Person; (vi) any other event, circumstance or conduct whatsoever, whether or not similar to any of the foregoing that might, but for this **Section 2.3.2(a)**, constitute a legal or equitable defense to or discharge of, or provide a right of set-off against, any Borrower's or any of its Subsidiaries' reimbursement and other payment obligations and liabilities, arising under, or in connection with, any Letter of Credit, whether against Issuing Bank, the beneficiary or any other Person; or (vii) the fact that any Default or Event of Default shall have occurred and be continuing. Whether or not Borrower Agent submits a Notice of Borrowing, Borrowers shall be deemed to have requested a Borrowing of Base Rate Revolver Loans in an amount necessary to pay all amounts due Issuing Bank on any Reimbursement Date and each Lender shall fund its Pro Rata share of such Borrowing whether or not the Commitments have terminated, an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied.

(b) Each Lender hereby irrevocably and unconditionally purchases from Issuing Bank, without recourse or warranty, an undivided Pro Rata participation in all LC Obligations outstanding from time to time. Issuing Bank is issuing Letters of Credit in reliance upon this participation. If Borrowers do not make a payment to Issuing Bank when due hereunder, Administrative Agent shall promptly notify Lenders and each Lender shall within one Business Day after such notice pay to Administrative Agent, for the benefit of Issuing Bank, the Lender's Pro Rata share of such payment. Upon request by a Lender, Issuing Bank shall provide copies of Letters of Credit and LC Documents in its possession at such time.

(c) The obligation of each Lender to make payments to Administrative Agent for the account of Issuing Bank in connection with Issuing Bank's payment under a Letter of Credit shall be absolute, unconditional and irrevocable, not subject to any counterclaim, setoff, qualification or exception whatsoever, and shall be made in accordance with this Agreement under all circumstances, irrespective of any lack of validity or unenforceability of any Loan Documents; any draft, certificate or other document presented under a Letter of Credit having been determined to be forged, fraudulent, noncompliant, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect; any waiver by Issuing Bank of a requirement that exists for its protection (and not a Borrower's protection) or that does not materially prejudice a Borrower; any honor of an electronic demand for payment even if a draft is required; any payment of an item presented after a Letter of Credit's expiration date if authorized by the UCC or applicable customs or practices; or any setoff or defense that an Obligor may have with respect to any Obligations. No Issuing Bank assumes any responsibility for any failure or delay in performance or any breach by any Borrower or other Person of any obligations under any LC Documents. No Issuing Bank makes to Lenders any express or implied warranty, representation or guaranty with respect to any Letter of Credit, Collateral, LC Document or Obligor. No Issuing Bank shall be responsible to any Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Documents; the validity, genuineness, enforceability, collectability, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor.

(d) No Issuing Bank Indemnitee shall be liable to any Lender or other Person for any action taken or omitted to be taken in connection with any Letter of Credit or LC Document except as a result of its gross negligence or willful misconduct. Each Issuing Bank may (but is not obligated to) refrain from taking any action with respect to a Letter of Credit until it receives written instructions (and in its discretion, appropriate assurances) from the Required Lenders.

2.3.3. Cash Collateral. Subject to **Section 2.1.5**, if at any time (a) an Event of Default exists, (b) the Commitment Termination Date has occurred, or (c) the Revolver Termination Date is scheduled to occur within 5 Business Days, then Borrowers shall, at Issuing Bank's or Administrative Agent's request, Cash Collateralize all the stated amount of all outstanding Letters of Credit and all other LC Obligations. Borrowers shall, at Issuing Bank's or Administrative Agent's request at any time, Cash

Collateralize the Fronting Exposure of any Defaulting Lender. If Borrowers fail to provide any Cash Collateral as required hereunder, Lenders may (and shall upon direction of Administrative Agent) advance, as Revolver Loans, the amount of Cash Collateral required (whether or not the Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied).

2.3.4. Resignation of Issuing Bank. Issuing Bank may resign at any time upon notice to Administrative Agent and Borrowers. From the effective date of such resignation, Issuing Bank shall have no obligation to issue, amend, renew, extend or otherwise modify any Letter of Credit, but shall continue to have all rights and other obligations of an Issuing Bank hereunder relating to any Letter of Credit issued by it prior to such date. Administrative Agent shall promptly appoint a replacement Issuing Bank, which, as long as no Default or Event of Default exists, shall be reasonably acceptable to Borrowers.

2.3.5. Indemnification. In addition to (and not in any way in limitation of) any other terms or provisions of this Agreement or any other Loan Document or LC Document providing for the indemnification of any Issuing Bank or otherwise, each Borrower agrees to indemnify, defend and hold harmless each Issuing Bank Indemnitee (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), which may be incurred by or awarded against any Issuing Bank Indemnitee (other than Taxes, which shall be governed by **Section 5.9**) (the “Letter of Credit Indemnified Costs”), and which arise out of or in connection with, or as a result of this Agreement, any Letter of Credit, any LC Document, or any Drawing Document referred to in or related to any Letter of Credit, or any action or proceeding arising out of any of the foregoing (whether administrative, judicial or in connection with arbitration); in each case, including that resulting from the Issuing Bank Indemnitee’s own negligence; provided, however, that such indemnity shall not be available to any Issuing Bank Indemnitee claiming indemnification to the extent that such Letter of Credit Indemnified Costs may be finally determined in a final, non-appealable judgment of a court of competent jurisdiction to have resulted directly from the gross negligence or willful misconduct of the Issuing Bank Indemnitee claiming indemnity. This indemnification provision shall survive termination of this Agreement and all Letters of Credit.

2.3.6. Limitation of Liability. The liability of Issuing Bank (or any other Indemnitee) under, in connection with or arising out of any Letter of Credit (or pre-advice), regardless of the form or legal grounds of the action or proceeding, shall be limited to direct damages suffered by Borrowers that are caused directly by Issuing Bank’s gross negligence or willful misconduct in (i) honoring a presentation under a Letter of Credit that on its face does not at least substantially comply with the terms and conditions of such Letter of Credit, (ii) failing to honor a presentation under a Letter of Credit that strictly complies with the terms and conditions of such Letter of Credit or (iii) retaining Drawing Documents presented under a Letter of Credit. Issuing Bank shall be deemed to have acted with due diligence and reasonable care if Issuing Bank’s conduct is in accordance with Standard Letter of Credit Practice or in accordance with this Agreement.

SECTION 3. INTEREST, FEES AND CHARGES

3.1. Interest.

3.1.1. Rates and Payment of Interest.

(a) The Obligations shall bear interest (i) if a Base Rate Loan, at the Base Rate in effect from time to time, plus the Applicable Margin; (ii) if a LIBOR Loan, at LIBOR for the applicable Interest Period, plus the Applicable Margin; and (iii) if any other Obligation not paid when due

(including, to the extent permitted by law, interest not paid when due), at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate Revolver Loans.

(b) During an Insolvency Proceeding with respect to any Borrower, or during any other Event of Default if Required Lenders in their discretion so elect, Obligations shall bear interest at the Default Rate (whether before or after any judgment). Each Borrower acknowledges that the cost and expense to Administrative Agent and Lenders due to an Event of Default are difficult to ascertain and that the Default Rate is fair and reasonable compensation for this.

(c) Interest shall accrue from the date a Loan is advanced or Obligation is not paid when due, until paid in full by Borrowers. Interest accrued on the Loans shall be due and payable in arrears, (i) on the first day of each quarter with respect to a Base Rate Revolver Loan, and on the last day of the applicable Interest Period with respect to a LIBOR Revolver Loan (except in the case of a LIBOR Revolver Loan with an Interest Period of more than 90 days' duration, each day prior to the last day of such Interest Period that occurs at intervals of 90 days' duration after the first day of such Interest Period); (ii) on any date of prepayment, with respect to the principal amount of Loans being prepaid; and (iii) on the Commitment Termination Date. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents and, if no payment date is specified, shall be due and payable on demand. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable on demand.

3.1.2. Application of LIBOR to Outstanding Loans.

(a) Borrowers may on any Business Day, subject to delivery of a Notice of Conversion/Continuation, elect to convert any portion of the Base Rate Loans to, or to continue any LIBOR Loan at the end of its Interest Period as, a LIBOR Loan. During any Default or Event of Default, Administrative Agent may (and shall at the direction of Required Lenders) declare that no Loan may be made, converted or continued as a LIBOR Loan.

(b) Whenever Borrowers desire to convert or continue Loans as LIBOR Loans, Borrower Agent shall give Administrative Agent a Notice of Conversion/Continuation, no later than 11:00 a.m. at least two Business Days before the requested conversion or continuation date. Promptly after receiving any such notice, Administrative Agent shall notify each Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be 30 days if not specified). If, upon the expiration of any Interest Period for any LIBOR Loan, Borrowers shall have failed to deliver a Notice of Conversion/Continuation, they shall be deemed to have elected to convert such Loan into a Base Rate Loan. Administrative Agent does not warrant or accept responsibility for, nor shall it have any liability with respect to, administration, submission or any other matter related to any rate described in the definition of LIBOR.

3.1.3. Interest Periods. In connection with the making, conversion or continuation of any LIBOR Loans, Borrowers shall select an interest period ("Interest Period") to apply, which interest period shall be 30, 60, 90 or 180 days (or, with the consent of all Lenders, such longer period not to exceed 360 days); provided, however, that:

(a) the Interest Period shall begin on the date the Loan is made or continued as, or converted into, a LIBOR Loan, and shall expire on the numerically corresponding day in the calendar month at its end;

(b) if any Interest Period begins on a day for which there is no corresponding day in the calendar month at its end or if such corresponding day falls after the last Business Day of such month,

then the Interest Period shall expire on the last Business Day of such month; and if any Interest Period would otherwise expire on a day that is not a Business Day, the period shall expire on the next Business Day; and

(c) no Interest Period shall extend beyond the Revolver Termination Date.

3.2. Fees.

3.2.1. Unused Line Fee. Borrowers shall pay to Administrative Agent, for the Pro Rata benefit of Lenders, a fee equal to the Unused Line Fee Rate times the amount by which the Revolver Commitments exceed the average daily Revolver Usage during any quarter. Such fee shall be payable quarterly in arrears, on the first day of each quarter and on the Commitment Termination Date.

3.2.2. LC Facility Fees. Borrowers shall pay (a) to Administrative Agent, for the Pro Rata benefit of Lenders, a fee equal to the Applicable Margin for LIBOR Revolver Loans times the average daily Stated Amount of Letters of Credit, which fee shall be payable quarterly in arrears, on the first day of each quarter; (b) to the applicable Issuing Bank, for its own account, a fronting fee equal to 0.125% per annum on the Stated Amount of each Letter of Credit, which fee shall be payable quarterly in arrears, on the first day of each quarter; and (c) to the applicable Issuing Bank, for its own account, all customary charges associated with the issuance, amending, negotiating, payment, processing, transfer and administration of Letters of Credit, which charges shall be paid as and when incurred. During an Event of Default, the fee payable under clause (a) shall be increased by 2% per annum to the extent the Default Rate is applied pursuant to **Section 3.1.1(b)** hereof.

3.2.3. Fee Letters. Borrowers shall pay all fees set forth in any fee letter executed in connection with this Agreement (including the Agent Fee Letter and the Arranger Fee Letter) (collectively, the "Fee Letters" and each a "Fee Letter").

3.3. Computation of Interest, Fees, Yield Protection. All interest (other than interest computed by reference to the Base Rate), as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 360 days, and interest computed by reference to the Base Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year). Each determination by Administrative Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by Borrowers under **Section 3.4, 3.6, 3.7, 3.9 or 5.9**, submitted to Borrower Agent by Administrative Agent or the affected Lender shall be final, conclusive and binding for all purposes, absent manifest error, and Borrowers shall pay such amounts to the appropriate party within 10 days following receipt of the certificate.

3.4. Reimbursement Obligations. Borrowers shall pay all Extraordinary Expenses promptly upon request. Borrowers shall also reimburse Administrative Agent for all reasonable and documented out-of-pocket legal, accounting, appraisal, consulting, and other fees, costs and expenses incurred by it in connection with (a) negotiation and preparation of any Loan Documents, including any amendment or other modification thereof; (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby, including any actions taken to perfect or maintain priority of Administrative Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral; and (c) subject to the limits of **Section 10.1.1(b)**, each inspection, audit or appraisal with respect to any Obligor or Collateral, whether prepared by Administrative Agent's personnel or a third party; provided that legal fees shall be limited to one firm of counsel and an additional local law firm in each applicable jurisdiction and, in the case of an actual or potential conflict of interest as determined by the affected party, one additional firm of counsel to such affected party and one additional firm of local

counsel to such affected party in each applicable jurisdiction. All reasonable and documented legal, accounting and consulting fees shall be charged to Borrowers by Administrative Agent's professionals at their full hourly rates, regardless of any alternative fee arrangements that Administrative Agent, any Lender or any of their Affiliates may have with such professionals that otherwise might apply to this or any other transaction. Borrowers acknowledge that counsel may provide Administrative Agent with a benefit (such as a discount, credit or accommodation for other matters) based on counsel's overall relationship with Administrative Agent, including fees paid hereunder. All amounts payable by Borrowers under this Section shall be due on demand.

3.5. Illegality. If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund LIBOR Loans, or to determine or charge interest rates based upon LIBOR, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to Administrative Agent, any obligation of such Lender to make or continue LIBOR Loans or to convert Base Rate Loans to LIBOR Loans shall be suspended until such Lender notifies Administrative Agent that the circumstances giving rise to such determination no longer exist. Upon delivery of such notice, Borrowers shall prepay or, if applicable, convert all LIBOR Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Loans. Upon any such prepayment or conversion, Borrowers shall also pay accrued interest on the amount so prepaid or converted.

3.6. Inability to Determine Rates. Administrative Agent will promptly notify Borrower Agent and Lenders if, in connection with any Loan or request for a Loan, (a) Administrative Agent determines that (i) any Interest Period is not available on the basis provided herein, (ii) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable Loan amount or Interest Period, or (iii) adequate and reasonable means do not exist for determining LIBOR for the Interest Period; or (b) Administrative Agent or Required Lenders determine for any reason that LIBOR for the Interest Period does not adequately and fairly reflect the cost to Lenders of funding the Loan. Thereafter, Lenders' obligations to make or maintain affected LIBOR Loans and utilization of the LIBOR component (if affected) in determining Base Rate shall be suspended and no further Loans may be converted into or continued as such LIBOR Loans until Administrative Agent (upon instruction by Required Lenders) withdraws the notice.

3.7. Increased Costs; Capital Adequacy.

3.7.1. Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, liquidity, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in calculating LIBOR) or any Issuing Bank;

(b) subject any Recipient to Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (iii) Connection Income Taxes) with respect to any Loan, Letter of Credit, Commitment or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(c) impose on any Lender, any Issuing Bank or interbank market any other condition, cost or expense (other than Taxes) affecting any Loan, Letter of Credit, participation in LC Obligations, Commitment or Loan Document;

and the result thereof shall be to increase the cost to a Lender of making or maintaining any Loan or Commitment, or converting to or continuing any interest option for a Loan, or to increase the cost to a Lender or an Issuing Bank of participating in, issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit), or to reduce the amount of any sum received or receivable by a Lender or an Issuing Bank hereunder (whether of principal, interest or any other amount) then, upon request of such Lender or Issuing Bank, Borrowers will pay to it such additional amount(s) as will compensate it for the additional costs incurred or reduction suffered.

3.7.2. Capital Requirements. If a Lender or an Issuing Bank determines that a Change in Law affecting such Lender or Issuing Bank or its holding company, if any, regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's, Issuing Bank's or holding company's capital as a consequence of this Agreement, or such Lender's or Issuing Bank's Commitments, Loans, Letters of Credit or participations in LC Obligations or Loans, to a level below that which such Lender, Issuing Bank or holding company could have achieved but for such Change in Law (taking into consideration its policies with respect to capital adequacy), then from time to time Borrowers will pay to such Lender or Issuing Bank, as the case may be, such additional amounts as will compensate it or its holding company for the reduction suffered; provided, that such Lender or such Issuing Bank is generally seeking, or intends generally to seek, compensation from similarly situated borrowers under similar credit facilities (to the extent such Lender or Issuing Bank has the right under such similar credit facilities to do so) with respect to such Change in Law regarding capital or liquidity requirements.

3.7.3. LIBOR Loan Reserves. If any Lender is required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, Borrowers shall pay additional interest to such Lender on each LIBOR Loan equal to the costs of such reserves allocated to the Loan by the Lender (as determined by it in good faith, which determination shall be conclusive). The additional interest shall be due and payable on each interest payment date for the Loan; provided, however, that if the Lender notifies Borrowers (with a copy to Administrative Agent) of the additional interest less than 10 days prior to the interest payment date, then such interest shall be payable 10 days after Borrowers' receipt of the notice.

3.7.4. Compensation. Failure or delay on the part of any Lender or any Issuing Bank to demand compensation pursuant to this Section shall not constitute a waiver of its right to demand such compensation, but Borrowers shall not be required to compensate a Lender or an Issuing Bank for any increased costs incurred or reductions suffered more than six months (plus any period of retroactivity of the Change in Law giving rise to the demand) prior to the date that such Lender or Issuing Bank notifies Borrower Agent of the applicable Change in Law and of such Lender's or Issuing Bank's intention to claim compensation therefor.

3.8. Mitigation. If any Lender gives a notice under **Section 3.5** or requests compensation under **Section 3.7**, or if Borrowers are required to pay any Indemnified Taxes or additional amounts with respect to a Lender under **Section 5.9**, then at the request of Borrower Agent, such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to it or unlawful. Borrowers shall pay all reasonable and documented costs and expenses incurred by any Lender in connection with any such designation or assignment.

3.9. Funding Losses. If for any reason (a) any Borrowing, conversion or continuation of a LIBOR Loan does not occur on the date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation (whether or not withdrawn), (b) any repayment or conversion of a LIBOR Loan

occurs on a day other than the end of its Interest Period, (c) Borrowers fail to repay a LIBOR Loan when required hereunder, or (d) a Lender (other than a Defaulting Lender) is required to assign a LIBOR Loan prior to the end of its Interest Period pursuant to **Section 14.4**, then Borrowers shall pay to Administrative Agent its customary administrative charge and to each Lender all losses, expenses and fees arising from redeployment of funds or termination of match funding. For purposes of calculating amounts payable under this Section, a Lender shall be deemed to have funded a LIBOR Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and period, whether or not the Loan was in fact so funded.

3.10. Maximum Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the Maximum Rate of non-usurious interest permitted by Applicable Law ("Maximum Rate"). If 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 Obligations or, if it exceeds such unpaid principal, refunded to Borrowers. In determining whether the interest contracted for, charged or received by Administrative Agent or a Lender exceeds the Maximum Rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 4. LOAN ADMINISTRATION

4.1. Manner of Borrowing and Funding Revolver Loans.

4.1.1. Notice of Borrowing.

(a) Whenever Borrowers desire funding of Revolver Loans, Borrower Agent shall give Administrative Agent a Notice of Borrowing. Such notice must be received by Administrative Agent by 11:00 a.m. (i) on the requested funding date, in the case of Base Rate Loans, and (ii) at least two Business Days prior to the requested funding date, in the case of LIBOR Loans. Notices received after such time shall be deemed received on the next Business Day. Each Notice of Borrowing shall be irrevocable and shall specify (A) the amount of the Borrowing, (B) the requested funding date (which must be a Business Day), (C) whether the Borrowing is to be made as a Base Rate Loan or LIBOR Loan, and (D) in the case of a LIBOR Loan, the applicable Interest Period (which shall be deemed to be 30 days if not specified).

(b) Unless payment is otherwise made by Borrowers, the becoming due of any Obligation (whether principal, interest, fees or other charges, including Extraordinary Expenses, LC Obligations, Cash Collateral and Secured Bank Product Obligations) shall be deemed to be a request for a Base Rate Revolver Loan on the due date in the amount due and the Loan proceeds shall be disbursed as direct payment of such Obligation. In addition, Administrative Agent may, at its option, charge such amount against any operating, investment or other account of a Borrower maintained with Administrative Agent or any of its Affiliates.

(c) If a Borrower maintains a disbursement account with Administrative Agent or any of its Affiliates, then presentation for payment in the account of a Payment Item when there are insufficient funds to cover it shall be deemed to be a request for a Base Rate Revolver Loan on the presentation date, in the amount of the Payment Item. Proceeds of the Loan may be disbursed directly to the account.

4.1.2. Fundings by Lenders. Except for Borrowings to be made as Swingline Loans, Administrative Agent shall endeavor to notify Lenders of each Notice of Borrowing (or deemed

request for a Borrowing) by 1:00 p.m. on the proposed funding date for a Base Rate Loan or by 3:00 p.m. at least two Business Days before a proposed funding of a LIBOR Loan. Each Lender shall fund its Pro Rata share of a Borrowing in immediately available funds not later than 3:00 p.m. on the requested funding date, unless Administrative Agent's notice is received after the times provided above, in which case Lender shall fund by 11:00 a.m. on the next Business Day. Subject to its receipt of such amounts from Lenders, Administrative Agent shall disburse the Borrowing proceeds as directed by Borrower Agent. Unless Administrative Agent shall have received (in sufficient time to act) written notice from a Lender that it does not intend to fund its share of a Borrowing, Administrative Agent may assume that such Lender has deposited or promptly will deposit its share with Administrative Agent, and Administrative Agent may disburse a corresponding amount to Borrowers. If a Lender's share of a Borrowing or of a settlement under **Section 4.1.3(b)** is not received by Administrative Agent, then Borrowers agree to repay to Administrative Agent on demand the amount of such share, together with interest thereon from the date disbursed until repaid, at the rate applicable to the Borrowing. A Lender or an Issuing Bank may fulfill its obligations under Loan Documents through one or more Lending Offices, and this shall not affect any obligation of Obligors under the Loan Documents or with respect to any Obligations.

4.1.3. Swingline Loans; Settlement.

(a) To fulfill any request for a Base Rate Revolver Loan hereunder, Administrative Agent may in its discretion advance Swingline Loans to Borrowers, up to an aggregate outstanding amount of \$15,000,000. Swingline Loans shall constitute Revolver Loans for all purposes, except that payments thereon shall be made to Administrative Agent for its own account until Lenders have funded their participations therein as provided below.

(b) Settlement of Loans, including Swingline Loans, among Lenders and Administrative Agent shall take place on a date determined from time to time by Administrative Agent (but at least weekly, unless the settlement amount is de minimis), on a Pro Rata basis in accordance with the Settlement Report delivered by Administrative Agent to Lenders. Between settlement dates, Administrative Agent may in its discretion apply payments on Revolver Loans to Swingline Loans, regardless of any designation by Borrowers or any provision herein to the contrary. Each Lender hereby purchases, without recourse or warranty, an undivided Pro Rata participation in all Swingline Loans outstanding from time to time until settled. If a Swingline Loan cannot be settled among Lenders, whether due to an Obligor's Insolvency Proceeding or for any other reason, each Lender shall pay the amount of its participation in the Loan to Administrative Agent, in immediately available funds, within one Business Day after Administrative Agent's request therefor. Lenders' obligations to make settlements and to fund participations are absolute, irrevocable and unconditional, without offset, counterclaim or other defense, and whether or not the Commitments have terminated, an Overadvance exists or the conditions in **Section 6** are satisfied.

4.1.4. Notices. Borrowers may request, convert or continue Loans, select interest rates and transfer funds based on telephonic or e-mailed instructions to Administrative Agent. Borrowers shall confirm each such request by prompt delivery to Administrative Agent of a Notice of Borrowing or Notice of Conversion/Continuation, if applicable, but if it differs materially from the action taken by Administrative Agent or Lenders, the records of Administrative Agent and Lenders shall govern. Neither Administrative Agent nor any Lender shall have any liability for any loss suffered by a Borrower as a result of Administrative Agent or any Lender acting upon its understanding of telephonic or e-mailed instructions from a person believed in good faith by Administrative Agent or any Lender to be a person authorized to give such instructions on a Borrower's behalf.

4.2. **Defaulting Lender.** Notwithstanding anything herein to the contrary:

4.2.1. Reallocation of Pro Rata Share; Amendments. For purposes of determining

Lenders' obligations or rights to fund, participate in or receive collections with respect to Loans and Letters of Credit (including existing Swingline Loans, Protective Advances and LC Obligations), Administrative Agent may in its discretion reallocate Pro Rata shares by excluding a Defaulting Lender's Commitments and Loans from the calculation of shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 15.1.1(c)**.

4.2.2. Payments; Fees. To the extent the Borrowers are required to pay any amounts to a Defaulting Lender hereunder, Administrative Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to Administrative Agent such amounts until all Obligations owing to Administrative Agent, non-Defaulting Lenders and other Secured Parties have been paid in full. Administrative Agent may use such amounts to cover the Defaulting Lender's defaulted obligations, to Cash Collateralize such Lender's Fronting Exposure, to readvance the amounts to Borrowers or to repay Obligations. A Lender shall not be entitled to receive any fees accruing hereunder while it is a Defaulting Lender and its unfunded Commitment shall be disregarded for purposes of calculating the unused line fee under **Section 3.2.1**, and the Borrowers shall not be required to pay such unused line fee to such Defaulting Lender (or Administrative Agent for the benefit of such Defaulting Lender). If any LC Obligations owing to a Defaulting Lender are reallocated to other Lenders, fees attributable to such LC Obligations under **Section 3.2.2** shall be paid to such Lenders. Administrative Agent shall be paid all fees attributable to LC Obligations that are not reallocated.

4.2.3. Status; Cure. Administrative Agent may determine in its discretion that a Lender constitutes a Defaulting Lender and the effective date of such status shall be conclusive and binding on all parties, absent manifest error. Borrowers, Administrative Agent and Issuing Bank may agree in writing that a Lender has ceased to be a Defaulting Lender, whereupon Pro Rata shares shall be reallocated without exclusion of the reinstated Lender's Commitments and Loans, and the Revolver Usage and other exposures under the Revolver Commitments shall be reallocated among Lenders and settled by Administrative Agent (with appropriate payments by the reinstated Lender, including payment of any breakage costs for reallocated LIBOR Loans) in accordance with the readjusted Pro Rata shares. Unless expressly agreed by Borrowers, Administrative Agent and Issuing Bank, no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. Unless expressly agreed by Borrowers, Agent and Issuing Bank, or as expressly provided herein with respect to Bail-In Actions and related matters, no reallocation of Commitments and Loans to non-Defaulting Lenders or reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform obligations hereunder shall not relieve any other Lender of its obligations under any Loan Document. No Lender shall be responsible for default by another Lender.

4.3. Number and Amount of LIBOR Loans; Determination of Rate. Each Borrowing of LIBOR Loans when made shall be in a minimum amount of \$1,000,000, plus an increment of \$500,000 in excess thereof. No more than six (6) Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose. Upon determining LIBOR for any Interest Period requested by Borrowers, Administrative Agent shall promptly notify Borrowers thereof by telephone or electronically and, if requested by Borrowers, shall confirm any telephonic notice in writing.

4.4. Borrower Agent. Each Borrower hereby designates the Company ("Borrower Agent") as its representative and agent for all purposes under the Loan Documents, including requests for and receipt of Loans and Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrower Materials, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with Administrative Agent,

any Issuing Bank or any Lender. Borrower Agent hereby accepts such appointment. 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. Administrative Agent and Lenders may give any notice or communication with a Borrower hereunder to Borrower Agent on behalf of such Borrower. Each of Administrative Agent, Issuing Bank and Lenders shall have the right, in its discretion, to deal exclusively with Borrower Agent for all purposes under the Loan Documents. Each Borrower agrees that any notice, election, communication, delivery, representation, agreement, action, omission or undertaking on its behalf by Borrower Agent shall be binding upon and enforceable against it.

4.5. One Obligation. The Loans, LC Obligations and other Obligations constitute one general obligation of Borrowers and are secured by Administrative Agent's Lien on all Collateral; provided, however, that Administrative Agent and each Lender shall be deemed to be a creditor of, and the holder of a separate claim against, each Borrower to the extent of any Obligations jointly or severally owed by such Borrower.

4.6. Effect of Termination. On the effective date of the termination of all Commitments, the Obligations shall be immediately due and payable, and each Secured Bank Product Provider may terminate its Bank Products to the extent permitted by the agreements covering such Bank Products. Until Full Payment of the Obligations, all undertakings of Borrowers contained in the Loan Documents shall continue, and Administrative Agent shall retain its Liens in the Collateral and all of its rights and remedies under the Loan Documents. **Sections 2.3, 3.4, 3.6, 3.7, 3.9, 5.5, 5.9, 5.10, 13, 15.2**, this Section, and each indemnity or waiver given by an Obligor or Lender in any Loan Document, shall survive Full Payment of the Obligations.

SECTION 5. PAYMENTS

5.1. General Payment Provisions. All payments of Obligations shall be made in Dollars, without offset, counterclaim or defense of any kind, free and clear of (and without deduction for) any Taxes, and in immediately available funds, not later than 12:00 noon on the due date. Any payment after such time shall be deemed made on the next Business Day. Any payment of a LIBOR Loan prior to the end of its Interest Period shall be accompanied by all amounts due under **Section 3.9**. Borrowers agree that after an Event of Default has occurred and is continuing, Administrative Agent shall have the continuing, exclusive right to apply and reapply payments and proceeds of Collateral against the Obligations, in such manner as Administrative Agent deems advisable, but whenever possible, any prepayment of Loans shall be applied first to Base Rate Loans and then to LIBOR Loans.

5.2. Repayment of Revolver Loans. Revolver Loans shall be due and payable in full on the Revolver Termination Date, unless payment is sooner required hereunder. Revolver Loans may be prepaid from time to time, without penalty or premium. Subject to **Section 2.1.5**, if an Overadvance exists at any time, Borrowers shall, on the sooner of Administrative Agent's demand or the first Business Day after any Borrower has knowledge thereof, repay Revolver Loans in an amount sufficient to reduce Revolver Usage to the Borrowing Base. If any Asset Disposition includes the disposition of Accounts, Borrowers shall apply Net Proceeds to repay Revolver Loans equal to the greater of (a) the net book value of such Accounts, or (b) the reduction in Borrowing Base resulting from the disposition.

5.3. [Reserved].

5.4. Payment of Other Obligations. Obligations other than Loans, including LC Obligations and Extraordinary Expenses, shall be paid by Borrowers as provided in the Loan Documents or, if no payment date is specified, on demand.

5.5. Marshaling; Payments Set Aside. None of Administrative Agent or Lenders shall be

under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of Borrowers is made to Administrative Agent, any Issuing Bank or any Lender, or if Administrative Agent, any Issuing Bank or any Lender exercises a right of setoff, and any of such payment or setoff is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Administrative Agent, an Issuing Bank or a Lender in its discretion) to be repaid to a trustee, receiver or any other Person, then the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment or setoff had not occurred.

5.6. Application and Allocation of Payments.

5.6.1. Application. Payments made by Borrowers hereunder shall be applied (a) first, as specifically required hereby; (b) second, to Obligations then due and owing; (b) third, to other Obligations specified by Borrowers; and (c) fourth, as determined by Administrative Agent in its discretion.

5.6.2. Post-Default Allocation. Notwithstanding anything in any Loan Document to the contrary, during an Event of Default, monies to be applied to the Obligations, whether arising from payments by Obligors, realization on Collateral, setoff or otherwise, shall be allocated as follows (subject to the terms of the Intercreditor Agreement):

(a) first, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Administrative Agent;

(b) second, to all amounts owing to Administrative Agent on Swingline Loans, Protective Advances, and Loans and participations that a Defaulting Lender has failed to settle or fund;

(c) third, to all amounts owing to Issuing Bank, ratably among each Issuing Bank in proportion to the respective amounts described in this clause payable to it;

(d) fourth, to all Obligations (other than Secured Bank Product Obligations) constituting fees, indemnification, costs or expenses owing to Lenders;

(e) fifth, to all Obligations (other than Secured Bank Product Obligations) constituting interest;

(f) sixth, to Cash Collateralize all LC Obligations;

(g) seventh, to all Loans, and to Secured Bank Product Obligations arising under Hedging Agreements (including Cash Collateralization thereof) up to the amount of reserves existing therefor;

(h) eighth, to all other Secured Bank Product Obligations; and

(i) last, to all remaining Obligations.

Amounts shall be applied to payment of each category of Obligations only after Full Payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. Monies and proceeds obtained from an Obligor shall not be applied to its Excluded Swap Obligations, but appropriate adjustments shall be made with respect to amounts obtained from other Obligors to preserve the allocations in any applicable category. Administrative Agent shall have no obligation to calculate the amount of any Secured Bank Product Obligation and may request a reasonably detailed calculation thereof from a Secured Bank Product Provider. The allocations set forth in this Section are solely to determine the rights

and priorities among Secured Parties, and may be changed by agreement of the affected Secured Parties, without the consent of any Obligor. This Section is not for the benefit of or enforceable by any Obligor, and each Borrower irrevocably waives the right to direct the application of any payments or Collateral proceeds subject to this Section.

5.6.3. Erroneous Application. Administrative Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been made shall be to recover the amount from the Person that actually received it (and, if such amount was received by a Secured Party, the Secured Party agrees to return it).

5.7. Dominion and Other Accounts. The ledger balance in the main Dominion Account (and, at Administrative Agent option, any other Deposit Account or Securities Account over which Administrative Agent has a perfected Lien that Administrative Agent is able to sweep or otherwise direct the disposition of funds on deposit or credit therein) as of the end of a Business Day shall be applied to the Obligations at the beginning of the next Business Day, during any Sweep Trigger Period. If a credit balance results from such application, it shall not accrue interest in favor of Borrowers and shall be made available to Borrowers as long as no Event of Default exists.

5.8. Account Stated. Administrative Agent shall maintain, in accordance with its customary practices, loan account(s) evidencing the Debt of Borrowers hereunder. Any failure of Administrative Agent to record anything in a loan account, or any error in doing so, shall not limit or otherwise affect the obligation of Borrowers to pay any amount owing hereunder. Entries made in a loan account shall constitute presumptive evidence of the information contained therein. If any information contained in a loan account is provided to or inspected by any Person, the information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Administrative Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute.

5.9. Taxes.

5.9.1. Payments Free of Taxes; Obligation to Withhold; Tax Payment.

(a) All payments of Obligations by Obligors shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If Applicable Law (as determined by Administrative Agent in its discretion) requires the deduction or withholding of any Tax from any such payment by Administrative Agent or an Obligor, then Administrative Agent or such Obligor shall be entitled to make such deduction or withholding, taking into account information and documentation provided pursuant to **Section 5.10**.

(b) [Reserved].

(c) If Administrative Agent or any Obligor is required by any Applicable Law to withhold or deduct Taxes from any payment, then (i) Administrative Agent or such Obligor, to the extent required by Applicable Law, shall apply such withholding or deduction and timely pay the full amount to be withheld or deducted to the relevant Governmental Authority, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

5.9.2. Payment of Other Taxes. Without limiting the foregoing, Borrowers shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at Administrative Agent's option, timely reimburse Administrative Agent for payment of, any Other Taxes.

5.9.3. Tax Indemnification.

(a) Each Borrower shall indemnify and hold harmless, on a joint and several basis, each Recipient against any Indemnified Taxes (including those Indemnified Taxes imposed or asserted on or attributable to amounts payable under this Section) payable or paid by a Recipient or required to be withheld or deducted from a payment to a Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Borrower shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to Borrowers by a Lender or an Issuing Bank (with a copy to Administrative Agent), or by Administrative Agent on its own behalf or on behalf of any Recipient, shall be conclusive absent manifest error.

(b) Each Lender and Issuing Bank shall indemnify and hold harmless, on a several basis, (i) Administrative Agent against any Indemnified Taxes attributable to such Lender or Issuing Bank (but only to the extent Borrowers have not already paid or reimbursed Administrative Agent therefor and without limiting Borrowers' obligation to do so), (ii) Administrative Agent and Obligors, as applicable, against any Taxes attributable to such Lender's failure to maintain a Participant register as required hereunder, and (iii) Administrative Agent and Obligors, as applicable, against any Excluded Taxes attributable to such Lender or Issuing Bank, in each case, that are payable or paid by Administrative Agent or an Obligor in connection with any Obligations, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender and Issuing Bank shall make payment within 10 days after demand for any amount or liability payable under this Section. A certificate as to the amount of such payment or liability delivered to any Lender or any Issuing Bank by Administrative Agent shall be conclusive absent manifest error.

5.9.4. Evidence of Payments. If Administrative Agent or an Obligor pays any Taxes pursuant to this Section, then upon request, Administrative Agent shall deliver to Borrower Agent or Borrower Agent shall deliver to Administrative Agent, respectively, a copy of a receipt issued by the appropriate Governmental Authority evidencing the payment, a copy of any return required by Applicable Law to report the payment, or other evidence of payment reasonably satisfactory to Administrative Agent or Borrower Agent, as applicable.

5.9.5. Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Administrative Agent have any obligation to file for or otherwise pursue on behalf of a Lender or an Issuing Bank, nor have any obligation to pay to any Lender or any Issuing Bank, any refund of Taxes withheld or deducted from funds paid for the account of a Lender or an Issuing Bank. If a Recipient determines in its discretion, exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by Borrowers or with respect to which a Borrower has paid additional amounts pursuant to this Section, it shall pay Borrowers an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by Borrowers with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund), provided that Borrowers agree, upon request by the Recipient, to repay the amount paid over to Borrowers (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient if the Recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything herein to the contrary, no Recipient shall be required to pay any amount to Borrowers if such payment would place the Recipient in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. In no event shall Administrative Agent or any Recipient be required to make its tax returns (or any other information relating to its Taxes that it

deems confidential) available to any Obligor or other Person.

5.9.6. Survival. Each party's obligations under **Sections 5.9** and **5.10** shall survive the resignation or replacement of Administrative Agent or any assignment of rights by or replacement of a Lender or an Issuing Bank, the termination of the Commitments, and the repayment, satisfaction, discharge or Full Payment of any Obligations.

5.10. Lender Tax Information.

5.10.1. Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments of Obligations shall deliver to Borrowers and Administrative Agent properly completed and executed documentation reasonably requested by Borrowers or Administrative Agent as will permit such payments to be made without or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by Borrowers or Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by Borrowers or Administrative Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding the foregoing, such documentation (other than documentation described in **Sections 5.10.2(a), (b)** and **(d)**) shall not be required if a Lender reasonably believes delivery of the documentation would subject it to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position.

5.10.2. Documentation. Without limiting the foregoing, if any Borrower is a U.S. Person,

(a) Any Lender that is a U.S. Person shall deliver to Borrowers and Administrative Agent on or prior to the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of Borrowers or Administrative Agent), executed originals of IRS Form W-9, certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(b) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and 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 hereunder (and from time to time thereafter upon reasonable request of Borrowers or Administrative Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty, and (y) with respect to other payments under the Loan Documents, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(ii) executed originals of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate in form satisfactory to Administrative Agent to the effect that such Foreign Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10 percent shareholder" of a Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code ("U.S. Tax Compliance Certificate"), and (y) executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable; or

(iv) to the extent a Foreign Lender is not the beneficial owner, executed originals of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or W-8BEN-E, as applicable, a U.S. Tax Compliance Certificate in form satisfactory to Administrative Agent, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that if the Foreign Lender is a partnership and one or more direct or indirect partners of such Foreign Lender are claiming the portfolio interest exemption, such Foreign Lender may provide a U.S. Tax Compliance Certificate on behalf of each such direct and indirect partner;

(c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to Borrowers and 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 hereunder (and from time to time thereafter upon the reasonable request of Borrowers or Administrative Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit Borrowers or Administrative Agent to determine the withholding or deduction required to be made; and

(d) if payment of an Obligation to a Recipient would be subject to U.S. federal withholding Tax imposed by FATCA if such Recipient were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code), such Recipient shall deliver to Borrowers and Administrative Agent at the time(s) prescribed by law and otherwise as reasonably requested by Borrowers or Administrative Agent such documentation prescribed by Applicable Law (including Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by Borrowers or Administrative Agent as may be necessary for them to comply with their obligations under FATCA and to determine that such Recipient has complied with its obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (d), "FATCA" shall include any amendments made to FATCA after the date hereof.

5.10.3. Administrative Agent Documentation On or before the date Bank of America becomes the Administrative Agent hereunder, it shall (and any successor or replacement Administrative Agent shall, on or before the date on which it becomes the Administrative Agent hereunder), deliver to the Borrower Agent two executed originals of either (i) IRS Form W-9, or (ii) IRS Form W-8ECI (with respect to any payments to be received on its own behalf) and IRS Form W-8IMY (for all other payments), establishing that the Borrowers can make payments to the Administrative Agent without deduction or withholding of any Taxes imposed by the United States, including Taxes imposed under FATCA.

5.10.4. Redelivery of Documentation. If any form or certification previously delivered by a Lender or Administrative Agent pursuant to this Section expires or becomes obsolete or inaccurate in any respect, such Lender or Administrative Agent, as applicable shall promptly update the form or certification or notify Borrowers and Administrative Agent in writing of its inability to do so.

5.11. Nature and Extent of Each Borrower's Liability.

5.11.1. Joint and Several Liability. Each Borrower agrees that it is jointly and severally liable for, and absolutely and unconditionally guarantees to Administrative Agent and Lenders the prompt payment and performance of, all Obligations, except its Excluded Swap Obligations. 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 Full Payment of the Obligations, and that such obligations are absolute and unconditional, irrespective of (a) the genuineness, validity, regularity, enforceability, subordination or any future modification of, or change in, any Obligations or Loan Document, or any other document, instrument or agreement to which any Obligor is or may become

a party or be bound; (b) the absence of any action to enforce this Agreement (including this Section) or any other Loan Document, or any waiver, consent or indulgence of any kind by Administrative Agent or any Lender with respect thereto; (c) the existence, value or condition of, or failure to perfect a Lien or to preserve rights against, any security or guaranty for any Obligations or any action, or the absence of any action, by Administrative Agent or any Lender in respect thereof (including the release of any security or guaranty); (d) the insolvency of any Obligor; (e) any election by Administrative Agent or any Lender in an Insolvency Proceeding for the application of Section 1111(b)(2) of the Bankruptcy Code; (f) any borrowing or grant of a Lien by any other Borrower, as debtor-in-possession under Section 364 of the Bankruptcy Code or otherwise; (g) the disallowance of any claims of Administrative Agent or any Lender against any Obligor for the repayment of any Obligations under Section 502 of the Bankruptcy Code or otherwise; or (h) any other action or circumstances that might otherwise constitute a legal or equitable discharge or defense of a surety or guarantor, except Full Payment of the Obligations.

5.11.2. Waivers.

(a) 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 Administrative Agent or Lenders to marshal assets or to proceed against any Obligor, other Person or security for the payment or performance of any Obligations before, or as a condition to, proceeding against such Borrower. Each Borrower waives all defenses available to a surety, guarantor or accommodation co-obligor other than Full Payment of Obligations and waives, to the maximum extent permitted by law, any right to revoke any guaranty of Obligations as long as it is a Borrower. It is agreed among each Borrower, Administrative Agent and Lenders that the provisions of this **Section 5.11** are of the essence of the transaction contemplated by the Loan Documents and that, but for such provisions, 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.

(b) Administrative Agent and Lenders may, in their discretion, pursue such rights and remedies as they deem appropriate, including realization upon Collateral or any Real Estate by judicial foreclosure or nonjudicial sale or enforcement, without affecting any rights and remedies under this **Section 5.11**. If, in taking any action in connection with the exercise of any rights or remedies, Administrative Agent or any Lender shall forfeit any other rights or remedies, including the right to enter a deficiency judgment against any Borrower 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 based upon it, even if the action may result in loss of any rights of subrogation that any Borrower might otherwise have had. Any election of remedies that results in denial or impairment of the right of Administrative Agent or any Lender to seek a deficiency judgment against any Borrower shall not impair any other Borrower’s obligation to pay the full amount of the Obligations. Each Borrower waives all rights and defenses arising out of an election of remedies, such as nonjudicial foreclosure with respect to any security for Obligations, even though that election of remedies destroys such Borrower’s rights of subrogation against any other Person. Administrative Agent may bid Obligations, in whole or part, at any foreclosure, trustee or other sale, including any private sale, and the amount of such bid need not be paid by Administrative Agent but shall be credited against the Obligations. The amount of the successful bid at any such sale, whether 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 5.11**, notwithstanding that any present or future law or court decision may have the effect of reducing the amount of any deficiency claim to which Administrative Agent or any Lender might otherwise be entitled but for such bidding at any such sale.

5.11.3. Extent of Liability; Contribution.

(a) Notwithstanding anything herein to the contrary, each Borrower's liability under this **Section 5.11** shall not exceed the greater of (i) all amounts for which such Borrower is primarily liable, as described in clause (c) below, and (ii) such Borrower's Allocable Amount.

(b) If any Borrower makes a payment under this **Section 5.11** 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, ratably based on 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 5.11** without rendering such payment voidable under Section 548 of the Bankruptcy Code or under any applicable state fraudulent transfer or conveyance act, or similar statute or common law.

(c) **Section 5.11.3(a)** shall not limit the liability of any Borrower to pay or guarantee Loans made directly or indirectly to it (including Loans advanced hereunder to any other Person and then re-loaned or otherwise transferred to, or for the benefit of, such Borrower), LC Obligations relating to Letters of Credit issued to support its business, Secured Bank Product Obligations incurred to support its 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. Administrative Agent and Lenders shall have the right, at any time in their discretion, to condition Loans and Letters of Credit upon a separate calculation of borrowing availability for each Borrower and to restrict the disbursement and use of Loans and Letters of Credit to a Borrower based on that calculation.

(d) Each Obligor that is a Qualified ECP when its guaranty of or grant of Lien as security for a Swap Obligation becomes effective hereby jointly and severally, absolutely, unconditionally and irrevocably undertakes to provide funds or other support to each Specified Obligor with respect to such Swap Obligation as may be needed by such Specified Obligor from time to time to honor all of its obligations under the Loan Documents in respect of such Swap Obligation (but, in each case, only up to the maximum amount of such liability that can be hereby incurred without rendering such Qualified ECP's obligations and undertakings under this **Section 5.11** voidable under any applicable fraudulent transfer or conveyance act). The obligations and undertakings of each Qualified ECP under this Section shall remain in full force and effect until Full Payment of all Obligations. Each Obligor intends this Section to constitute, and this Section shall be deemed to constitute, a guarantee of the obligations of, and a "keepwell, support or other agreement" for the benefit of, each Obligor for all purposes of the Commodity Exchange Act.

5.11.4. Joint Enterprise. Each Borrower has requested that 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. Borrowers' business is a mutual and collective enterprise, and the successful operation of each Borrower is dependent upon the successful performance of the integrated group. Borrowers believe that consolidation of their credit facility will enhance the borrowing power of each Borrower and ease administration of the facility, all to their mutual advantage. Borrowers acknowledge that 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 Borrowers and at Borrowers' request.

5.11.5. Subordination. Each Borrower hereby subordinates any claims, including any rights at law or in equity to payment, subrogation, reimbursement, exoneration, contribution, indemnification or set off, that it may have at any time against any other Obligor, howsoever arising, to

the Full Payment of its Obligations.

SECTION 6. CONDITIONS PRECEDENT

6.1. Conditions Precedent to Initial Credit Extensions. In addition to the conditions set forth in **Section 6.2**, Lenders shall not be required to fund any requested Loan, issue any Letter of Credit or deem to have issued any Existing Letters of Credit, or otherwise extend credit to Borrowers hereunder, until the date ("Closing Date") that each of the following conditions has been satisfied (or waived in accordance with **Section 15.1.1(d)** hereof):

(a) Each Loan Document shall have been duly executed and delivered to Administrative Agent by each of the signatories thereto, and each Obligor shall be in compliance with all terms thereof, in each case subject to the post-closing collateral requirements set forth in **Section 7.3.3**.

(b) Administrative Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the Collateral or arrangements reasonably satisfactory to the Administrative Agent for such filings and recordations shall have been made (and all filing and recording fees and taxes in connection therewith shall have been duly paid or arrangements reasonably satisfactory to the Administrative Agent for the payment of such fees and taxes shall have been made), as well as UCC and Lien searches and other evidence reasonably satisfactory to Administrative Agent that such Liens are the only Liens upon such Collateral, except Permitted Liens, in each case subject to the post-closing collateral requirements set forth in **Section 7.3.3**.

(c) Administrative Agent shall have received duly executed agreements establishing each Dominion Account and related lockbox, in form and substance, and with financial institutions, reasonably satisfactory to Administrative Agent.

(e) Administrative Agent shall have received certificates, in form and substance reasonably satisfactory to it, from a knowledgeable Senior Officer of each Borrower certifying that, after giving effect to the transactions under the Loan Documents, (i) the Borrowers and the Obligors, taken as a whole, are Solvent; (ii) no Default exists; (iii) the representations and warranties set forth in **Section 9** are true and correct in all material respects, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date); and (iv) such Borrower has complied with all agreements and conditions to be satisfied by it under the Loan Documents.

(f) Administrative Agent shall have received a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; (iii) that an attached copy of the Confirmation Order (as defined below) authorizing execution and delivery of the Loan Documents and the Definitive Restructuring Documents (as defined in the Plan Support Agreement), is in full force and effect, and not subject to a stay; and (iv) to the title, name and signature of two Persons authorized to sign the Loan Documents (as used herein, "Confirmation Order" means the order confirming the Prepackaged Plan, as entered by the Bankruptcy Court, which shall be in form and substance reasonably satisfactory to Administrative Agent);

(g) Administrative Agent shall have received a customary written opinion of Sullivan & Cromwell LLP, as well as Vinson & Elkins LLP, in form and substance reasonably satisfactory to Administrative Agent;

(h) Administrative Agent shall have received good standing certificates (to the extent available in such Obligor's jurisdiction of organization) for each Obligor, issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization;

(i) Administrative Agent shall have received copies of policies or certificates of insurance for the insurance policies carried by Borrowers;

(j) No changes or developments shall have occurred, and no new or additional information, shall have been received or discovered by the Administrative Agent or the Lenders regarding the Obligors after August 24, 2016 that (A) either individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect or (B) purports to materially adversely affect the Transactions;

(k) Administrative Agent shall have received, each in form and substance reasonably satisfactory to the Administrative Agent, (i) any updates or modifications to the monthly projected financial statements of Borrowers previously received by Administrative Agent, in each case in form and substance reasonably satisfactory to the Administrative Agent, and (ii) such other items or documents as may be reasonably required by Administrative Agent in connection with its due diligence.

(l) Administrative Agent shall have received a Borrowing Base Report as of the last day of the most recently completed month (it being understood and agreed that the most recent weekly Borrowing Base Report delivered prior to the Closing Date pursuant to the final cash collateral order entered by the Bankruptcy Court on November 14, 2016 shall serve as an opening Borrowing Base Report hereunder and satisfy the requirements of this condition).

(m) All reasonable and documented fees (including pursuant to the Agent Fee Letter and the Arranger Fee Letter) and expenses of the Lead Arrangers (as such term is defined in the engagement letter entered into in connection with this Agreement), Administrative Agent and the Lenders (including the reasonable and documented fees and expenses of one firm of counsel and one firm of local counsel in each appropriate jurisdiction and expenses and audit and appraisal fees and expenses (including, without limitation, reasonable and documented costs and expenses for travel, lodging and meals for personnel, out of pocket examination costs and customary charges for field examinations and the preparation of reports) for Administrative Agent) for which invoices have been presented at least two Business Days prior to the closing date shall have been paid;

(n) (A) the Prepackaged Plan and any amendments thereto shall be in form and substance reasonably satisfactory to Administrative Agent, (B) all conditions precedent to the confirmation and effectiveness of the Prepackaged Plan, as set forth in the Prepackaged Plan, shall have been satisfied or waived in accordance with the terms thereof, (C) the Bankruptcy Court shall have entered the Confirmation Order, and such Confirmation Order shall be Final (it being understood and agreed that the Administrative Agent and Lenders have waived the requirement that such Confirmation Order be Final), (D) the effective date under the Prepackaged Plan shall have occurred (and all conditions precedent thereto as set forth therein shall have been satisfied or waived in accordance with the terms thereof), (E) substantial consummation under the Prepackaged Plan shall have occurred, and (F) no motion, action or proceeding by any creditor or other party-in-interest to the Chapter 11 Cases which could materially adversely affect the Prepackaged Plan, the consummation of the Prepackaged Plan, the business or operations of Borrowers or the transactions contemplated by the Loan Documents or the Prepackaged Plan shall be pending;

(o) Administrative Agent shall have received a certificate of a duly authorized Senior Officer of the Borrowers, demonstrating, in form and detail reasonably satisfactory to Administrative Agent, that, after giving effect to all payments under the Prepackaged Plan (including on account of accrued and unpaid professional fees and expenses, but not including any fees paid or to be paid in

connection with the Corporate Advisory Services Agreement (as defined in the Plan Support Agreement)), on the effective date of the Prepackaged Plan, the Debtors shall, on a pro forma basis after giving effect to the funding of the Rights Offering and the Incremental Liquidity Facility, if any (as such terms are defined in the Plan Term Sheet attached as Exhibit A to the Plan Support Agreement), have minimum total liquidity of \$100,000,000 on the closing date (liquidity for these purposes shall consist of (i) Availability hereunder, plus (ii) unrestricted domestic cash or cash equivalents plus (iii) Expected Asset Sale Proceeds in an aggregate amount not to exceed \$5,000,000);

(p) Administrative Agent shall have received evidence that the Original Credit Agreement has been, or concurrently with the closing of this Agreement is being, terminated and all Liens securing obligations under the Original Credit Agreement (including, without limitation, liens on real estate securing obligations under the Original Credit Agreement) have been, or concurrently with the closing of this Agreement are being, released;

(q) Administrative Agent shall have received a true, correct and complete copy of the Term Loan Credit Agreement; and

(r) Administrative Agent shall have received, at least three Business Days prior to the Closing Date, all documentation and other information required by Governmental Authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act (including, but not limited to, the Obligors’ W-9), that has been reasonably requested in writing at least 10 Business Days prior to the Closing Date by the Lenders.

For purposes of determining whether any condition that requires the delivery of a document or other matter satisfactory to Administrative Agent or each Lender specified in this **Section 6.1** has been satisfied, by releasing its signature page hereto, the Administrative Agent and such Lender shall be deemed to have been satisfied with each document or other matter required by the terms of this **Section 6.1** to be satisfactory to the Administrative Agent or such Lender, as the case may be.

6.2. Conditions Precedent to All Credit Extensions. Administrative Agent, Issuing Bank and Lenders shall not be required to fund any Loans or arrange for issuance of any Letters of Credit to or for the benefit of Borrowers, unless the following conditions are satisfied (or waived in accordance with **Section 15.1.1(d)** hereof):

(a) No Default or Event of Default shall exist at the time of, or result from, such funding or issuance;

(b) The representations and warranties of each Obligor in the Loan Documents shall be true and correct in all material respects (without duplication of any materiality qualifier contained therein) on the date of, and upon giving effect to, such funding or issuance (except for representations and warranties that expressly relate to an earlier date);

(c) [Reserved.];

(d) No event shall have occurred or circumstance exist that has or could reasonably be expected to have a Material Adverse Effect;

(e) With respect to issuance of a Letter of Credit, the Issuing Bank shall have received an LC Request and LC Application at least three Business Days prior to the requested date of issuance and the LC Conditions shall have been satisfied; and

(f) Administrative Agent shall have received a Notice of Borrowing with respect to the funding of any Loan.

Each request (or deemed request) by Borrowers for funding of a Loan or issuance of a Letter of Credit shall constitute a representation by Borrowers that the foregoing conditions are satisfied on the date of such request and on the date of such funding or issuance.

SECTION 7. COLLATERAL

7.1. Grant of Security Interest. To secure the prompt payment and performance of its Obligations, each Obligor hereby grants to Administrative Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all Property of such Obligor, including all of the following Property, whether now owned or hereafter acquired, and wherever located:

- (a) all Accounts;
- (b) all Chattel Paper, including electronic chattel paper;
- (c) all Commercial Tort Claims, including those shown on **Schedule 7.4.1**;
- (d) all Deposit Accounts;
- (e) all Documents;
- (f) all General Intangibles, including Intellectual Property;
- (g) all Goods, including Inventory, Equipment and fixtures;
- (h) all Instruments;
- (i) all Investment Property;
- (j) all Letter-of-Credit Rights;
- (k) all Supporting Obligations;
- (l) all Vehicles;
- (m) all monies, whether or not in the possession or under the control of Administrative Agent, a Lender, or a bailee or Affiliate of Administrative Agent or a Lender, including any Cash Collateral;
- (n) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral;
- (o) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing; and
- (p) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

Notwithstanding anything herein to the contrary, in no event shall the security interest attach to, or the term "Collateral" be deemed to include any of the Property set forth in **Section 7.7**.

7.2. Lien on Deposit Accounts; Securities Accounts; Cash Collateral.

7.2.1. Deposit Accounts; Securities Accounts. To further secure the prompt payment and performance of its Obligations, each Obligor hereby grants to Administrative Agent a continuing security interest in and Lien upon all amounts credited to any Deposit Account and Securities Account of such Obligor, including sums in any blocked, lockbox, sweep or collection account; provided that, subject to the Intercreditor Agreement, any security interest in the TL Proceeds and Priority Collateral Account shall have second priority (and subject to Permitted Liens (x) in favor of the account bank and (y) that have priority by operation of law). Each Obligor hereby authorizes and directs each bank or other depository or securities intermediary to deliver to Administrative Agent, upon request of Administrative Agent, all balances in any Deposit Account and Securities Account maintained for such Obligor, without inquiry into the authority or right of Administrative Agent to make such request. Administrative Agent hereby agrees that it will not issue any such request unless an Event of Default has occurred and is continuing.

7.2.2. Cash Collateral. Cash Collateral may be invested, at Administrative Agent's discretion (and with the consent of Borrower Agent, as long as no Event of Default exists), but Administrative Agent shall have no duty to do so, regardless of any agreement or course of dealing with any Obligor, and shall have no responsibility for any investment or loss. As security for its Obligations, each Obligor hereby grants to Administrative Agent a security interest in and Lien upon all Cash Collateral held from time to time and all proceeds thereof, whether held in a Cash Collateral Account or otherwise. After an Event of Default has occurred and is continuing, Administrative Agent may apply Cash Collateral to the payment of such Obligations as they become due, in such order as Administrative Agent may elect. Each Cash Collateral Account and all Cash Collateral shall be under the sole dominion and control of Administrative Agent, and no Obligor or other Person shall have any right to any Cash Collateral, until Full Payment of the Obligations.

7.3. Real Estate Collateral, Vehicles and Post Closing Collateral.

7.3.1. Lien on Real Estate. (I) If, after the Closing Date, any Obligor acquires (x) any Restricted Subsidiary that owns Material Real Property or (y) any Material Real Property, other than, in each case, (A) Real Estate constituting Excluded Property and (B) Agent Excluded Real Property, or if any Real Estate ceases to be Excluded Property (other than any Agent Excluded Real Property), the Obligors shall, within 90 days (as may be extended by the Co-Collateral Agents in their sole discretion), with respect to such Material Real Property, (a) execute, deliver and record a Mortgage sufficient to create a perfected Lien in favor of the Administrative Agent, (b) deliver a customary opinion of local counsel in the state in which such Material Real Property is located as to such Mortgage, (c) at least 15 days (or such shorter period as agreed to by the Co-Collateral Agents in their sole discretion) prior to the effective date of the Mortgage, deliver or cause to be delivered to the Co-Collateral Agents and each applicable Lender, flood hazard information requested by any Lender as needed for a life-of-loan flood hazard determination and, if the Real Estate is located in a special flood hazard zone, flood insurance documentation (including an acknowledged notice to the Borrower and real property and contents flood insurance by an insurer reasonably acceptable to Co-Collateral Agents) in accordance with the Flood Disaster Protection Act or otherwise reasonably satisfactory to each Lender and other such documents as Administrative Agent or any Lender may reasonably require with respect to flood insurance for the Real Estate; (d) deliver to the Administrative Agent such existing documents, instruments or agreements as the Administrative Agent may reasonably request with respect to any environmental risks regarding such Real Estate (which, as long as Term Loans are outstanding, shall be satisfied by the delivery to the Administrative Agent of the existing documents, instruments or agreements requested by the Term Loan Agent), (e) upon request, deliver to the Administrative Agent any existing survey of such Material Real Property (which, as long as Term Loans are outstanding, shall be satisfied by the delivery to the Administrative Agent of the existing surveys requested by the Term Loan Agent); and (f) (A) upon the reasonable request of the Administrative Agent, deliver to the Administrative Agent a title report for all Real Estate referred to in clause (I) of this **Section 7.3.1** with a net book value between \$250,000 and \$500,000, and (B) deliver a mortgagee title policy (or "marked" title commitment therefor) for all Real

Estate referred to in this **Section 7.3.1** with a net book value in excess of \$500,000, in form and substance reasonably acceptable to the Administrative Agent, having a value not in excess of the fair market value of such Real Estate covering the Administrative Agent's interest under the Mortgage, by an insurer reasonably acceptable to the Administrative Agent (which must be fully paid on such effective date) (all of which deliveries under clause (f)(A) above will be satisfied by corresponding deliveries required by the Term Loan Agent under this **Section 7.3.1** of the Term Loan Credit Agreement; provided, that the Company shall not be obligated to deliver any mortgage title policies to the extent doing so would require the Company to obtain new surveys, zoning letters, appraisals, or environmental assessments of such Real Estate, and

(II) within 90 days after the acquisition referenced below or such longer period as the Co-Collateral Agents may agree (such extensions not to be unreasonably withheld, delayed or conditioned), the Obligors shall use commercially reasonable efforts to (i) transfer all leased Real Estate and all owned Real Estate, in each case acquired after the Closing Date and not constituting Excluded Property (other than Agent Excluded Real Property), if not required to be secured by a Mortgage pursuant to clause (I) above, to the SPV and, upon request of the Administrative Agent, provide evidence of same; provided that such commercially reasonable efforts shall not require the Obligors to (A) pay consent or similar fees to counterparties to leases or other contracts in order to effect such transfers or (B) transfer any lease to the extent that a grant of a perfected security interest in the equity interests in the SPV would violate or invalidate such lease or create a right of termination in favor of any other party thereto, and (ii) grant to the Administrative Agent a perfected security interest in the equity interests in the SPV (to the extent not then in place).

7.3.2. Vehicles. If any Obligor acquires a Vehicle that does not constitute Excluded Property or a Vehicle that is a Specified Vehicle (or if any Vehicle ceases to be Excluded Property), Obligors shall, within 90 days (as may be extended by Administrative Agent in its sole discretion), execute and deliver such documents and take such actions (including notation on the certificate of title) as Administrative Agent may reasonably request to create a perfected Lien in favor of Administrative Agent on such Vehicle.

7.3.3. Post-Closing Collateral. Borrowers shall, and shall cause each other Obligor to, as promptly as reasonably practicable, but in no event later than the number of days after the Closing Date applicable to each clause set forth below as any such period may be extended by the Co-Collateral Agents (such extensions not to be unreasonably withheld, delayed or conditioned), provide the items or perform the actions listed below (the assets subject to the below requirements, collectively, the "Post-Closing Collateral" and the time periods relating thereto, the "Post-Closing Collateral Period"):

(a) within 90 days following the Closing Date, the Obligors shall, with respect to the owned Real Estate set forth on **Schedule 1.1(C)** (other than such Real Estate that becomes the Agent Excluded Real Property, the "Closing Date Mortgaged Real Property"), (i) execute, deliver and record to the Administrative Agent a Mortgage sufficient to create a perfected Lien in favor of the Administrative Agent, (ii) deliver to the Administrative Agent a customary opinion of local counsel in the state in which such Closing Date Mortgaged Real Property is located as to such Mortgage, (iii) at least 15 days prior to the effective date of the applicable Mortgage (or such shorter period as agreed to by the Co-Collateral Agents), the Co-Collateral Agents and each applicable Lender shall receive (in form and substance reasonably satisfactory to the Co-Collateral Agents), flood hazard information requested by any Lender as needed for a life-of-loan flood hazard determination and, if the Real Estate is located in a special flood hazard zone, flood insurance documentation (including an acknowledged notice to borrower and real property and contents flood insurance by an insurer reasonably acceptable to Co-Collateral Agents) in accordance with the Flood Disaster Protection Act or otherwise reasonably satisfactory to each Lender and other such documents as the Administrative Agent or any Lender may reasonably require; (iv) deliver to the Administrative Agent any existing documents, instruments or agreements as the Administrative Agent may reasonably request with respect to any environmental risks regarding such

Real Estate (which, as long as Term Loans are outstanding, shall be satisfied by the delivery to the Administrative Agent of the existing documents, instruments or agreements requested by the Term Loan Agent); (v) upon request, deliver to the Administrative Agent any existing survey of such Closing Date Mortgaged Real Property (which, as long as Term Loans are outstanding, shall be satisfied by the delivery to the Administrative Agent of the existing surveys requested by the Term Loan Agent); and (vi) (A) upon the reasonable request of the Administrative Agent, deliver to the Administrative Agent a title report for all Closing Date Mortgaged Real Property with an estimated emergence net book value between \$175,000 and \$400,000 as set forth on **Schedule 1.1(C)**, and (B) deliver to the Administrative Agent a mortgagee title policy (or “marked” title commitment therefor) for all Closing Date Mortgaged Real Property with an estimated emergence net book value in excess of \$400,000 as set forth on **Schedule 1.1(C)**, in form and substance reasonably acceptable to the Administrative Agent, having a value not in excess of the fair market value of such Real Estate covering Administrative Agent’s interest under the Mortgage, by an insurer reasonably acceptable to the Administrative Agent (which must be fully paid on such effective date) (all of which deliveries under clause (v)(A) above will be satisfied by corresponding deliveries required by the Term Loan Agent under **Section 7.3.3(a)** of the Term Loan Credit Agreement; provided, that the Borrowers shall not be obligated to deliver any mortgage title policies to the extent doing so would require the Borrowers to obtain new surveys, zoning letters, appraisals, or environmental assessments of such Real Estate;

(b) within 90 days following the Closing Date the Obligor shall use commercially reasonable efforts to (i) transfer all leased Real Estate (other than the Borrower’s principal office) and all owned Real Estate not secured by a Mortgage (and in any event shall transfer owned Real Estate accounting for at least 90% of the aggregate net book value of all applicable Real Estate) to the SPV; provided that such commercially reasonable efforts shall not require the Obligor to pay consent or similar fees to counterparties to leases or other contracts in order to effect such transfers, and (ii) grant to the Administrative Agent a perfected security interest in the equity interests in the SPV;

(c) the Obligor shall use commercially reasonable efforts to create a perfected Lien in favor of the Administrative Agent on each Vehicle that does not constitute Excluded Property that is not currently subject to a perfected security interest in favor of the Administrative Agent within 360 days following the Closing Date;

(d) other than as provided in **Sections 7.3.3(a)** through (c), the Obligor shall not be required to provide any leasehold mortgages or any Related Real Estate Documents with respect to any Mortgaged Property; and

(e) within 30 days of the Closing Date (or such longer period as Administrative Agent may agree in its reasonable discretion), the Obligor shall deliver a Securities Account Control Agreement with respect to Account no. xxxx6101 maintained at Wells Fargo Securities, LLC signed by Wells Fargo Securities, LLC, in the form previously agreed to or such other form reasonably satisfactory to Administrative Agent.

7.4. Other Collateral.

7.4.1. Commercial Tort Claims. Except as shown on **Schedule 7.4.1**, as of the Closing Date, no Obligor has a Commercial Tort Claim (other than a Commercial Tort Claim for less than \$5,000,000). Obligor shall promptly notify Administrative Agent in writing if any Obligor has a Commercial Tort Claim (other than a Commercial Tort Claim for less than \$5,000,000), shall promptly amend **Schedule 7.4.1** to include such claim, and shall take such actions as Administrative Agent deems appropriate to subject such claim to a duly perfected, first priority (or, subject to the Intercreditor Agreement, second priority) Lien in favor of Administrative Agent.

7.4.2. Certain After-Acquired Collateral. Obligor shall promptly notify

Administrative Agent in writing if, after the Closing Date, any Borrower obtains any interest in any Collateral consisting of (a) Deposit Accounts (other than an Excluded Account), (b) Intellectual Property that is material to such Obligor's business or (c) Chattel Paper, Documents, Instruments or Investment Property, in each case with an individual value of or face amount in excess of \$1,000,000, and, upon Administrative Agent's request, shall promptly take such actions as Administrative Agent deems appropriate to effect Administrative Agent's duly perfected, first priority (or subject to the Intercreditor Agreement, second priority) Lien upon such Collateral, including obtaining any appropriate possession, control agreement or Lien Waiver. If any Collateral is in the possession of a third party, at Administrative Agent's request, Obligors shall use commercially reasonable efforts to obtain an acknowledgment that such third party holds the Collateral for the benefit of Administrative Agent.

7.5. Limitations. The Lien on Collateral granted hereunder is given as security only and shall not subject Administrative Agent or any Lender to, or in any way modify, any obligation or liability of Obligors relating to any Collateral. In no event shall the grant of any Lien under any Loan Document secure an Excluded Swap Obligation of the granting Obligor.

7.6. Further Assurances. All Liens granted to Administrative Agent under the Loan Documents are for the benefit of Secured Parties. Promptly upon request, Obligors shall deliver such instruments and agreements, and shall take such actions, as Administrative Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral, or otherwise to give effect to the intent of this Agreement. Each Obligor authorizes Administrative Agent to file any financing statement that describes the Collateral as "all assets" or "all personal property" of such Obligor, or words to similar effect, and ratifies any action taken by Administrative Agent before the Closing Date to effect or perfect its Lien on any Collateral.

7.7. Certain Limited Exclusions. (a) Notwithstanding **Section 7.1**, the Collateral shall not include, and no Obligor shall be deemed to have granted a security interest in, any of such Obligor's right, title or interest in:

- (i) any Excluded Property;
- (ii) Letter-of-Credit Rights (other than to the extent such rights can be perfected by filing a UCC financing statement);
- (iii) any governmental licenses or state or local franchises, charters and authorizations to the extent the granting of security interests therein are prohibited or restricted thereby;
- (iv) pledges and security interests prohibited or restricted by Applicable Law (including any requirement to obtain the consent of any Governmental Authority, unless such consent has been obtained (it being understood that there shall be no obligation to obtain such consent)) (after giving effect to the applicable anti-assignment provisions of the UCC, the assignment of which is expressly deemed effective under the UCC or other applicable law notwithstanding such prohibition);
- (v) (1) Property subject to a purchase money security agreement or capital lease agreement evidencing or governing purchase money and capital lease obligations that are permitted to be incurred pursuant to the Loan Documents to the extent the granting of a security interest therein is validly prohibited thereby or otherwise requires consent (but only so long as such prohibition or consent requirement was not created in contemplation or anticipation of the Collateral requirements under the Loan Documents) and/or (2) any lease, license, permit or agreement or any property subject to such agreement, in each case in existence on the Closing Date or upon acquisition of the relevant Obligor party thereto, to the extent that a grant of a security interest therein would violate or invalidate such lease, license, permit or agreement or create a right of termination in favor of any other party thereto or otherwise require consent thereunder (after giving effect to the applicable anti-assignment provisions of the UCC or other Applicable Law, the

assignment of which is expressly deemed effective under the UCC or other applicable law notwithstanding such prohibition), but only so long as such restriction or consent requirement was not created in contemplation or anticipation of the Collateral requirements under the Loan Documents);

(vi) any intent-to-use trademark application prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, to the extent, if any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law;

(vi) Equity Interests in captive insurance Subsidiaries;

(vii) interests in joint ventures and non-wholly owned Subsidiaries which cannot be pledged without the consent of third parties (but only so long as such consent requirement was not created in contemplation or anticipation of the Collateral requirements under the Loan Documents);

(viii) payroll, employee benefits, withholding tax and other fiduciary deposit accounts;

(ix) voting Equity Interests in excess of 66% in any CFC that is directly owned by one or more Domestic Subsidiaries;

(x) other Property to the extent the Administrative Agent determines that the cost of obtaining or perfecting a lien or security interest therein is excessive in relation to the benefit afforded to the Lenders thereby; and

(xi) any assets (including Equity Interests) owned by a Foreign Subsidiary.

(b) Obligors shall not be required to (i) take any action under the law of any non-U.S. jurisdiction to create or perfect a security interest in such assets, including any intellectual property registered in any non-U.S. jurisdiction (and no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction shall be required) or (ii) deliver any leasehold mortgages and shall only be required to use commercially reasonable efforts to deliver landlord waivers, estoppels or collateral access letters to the extent reasonably requested by Administrative Agent.

7.8. Intercreditor Agreement. Notwithstanding anything herein to the contrary, the liens and security interests granted to Administrative Agent pursuant to this Agreement and the exercise of any right or remedy by Administrative Agent hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.

SECTION 8. COLLATERAL ADMINISTRATION

8.1. Borrowing Base Reports. Borrowers shall deliver to Administrative Agent (and Administrative Agent shall promptly deliver same to Lenders) a Borrowing Base Report (i) as of the close of business of the previous month by the 20th day of each month, (ii) during any Reporting Trigger Period, as of the close of business of the previous week by Wednesday of each week and (iii) at such other times as Administrative Agent may request after a Default has occurred and is continuing. All information (including calculation of Availability) in a Borrowing Base Report shall be certified by Borrower Agent. Administrative Agent may from time to time adjust any such report (a) to reflect Administrative Agent’s reasonable estimate of declines in value of Collateral, due to collections received in the Dominion Account or otherwise; (b) to adjust advance rates to reflect changes in dilution, quality, mix and other factors affecting Collateral; and (c) to the extent any information or calculation does not comply with this Agreement.

8.2. Accounts.

8.2.1. Records and Schedules of Accounts. Each Borrower shall keep accurate and complete records, in all material respects, of its Accounts, including all payments and collections thereon, and shall submit to Administrative Agent sales, collection, reconciliation and other reports in form reasonably satisfactory to Administrative Agent, on such periodic basis as Administrative Agent may reasonably request. Each Borrower shall also provide to Administrative Agent, on or before the 20th day of each month and, during any Reporting Trigger Period, by Wednesday of each week, a detailed aged trial balance of all Accounts as of the end of the preceding month and, during any Reporting Trigger Period, as of the end of the preceding week, specifying each Account's Account Debtor name and address, amount, invoice date and due date, showing any discount, allowance, credit, authorized return or dispute, and including such proof of delivery, copies of invoices and invoice registers, copies of related documents, repayment histories, status reports and other information as Administrative Agent may reasonably request; provided that Administrative Agent and the Lenders understand that information delivered during a Reporting Trigger Period may be preliminary and subject to customary month-end adjustments. If any Account in an aggregate face amount of \$5,000,000 or more ceases to be an Eligible Account, Borrowers shall notify Administrative Agent of such occurrence promptly (and in any event within one Business Day) after any Borrower has knowledge thereof.

8.2.2. Taxes. If an Account of any Borrower includes a charge for any Taxes, Administrative Agent is authorized, during the continuance of an Event of Default, 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 Administrative Agent nor Lenders shall be liable for any Taxes that may be due from Borrowers or with respect to any Collateral.

8.2.3. Account Verification. After an Event of Default has occurred and is continuing, Administrative Agent shall have the right at any time, in the name of Administrative Agent, any designee of Administrative Agent or 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 Administrative Agent in an effort to facilitate and promptly conclude any such verification process.

8.2.4. Maintenance of Dominion Account. Borrowers shall maintain Dominion Accounts pursuant to lockbox or other arrangements acceptable to Administrative Agent. Borrowers shall obtain an agreement (in form and substance reasonably satisfactory to Administrative Agent) from each lockbox servicer and Dominion Account bank, establishing Administrative Agent's control over and Lien in the lockbox or Dominion Account, which may be exercised by Administrative Agent during any Sweep Trigger Period, requiring immediate deposit of all remittances received in the lockbox to a Dominion Account, and waiving offset rights of such servicer or bank, except for customary administrative charges. If a Dominion Account is not maintained with Bank of America, Administrative Agent may, during any Sweep Trigger Period, require immediate transfer of all funds in such account to a Dominion Account maintained with Bank of America. Administrative Agent and Lenders assume no responsibility to Borrowers for any lockbox arrangement or Dominion Account, including any claim of accord and satisfaction or release with respect to any Payment Items accepted by any bank.

8.2.5. Proceeds of Collateral. Borrowers shall request in writing and otherwise take all reasonably necessary steps to ensure that all payments on Accounts or otherwise relating to the ABL Priority Collateral are made directly to a Dominion Account (or a lockbox relating to a Dominion Account). If any Borrower or Restricted Subsidiary receives cash or Payment Items with respect to any ABL Priority Collateral, it shall hold same in trust for Administrative Agent and promptly (not later than the next Business Day) deposit same into a Dominion Account.

8.3. Proceeds of the Term Loans. The TL Proceeds and Priority Collateral Account and funds on deposit therein shall at all times be subject to a Deposit Account Control Agreement (or a

control agreement over Securities Account(s)) and perfected Lien in favor of Administrative Agent (subject to (i) the prior Lien in favor of the Term Loan Agent and (ii) Permitted Liens in favor of the account bank and that have priority by operation of law). Funds on deposit in the TL Proceeds and Priority Collateral Account on the Closing Date, identifiable proceeds of Asset Dispositions of Term Priority Collateral, and identifiable proceeds of insurance resulting from casualty of the Term Priority Collateral and of awards arising from condemnation of the Term Priority Collateral to the extent deposited in the TL Proceeds and Priority Collateral Account, (i) may not be commingled with any other funds and (ii) shall at all times remain segregated funds, separate and apart from any other funds of the Borrowers and their Subsidiaries.

8.4. Equipment.

8.4.1. Records and Schedules of Equipment. Each Obligor shall keep accurate and complete records, in all material respects, of its Equipment, including kind, quality, quantity, cost, acquisitions and dispositions thereof, and shall submit to Administrative Agent, on such periodic basis as Administrative Agent may reasonably request, a current schedule thereof, in form reasonably satisfactory to Administrative Agent. Promptly upon request, Obligors shall deliver to Administrative Agent evidence of their ownership or interests in any Equipment.

8.4.2. [Reserved.]

8.4.3. Condition of Equipment. With respect to the Obligors' obligations in connection with the operation of their business, the Equipment is in good operating condition and repair, and all necessary replacements and repairs have been made so that the value and operating efficiency of such Equipment is preserved at all times, reasonable wear and tear excepted. Each Obligor shall ensure that such Equipment is mechanically and structurally sound, and capable of performing the functions for which it was designed, in accordance with manufacturer specifications. No Borrower shall permit any Equipment having a value in excess of \$2,500,000 to become affixed to real Property unless any landlord or mortgagee delivers a Lien Waiver.

8.5. Deposit Accounts and Securities Accounts. Schedule 8.5 sets forth all Deposit Accounts and Securities Accounts maintained by Borrowers and other Obligors, including all Dominion Accounts as of the Closing Date. Each Borrower and other Obligors shall take all actions necessary to establish Administrative Agent's control of each such Deposit Account and Securities Account and each new Deposit Account and Securities Account opened after the Closing Date (other than (a) an account exclusively used for payroll, employee benefits, withholding tax and other fiduciary deposit accounts, such account, (b) escrow, defeasance and discharge accounts which are required to be established pursuant to the terms of related documents in connection with consummation of transactions otherwise permitted by the terms of this Agreement, and (c) accounts containing not more than \$2,500,000 for all such accounts at any time (each an "Excluded Account" and collectively for all such accounts in clauses (a), (b) and (c) above, the "Excluded Accounts")); it being understood and agreed that the Administrative Agent's control of account #xxxx xxxx xx03 maintained at Bank of America, N.A. is effected in reliance on § 9-104 (a)(1) of the UCC and that a control agreement with respect to such account will not be required. Each Borrower and each other Obligor shall be the sole account holders of each Deposit Account and Securities Account and shall not allow any other Person (other than Administrative Agent and, subject to the Intercreditor Agreement, the Term Loan Agent) to have control over a Deposit Account or a Securities Account or any Property deposited therein. Each Borrower and each other Obligor shall promptly notify Administrative Agent of any opening or closing of a Deposit Account or a Securities Account (other than an Excluded Account) and, with the consent of Administrative Agent, will amend **Schedule 8.5** to reflect same. Each Borrower shall (i) request in writing and otherwise take such reasonable steps to ensure that all Account Debtors forward payment directly to lockboxes and Dominion Accounts maintained pursuant to and in accordance with **Section 8.2.4**, and (ii) deposit or cause to be deposited promptly, and in any event no later than the first Business Day after the date of receipt thereof,

all cash, checks, drafts or other similar items of payment relating to or constituting payments made in respect of any and all ABL Priority Collateral (whether or not otherwise delivered to a lockbox) into one or more Dominion Accounts. All Net Proceeds of the sale or other disposition of any ABL Priority Collateral, shall be deposited directly into the applicable Dominion Accounts.

8.6. General Provisions.

8.6.1. Location of Collateral. All tangible items of Collateral, other than Inventory in transit, shall at all times be kept by the Borrowers at locations owned or leased by an Obligor, at customer locations or at manufacturer locations or other locations for the purposes of repair or servicing of such Collateral, except that the Borrowers may make sales or other dispositions of Collateral in accordance with **Section 10.2.9**.

8.6.2. Insurance of Collateral; Condemnation Proceeds

(a) Each Obligor shall maintain insurance with respect to the Collateral in accordance with **Section 10.1.8**. From time to time upon request, the Borrowers shall provide Administrative Agent with reasonably detailed information as to the insurance so carried; provided, that if Real Estate secures any Obligations, flood hazard diligence, documentation and insurance shall comply with the Flood Disaster Protection Act or otherwise shall be reasonably satisfactory to all Lenders. Unless Administrative Agent shall agree otherwise, each policy shall include satisfactory endorsements (i) showing Administrative Agent as loss payee in respect of the property insurance policies relating to the Collateral; (ii) (x) 10 days' prior written notice to Agent in the event of cancellation of the policy due to non-payment of premiums and (y) requiring 30 days prior written notice to Administrative Agent in the event of cancellation of the policy for any other reason; and (iii) specifying that the interest of Administrative Agent shall not be impaired or invalidated by any act or neglect of any Obligor or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy. If any Borrower fails to provide and pay for any insurance, Administrative Agent may, at its option, but shall not be required to, procure the insurance and charge Borrowers therefor. While no Event of Default exists, Borrowers may settle, adjust or compromise any insurance claim, as long as the proceeds are, subject to the terms of the Intercreditor Agreement, delivered to Administrative Agent. If an Event of Default exists, subject to the terms of the Intercreditor Agreement, only Administrative Agent shall be authorized to settle, adjust and compromise such claims.

(b) Subject to the terms of the Intercreditor Agreement, any proceeds of insurance (other than proceeds from workers' compensation or D&O insurance) and any awards arising from condemnation of any Collateral shall be paid to Administrative Agent. Subject to the terms of the Intercreditor Agreement and following the Discharge of Term Obligations, subject to clause (c) below, any proceeds or awards that relate to Equipment or Real Estate shall be applied first to Revolver Loans and then to other Obligations.

(c) Following the Discharge of Term Obligations, if requested by Borrowers in writing within 15 days after Administrative Agent's receipt of any insurance proceeds or condemnation awards relating to any loss or destruction of Equipment or Real Estate, Borrowers may use such proceeds or awards to repair or replace such Equipment or Real Estate (and until so used, the proceeds shall be held by Administrative Agent as Cash Collateral) as long as (i) no Default exists; (ii) such repair or replacement is promptly undertaken and concluded, in accordance with plans satisfactory to Administrative Agent; (iii) replacement buildings are constructed on the sites of the original casualties and are of comparable size, quality and utility to the destroyed buildings; (iv) the repaired or replaced Property is free of Liens, other than Permitted Liens that are not Purchase Money Liens; and (v) Borrowers comply with disbursement procedures for such repair or replacement as Administrative Agent may reasonably require.

8.6.3. Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Administrative Agent to any Person to realize upon any Collateral, shall be borne and paid by Obligors. Administrative Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Administrative Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Borrowers' sole risk.

8.6.4. Defense of Title. Each Obligor shall defend its title to Collateral and Administrative Agent's Liens therein against all Persons, claims and demands, except Permitted Liens.

8.7. Power of Attorney. Each Obligor hereby irrevocably constitutes and appoints Administrative Agent (and all Persons designated by Administrative Agent) as such Obligor's true and lawful attorney (and agent-in-fact) for the purposes provided in this Section. Administrative Agent, or Administrative Agent's designee, may (but shall have no obligation to), without notice and in either its or an Obligor's name, but at the cost and expense of Obligors and subject to the terms of the Intercreditor Agreement:

(a) endorse an Obligor's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Administrative Agent's possession or control; and

(b) during an Event of Default to the extent any of the following relates to the ABL Priority Collateral, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Administrative Agent deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; (v) prepare, file and sign an Obligor's name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to an Obligor, and notify postal authorities to deliver any such mail to an address designated by Administrative Agent; (vii) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use an Obligor's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use information contained in any data processing, electronic or information systems relating to Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which an Obligor is a beneficiary; and (xii) take all other actions as Administrative Agent deems appropriate to fulfill any Obligor's obligations under the Loan Documents.

SECTION 9. REPRESENTATIONS AND WARRANTIES

9.1. General Representations and Warranties. To induce Administrative Agent and Lenders to enter into this Agreement and to make available the Commitments, Loans and Letters of Credit, each Borrower represents and warrants that:

9.1.1. Organization; Powers. Each Borrower and its Restricted Subsidiaries is a legal entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such

qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications could not reasonably be expected to have a Material Adverse Effect.

9.1.2. Authority; Enforceability. After giving effect to the Confirmation Order and the Prepackaged Plan, the Transactions are within each Obligor's corporate, limited liability company or partnership powers, as applicable, and have been duly authorized by all necessary corporate, limited liability company or partnership, as applicable, and, if required, equity holder action (including, without limitation, any action required to be taken by any class of directors or other governing body of any Borrower or any other Person, whether interested or disinterested, in order to ensure the due authorization of the Transactions). Each Loan Document to which an Obligor is a party has been duly executed and delivered by such Obligor and constitutes a legal, valid and binding obligation of such Obligor, as applicable, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

9.1.3. Approvals; No Conflicts. After giving effect to the Confirmation Order and the Prepackaged Plan, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including shareholders or other equity holders or any class of directors or other governing body, whether interested or disinterested, of any Borrower or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby, except such as have been obtained or made and are in full force and effect other than (i) the recording and filing of the Security Documents as required by this Agreement, and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder, or could not reasonably be expected to have a Material Adverse Effect, (b) will not violate any Sanctions and Applicable Law or any Organic Documents of any Borrower or any Restricted Subsidiary, or any order of any Governmental Authority, (c) will not violate or result in a default under any Material Contract, or give rise to a right thereunder to require any payment to be made by any Borrower or any Restricted Subsidiary and (d) will not result in the creation or imposition of any Lien on any Property of any Borrower or any Restricted Subsidiary (other than the Liens created by the Loan Documents).

9.1.4. Financial Condition; No Material Adverse Effect.

(a) The Borrowers have heretofore furnished to Administrative Agent and the Lenders the consolidated balance sheet and statements of operations, stockholders' equity and cash flows of the Company and its Consolidated Subsidiaries as of and for the Fiscal Year ended December 31, 2015, reported on by Grant Thornton LLP, independent public accountants. Such financial statements are prepared in accordance with GAAP and present fairly, in all material respects, the financial position and results of operations and cash flows of the Company and its Consolidated Subsidiaries as of such date and for such period in accordance with GAAP.

(b) [Reserved.]

(c) Since Closing Date, there has been no event, development or circumstance that has had or would reasonably be expected to have a Material Adverse Effect.

(d) Neither any Borrowers nor any Restricted Subsidiary has, on the date hereof after giving effect to the Transactions, any Material Debt (including Disqualified Capital Stock) or any contingent liabilities, off-balance sheet liabilities or partnerships, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except for the Term Loans under the Term Loan Credit Agreement or as referred to or reflected or provided for

in the financial statements delivered to Administrative Agent and Lenders as set forth in **Schedule 9.1.4**.

9.1.5. Litigation. After giving effect to the Confirmation Order and the Prepackaged Plan, there are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of any Borrower, threatened in writing against or affecting the Borrowers or any Restricted Subsidiary or any of their respective Properties (i) that could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect or (ii) that involve any Loan Document or the Transactions.

9.1.6. Accounts. Administrative Agent may rely, in determining which Accounts are Eligible Accounts, on all statements and representations made by Borrowers with respect thereto. Borrowers warrant, with respect to each Account shown as an Eligible Account in a Borrowing Base Report, that:

- (a) it is genuine and in all material respects what it purports to be;
- (b) it arises out of a completed, *bona fide* sale and delivery of goods or rendition of services in the Ordinary Course of Business, and substantially in accordance with any purchase order, contract or other document relating thereto;
- (c) it is for a sum certain, maturing as stated in the applicable invoice, a copy of which has been furnished or is available to Administrative Agent on request;
- (d) it is not subject to any offset, Lien (other than Permitted Liens in favor of the account bank or Liens in favor of Administrative Agent, the Term Loan Agent or holders of Permitted Junior Priority Secured/Unsecured Debt), deduction, defense, dispute, counterclaim or other adverse condition except as arising in the Ordinary Course of Business and disclosed to Administrative Agent; and it is absolutely owing by the Account Debtor, without contingency in any respect;
- (e) no purchase order, agreement, document or Applicable Law restricts assignment of the Account to 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 or is in process 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 the Borrowers' knowledge, (i) there are no facts or circumstances that are reasonably likely to impair the enforceability or collectability of such Account; (ii) the Account Debtor had the capacity to contract when the Account arose, continues to meet the applicable Borrower's customary credit standards, is Solvent, is not contemplating or subject to an Insolvency Proceeding, and has not failed, or suspended or ceased doing business; and (iii) there are no proceedings or actions threatened or pending against any Account Debtor that could reasonably be expected to have a material adverse effect on the Account Debtor's financial condition.

9.1.7. Environmental Matters. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

- (a) the Borrowers and the Subsidiaries and each of their respective Properties and operations thereon are, and have been for the preceding five years, in compliance with applicable Environmental Laws;
- (b) the Borrowers and the Subsidiaries have obtained Environmental Permits

required for their respective operations and each of their Properties, with such Environmental Permits being currently in full force and effect, and neither the Borrowers nor any Subsidiary has received any written notice or otherwise has actual knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be protested or denied;

(c) there are no claims, demands, suits, orders, inquiries, investigations, written requests for information or proceedings concerning any violation of, or any liability (including as a potentially responsible party) under, any applicable Environmental Law that is pending or, to any Borrower's knowledge, threatened against any Borrower or any Subsidiary or any of their respective Properties or as a result of any operations at such Properties;

(d) none of the Properties of any Borrower or any Subsidiary contain or, during the period of ownership or operation of the respective Property by the Borrowers or any Subsidiary, to any Borrower's knowledge have, at any time, contained any: (i) underground storage tanks; (ii) asbestos-containing materials; (iii) landfills or dumps; (iv) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (v) sites on or nominated for the "National Priority List" promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

(e) there has been no Release or, to any Borrower's knowledge, threatened Release, of Hazardous Materials at, on, under or from any Borrower's or any Subsidiary's Properties requiring any investigations, remediations, abatements, removals, or monitorings of Hazardous Materials required under applicable Environmental Laws at such Properties and none of such Properties are adversely affected by any Release or threatened Release of a Hazardous Material originating or emanating from any other real property in quantities or concentrations that would require remediation;

(f) neither any Borrower nor any Subsidiary has received any written notice asserting an alleged liability or obligation under any applicable Environmental Laws with respect to the investigation, remediation, abatement, removal, or monitoring of any Hazardous Materials at, under, or Released or threatened to be Released from any real properties offsite any Borrower's or any Subsidiary's Properties and there are no conditions or circumstances that could reasonably be expected to result in the receipt of such written notice; and

(g) there has been no exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of any of the Borrowers' or the Subsidiaries' Properties that could reasonably be expected to form the basis for a claim for damages or compensation and there are no conditions or circumstances that could reasonably be expected to result in the receipt of notice regarding such exposure.

9.1.8. Surety Obligations. No Borrower or Restricted Subsidiary is obligated as surety or indemnitor under any bond or other contract that assures payment or performance of any obligation of any Person, except as permitted hereunder.

9.1.9. Compliance with the Laws and Agreements; No Defaults.

(a) After giving effect to the Confirmation Order, each Borrower and each Restricted Subsidiary is in compliance, and its Properties and business operations are in compliance, with all Applicable Law (including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, and laws regarding collection and payment of Taxes), and all agreements and other instruments binding upon it or its Property, and possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of its Property and the conduct of its business, except where the failure to do so (other than failure to comply with Anti-Terrorism Laws), individually or

in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Except for the FCPA Settlement, there have been no citations, notices or orders of material noncompliance issued to any Borrower or Subsidiary under any Applicable Law. No Inventory has been produced in violation of the FLSA.

(b) None of the Borrowers or any Restricted Subsidiary is in default, nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would constitute a default or would require any Borrower or a Restricted Subsidiary to redeem or make any offer to redeem under any material indenture, note, credit agreement or instrument pursuant to which any Material Debt is outstanding or by which any Borrower or any Restricted Subsidiary or any of their Properties is bound.

(c) No Default has occurred and is continuing.

9.1.10. Investment Company Act, etc. No Obligor is (i) an “investment company” or a company “controlled” by an “investment company,” within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other Applicable Law regarding its authority to incur Debt..

9.1.11. Taxes. Each Borrower and its Restricted Subsidiaries has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) to the extent being Properly Contested or (b) to the extent that failure to do so could not reasonably be expected to result in a Material Adverse Effect. The charges, accruals and reserves on the books of each Borrower and its Restricted Subsidiaries in respect of Taxes and other governmental charges are, in the reasonable opinion of such Borrower, adequate. No Lien relating to Taxes described in the first sentence of this **Section 9.1.11** has been filed and, to the knowledge of the Borrowers, no claim is being asserted with respect to any such Tax or other such governmental charge.

9.1.12. ERISA. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) the Borrowers, the Subsidiaries and each ERISA Affiliate have complied with ERISA and, where applicable, the Code regarding each Plan.

(b) each Plan is, and has been, established and maintained in compliance with its terms, ERISA and, where applicable, the Code.

(c) no act, omission or transaction has occurred which could result in imposition on any Borrower, any Subsidiary or any ERISA Affiliate (whether directly or indirectly) of (i) either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (ii) breach of fiduciary duty liability damages under section 409 of ERISA.

(d) full payment when due has been made of all amounts which the Borrowers, the Subsidiaries or any ERISA Affiliate is required under the terms of each Plan or applicable law to have paid as contributions to such Plan as of the date hereof.

(e) neither the Borrowers, the Subsidiaries nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that may not be terminated by a Borrower, a Subsidiary or any ERISA Affiliate in its sole

discretion at any time without any material liability.

(f) neither the Borrowers, the Subsidiaries nor any ERISA Affiliate sponsors, maintains or contributes to, or has at any time in the six-year period preceding the date hereof sponsored, maintained or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

9.1.13. Governmental Approvals. Each Borrower and Restricted Subsidiary has, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties, except as could not reasonably be expected to result in a Material Adverse Effect. All necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and Borrowers and Restricted Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect.

9.1.14. [Reserved].

9.1.15. Insurance. The Borrowers have, and have caused all of their Subsidiaries (after giving effect to any self-insurance) to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations (including hazard insurance). Administrative Agent has been named as additional insured in respect of such liability insurance policies, and Administrative Agent has been named as loss payee with respect to property loss insurance for all items of Collateral.

9.1.16. Burdensome Contracts. As of the Closing Date, no Borrower or Restricted Subsidiary is party or subject to any Restrictive Agreement, except as shown on **Schedule 9.1.16**. No such Restrictive Agreement prohibits the execution, delivery or performance of any Loan Document by an Obligor.

9.1.17. Restriction on Liens. Neither any Borrower nor any of the Restricted Subsidiaries is a party to any material agreement or arrangement (other than (a) Purchase Money Debt permitted by **Section 10.2.1(c)**, but then only on the Property subject of such Purchase Money Debt, and (b) restrictions under instruments creating Permitted Liens, but then only on the Property subject of such Lien), or subject to any order, judgment, writ or decree, which either restricts or purports to restrict its ability to grant Liens to Administrative Agent on or in respect of their Properties to secure the Obligations and the Loan Documents.

9.1.18. Capital Structure. **Schedule 9.1.18** shows, for each Borrower and each of its Subsidiaries, its jurisdiction of organization, authorized and issued Equity Interests, holders of its Equity Interests (other than the holders of the Equity Interests in the Company), and agreements binding on such holders with respect to such Equity Interests, in each case as of the Closing Date. Except as disclosed on **Schedule 9.1.18**, in the five years preceding the Closing Date, no Borrower or Restricted Subsidiary has acquired any substantial assets from any other Person nor been the surviving entity in a merger or combination. Each Borrower has good title to its Equity Interests in its Restricted Subsidiaries, subject only to Administrative Agent's and the Term Loan Agent's Lien and any Liens securing holders of Permitted Junior Priority Secured/Unsecured Debt (or their representative), and all such Equity Interests are duly issued, fully paid and non-assessable (to the extent applicable). As of the Closing Date, except as disclosed on **Schedule 9.1.18** or as expressly contemplated in the Prepackaged Plan, there are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Borrower or Restricted Subsidiary (other than relating to Equity Interests in the Company).

9.1.19. Location of Business and Offices. **Schedule 9.1.19** shows, as of the Closing Date, the name of each Obligor as listed in the public records of its jurisdiction of organization, such Obligor's organizational identification number in its jurisdiction of organization, and the address for such Obligor's principal place of business and chief executive office.

9.1.20. Trade Relations. There exists no actual or threatened termination, limitation or modification of any business relationship between the Borrowers and their Restricted Subsidiaries, taken as a whole on one hand, and any customer or supplier, or any group of customers or suppliers, on the other hand, who individually or in the aggregate are material to the business of such Borrower and its Restricted Subsidiaries, taken as a whole, except in each case, as could not reasonably be expected to result in a Material Adverse Effect. There exists no condition or circumstance that could reasonably be expected to materially impair the ability of any Borrower or Restricted Subsidiary to conduct its business at any time hereafter in substantially the same manner as conducted on the Closing Date.

9.1.21. Properties; Titles, Intellectual Property; Licenses; Etc.

(a) Each Borrower and each Restricted Subsidiary has good and valid title to, valid leasehold interests in, or valid easements, rights of way or other property interests in all of its material real and personal Property free and clear of all Liens except Permitted Liens. All Liens of Administrative Agent in the Collateral are or will be duly perfected, first priority Liens (or subject to the Intercreditor Agreement, second priority), subject only to Permitted Liens that are expressly allowed to have priority over Administrative Agent's Liens. From and after the transfers to the SPV described in **Section 7.3.1** and **7.3.3**, the SPV will have good and valid title to, valid leasehold interests in, or valid easements, rights of way or other property interests in all of its material real and personal Property free and clear of all Liens except Permitted Liens.

(b) All material leases, easements, rights of way and other agreements necessary for the conduct of the business of the Borrowers and the Restricted Subsidiaries are valid and subsisting, in full force and effect, and, to any of the Borrowers' knowledge there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any such lease or leases, which could reasonably be expected to result in a Material Adverse Effect.

(c) Each Borrower and each Restricted Subsidiary owns, or is licensed to use, all Intellectual Property material to its business, and to the Borrowers' knowledge, the use thereof by such Borrower and such Restricted Subsidiary, as applicable, does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. There is no pending or, to any Borrower's knowledge, threatened Intellectual Property Claim with respect to any Borrower, any Restricted Subsidiary or any of their Property (including any Intellectual Property) that could reasonably be expected to result in a Material Adverse Effect. All Intellectual Property owned, used or licensed by, or otherwise subject to any interests of, any Borrower or Restricted Subsidiary as of the Closing Date is shown on **Schedule 9.1.21**.

9.1.22. Maintenance of Properties. Except for such acts or failures to act as could not be reasonably expected to have a Material Adverse Effect, the Properties owned, leased or used by the Borrowers and their Restricted Subsidiaries that are necessary to the conduct of their businesses, in the aggregate, are in good operating condition and repair, subject to ordinary wear and tear.

9.1.23. Payable Practice. No Borrower or Restricted Subsidiary has made any material change in its historical accounts payable practices from those in effect on the Closing Date.

9.1.24. Hedging Agreements. **Schedule 9.1.24**, as of the date hereof, and after the date hereof, each report required to be delivered by the Borrowers pursuant to **Section 10.1.2(f)**, sets

forth, a true and complete list of all Hedging Agreements of the Borrowers and each Restricted Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark to market value thereof, all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement.

9.1.25. Security Documents.

(a) The provisions of this Agreement are effective to create, in favor of the Administrative Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on, and security interest in, all of the Collateral described herein, and (i) when financing statements and other filings in appropriate form are filed in the offices set forth on **Schedule 9.1.25(a)** and (ii) upon the taking of possession or control by Administrative Agent (or by the Term Loan Agent subject to the terms of the Intercreditor Agreement) of the Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to Administrative Agent (or the Term Loan Agent subject to the terms of the Intercreditor Agreement) to the extent possession or control by Administrative Agent is required by this Agreement), the Liens created by this Agreement shall constitute fully perfected first priority (or, subject to the Intercreditor Agreement, second priority) Liens on, and security interests in, all right, title and interest of the Obligors in the Collateral covered thereby (other than such Collateral in which a security interest cannot be perfected under the Uniform Commercial Code as in effect at the relevant time in the relevant jurisdiction), in each case free of all Liens other than Permitted Liens, and prior and superior to all other Liens other than such Liens and, subject to the terms of the Intercreditor Agreement, the Liens in favor of the Term Loan Agent.

(b) If and when executed and delivered, each Mortgage will be effective to create, in favor of Administrative Agent (or such other trustee as may be required or desired under local law) for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Mortgaged Property and the proceeds thereof, subject only to Permitted Liens, and when any Mortgage is executed and delivered after the date hereof in accordance with the provisions of **Section 7.3.1** and filed in the appropriate offices), the Mortgages shall constitute fully perfected first priority (or, subject to the Intercreditor Agreement, second priority) Liens on, and security interests in, all right, title and interest of the Obligors in the Real Estate subject to such Mortgage and the proceeds thereof, in each case prior and superior in right to any other person, other than Liens permitted by such Mortgage and, subject to the terms of the Intercreditor Agreement, the Liens in favor of the Term Loan Agent.

(c) Each Security Document delivered pursuant to **Section 7.4**, **Section 7.6** or **Section 10.1.13**, upon execution and delivery thereof, is effective to create in favor of Administrative Agent, for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Collateral thereunder, and when all appropriate filings or recordings are made in the appropriate offices as may be required under Applicable Law or possession or control is conferred to Administrative Agent, such Security Document will constitute fully perfected first priority (or, subject to the Intercreditor Agreement, second priority) Liens on, and security interests in, all right, title and interest of the Obligors in such Collateral, in each case with no other Liens except for Permitted Liens.

9.1.26. Use of Loans and Letters of Credit. The proceeds of the Loans and the Letters of Credit shall be used to pay fees and transaction expenses in connection with the Transactions, to refinance the existing Debt of the Borrowers and their Subsidiaries and for ongoing working capital and for other lawful, general corporate, limited liability company or partnership purposes of Borrowers and their Subsidiaries, including without limitation to finance permitted restricted payments, share repurchases, acquisitions, permitted Capital Expenditures and other Investments of Borrowers and their Subsidiaries. The Borrowers and their Subsidiaries are not engaged principally, or as one of its or their important activities, in the business of extending credit for the purpose, whether immediate, incidental or ultimate, of buying or carrying Margin Stock. No part of the proceeds of any Loan or Letter of Credit will be used, whether immediate, incidental or ultimate, to buy or carry, or to reduce or refinance any Debt

incurred to buy or carry, Margin Stock or for any related purpose governed by Regulations T, U or X of the Board of Governors.

9.1.27. Solvency. As of the Closing Date, after giving effect to (i) the consummation of the transactions contemplated herein to occur on the Closing Date and (ii) any extension of credit hereunder, the Borrowers and the Obligors, taken as a whole, are Solvent. No Obligor is planning to take any action described in **Section 12.1(h)**.

9.1.28. Common Enterprise. Each Borrower and Restricted Subsidiary and their business operations are closely integrated with one another into a single, interdependent and collective, common enterprise so that any benefit received by any one of them from the financial accommodations provided under this Agreement will be to the direct benefit of the others. The Borrowers and their Restricted Subsidiaries intend to render services to or for the benefit of each other, to purchase or sell and supply goods to or from or for the benefit of each other, to make loans, advances and provide other financial accommodations to or for the benefit of each other and to provide administrative, marketing, payroll and management services to or for the benefit of each other (in each case, except as may be prohibited by this Agreement).

9.1.29. Broker's Fees. Except as disclosed in the Prepackaged Plan, no broker's or finder's fee, commission or similar compensation will be payable by any Borrower or any Restricted Subsidiary with respect to the Transactions.

9.1.30. Employee Matters. As of the Closing Date, (a) neither any Borrower nor any Restricted Subsidiary, nor any of their respective employees, is subject to any collective bargaining agreement, (b) no petition for certification or union election is pending or, to the knowledge of any Borrower or any Restricted Subsidiary, contemplated with respect to the employees thereof and no union or collective bargaining unit has sought such certification or recognition with respect to the employees of any Borrower or any Restricted Subsidiary, and (c) there are no strikes, slowdowns, work stoppages or controversies pending or, to the knowledge of any Borrower, threatened between any Borrower or any Restricted Subsidiary and its respective employees.

9.1.31. Anti-Corruption Laws and Sanctions. The Borrowers have developed and implemented and maintain in effect internal controls, policies and procedures, management oversight, monitoring, audit and training designed to ensure compliance by the Borrowers, their Subsidiaries and their respective directors, officers, employees and agents with applicable Anti-Corruption Laws and applicable Sanctions. The Borrowers, their Subsidiaries and, to the knowledge of the Borrowers, their respective officers, employees, directors and agents are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

9.1.32. Status under Sanctions. None of the Borrowers or their Subsidiaries or, to the knowledge of any Borrower or such Subsidiary, any director, officer, employee, agent, affiliate or representative thereof, is or is owned or controlled by any individual or entity that is currently the subject or target of any Sanction or is located, organized or resident in a Designated Jurisdiction.

9.2. Complete Disclosure; Financial Statements and Projections. None of the reports, financial statements, certificates or other information furnished by or on behalf of the Borrowers or any Restricted Subsidiary to Administrative Agent or any Lender or any of their Affiliates in connection with the negotiation of this Agreement or any other Loan Document or delivered hereunder or under any other Loan Document (as modified or supplemented by other information so furnished) contain any material misstatement of fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading. The consolidated balance sheet and statements of operations, stockholders' equity and cash flows of the Company and its Consolidated Subsidiaries hereafter delivered to Administrative Agent and Lenders will be prepared in accordance with

GAAP and present fairly, in all material respects, the financial position and results of operations and cash flows of the Company and its Consolidated Subsidiaries as of the date and for the period set forth therein in accordance with GAAP. All projections delivered from time to time to Administrative Agent and Lenders have been prepared and will have been prepared, as the case may be, in good faith, based on assumptions believed by management of the Borrowers to be reasonable at the time made, it being recognized by Administrative Agent and the Lenders that such projections as they relate to future events are not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

10.1. Affirmative Covenants. Until Full Payment of all Obligations, each Borrower (on behalf of itself and its Restricted Subsidiaries) and each Guarantor by its execution of this Agreement, covenants and agrees with the Administrative Agent, Issuing Banks and the Lenders that:

10.1.1. Inspections; Appraisals.

(a) Each Borrower shall, and shall cause each Restricted Subsidiary to, permit Administrative Agent from time to time, subject (except when an Event of Default exists) to reasonable notice and normal business hours, to visit and inspect the Properties of any Borrower or any Restricted Subsidiary, inspect, audit and make extracts from any Borrower's or Restricted Subsidiary's books and records, and discuss with its officers, employees, agents, advisors and independent accountants such Borrower's or Restricted Subsidiary's business, financial condition, assets, prospects and results of operations. Lenders may participate in any such visit or inspection, at their own expense. Neither Administrative Agent nor any Lender shall have any duty to any Borrower to make any inspection, nor to share any results of any inspection, appraisal or report with any Borrower or any of its Subsidiaries. Borrowers acknowledge that all inspections, appraisals and reports are prepared by Administrative Agent and Lenders for their purposes, and Borrowers shall not be entitled to rely upon them.

(b) Each Borrower shall, and shall cause each Restricted Subsidiary to, permit Administrative Agent to examine any Obligor's books and records or any other financial or Collateral matters as Administrative Agent deems appropriate, which examinations shall be limited to two times per Loan Year; provided, however, that the foregoing limit shall not apply if an examination is initiated during a Default. Each Borrower shall, and shall cause each Restricted Subsidiary to, reimburse Administrative Agent for all reasonable and documented charges, costs and expenses of Administrative Agent in connection with foregoing examinations, and Borrowers agree to pay Administrative Agent's then standard charges for examination activities, including reasonable and documented charges for Administrative Agent's internal examination groups, as well as the reasonable and documented charges of any third party used for such purposes. No Borrowing Base calculation shall include Collateral acquired in a Permitted Acquisition or otherwise outside the Ordinary Course of Business until completion of applicable field examinations (which shall not be included in the limits provided above) reasonably satisfactory to Administrative Agent.

10.1.2. Financial Statements; Other Information. The Borrowers will furnish to Administrative Agent and, with respect to clause (n) below, the Co-Collateral Agents (the documents required to be delivered pursuant to clauses (a), (b) and (i) below shall be deemed to have been delivered on the date on which such documents are posted on the SEC's website at www.sec.gov):

(a) Annual Financial Statements. As soon as available, but in any event in accordance with then Applicable Law and not later than ninety (90) days after the end of each Fiscal Year of the Company, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by Grant Thornton LLP or other independent

public accountants of recognized national standing (without a “going concern” or like qualification or exception and without any qualification or exception as to the scope of such audit (other than as a result of an upcoming maturity date under this Agreement or the Term Loan Credit Agreement occurring within one year from the time such opinion is delivered or any potential inability to satisfy the springing financial covenant set forth in **Section 10.13** on a future date or in a future period) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Company and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

(b) Quarterly Financial Statements. As soon as available, but in any event in accordance with then Applicable Law and not later than sixty (60) days after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Company, its consolidated balance sheet and related statements of operations and cash flows as of the then elapsed portion of the Fiscal Year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by a Senior Officer of the Company as presenting fairly in all material respects the financial condition and results of operations of the Company and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied or as prepared in accordance with the requirements of the SEC, subject to normal year-end audit adjustments and the absence of footnotes.

(c) [Reserved].

(d) Annual Financial Projections. Concurrently with any delivery of financial statements under **Section 10.1.2(a)**, projections of Company’s consolidated balance sheets, related statements of operations, cash flow and Availability for the next Fiscal Year, quarter by quarter.

(e) Certificate of Senior Officer – Compliance. Concurrently with any delivery of financial statements under **Section 10.1.2(a)** and **Section 10.1.2(b)** and commencing on the first day of a Covenant Trigger Period and continuing for each month ending thereafter not later than thirty (30) days after the end of each such month until the Covenant Trigger Period is no longer in effect, a Compliance Certificate.

(f) Certificate of Senior Officer – Hedging Agreements. Concurrently with any delivery of financial statements under **Section 10.1.2(a)** and **Section 10.1.2(b)**, a certificate of a Senior Officer of Borrower Agent, in form and substance reasonably satisfactory to the Administrative Agent, setting forth as of the last Business Day of such month, Fiscal Quarter or Fiscal Year, as applicable, a true and complete list of all Hedging Agreements of each Borrower and each Restricted Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark-to-market value therefor, any new credit support agreements relating thereto, any margin required or supplied under any credit support document, and the counterparty to each such agreement.

(g) Certificate of Insurer/Broker – Insurance Coverage. Use commercially reasonable efforts to provide, concurrently with any delivery of financial statements under **Section 10.1.2(a)**, a certificate of insurance coverage from each insurer or insurance broker with respect to the insurance required by **Section 10.1.8**.

(h) Other Accounting Reports. Promptly upon receipt thereof, a copy of each other material report or letter (except standard and customary correspondence) submitted to any Borrower or any Restricted Subsidiaries by independent accountants in connection with any annual, interim or special audit made by them of the books of any such Borrower or any such Restricted Subsidiary, and a copy of any response by any such Borrower or any such Restricted Subsidiary, or the board of directors or other governing body, as applicable, of any such Borrower or any such Restricted Subsidiary, to such material

letter or report.

(i) SEC and Other Filings; Reports to Shareholders. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Company or any Restricted Subsidiary with the SEC, or with any national or foreign securities exchange (except standard and customary correspondence), or distributed by the Company to its shareholders generally, as the case may be.

(j) Default Notices Under Material Contracts. Promptly after the furnishing thereof, copies of any notice of Default furnished to or by any Person pursuant to the terms of any Material Contract.

(k) Information Regarding Obligors. Prompt written notice (and in any event not more than three (3) Business Days after the occurrence thereof) of any change (i) in any Obligor's corporate name or in any trade name used to identify such Person in the conduct of its business or in the ownership of its Properties, (ii) in the location of any Obligor's chief executive office or principal place of business, (iii) in any Obligor's identity or corporate structure, (iv) in any Obligor's jurisdiction of organization or such Person's organizational identification number in such jurisdiction of organization, and (v) in any Obligor's federal taxpayer identification number.

(l) Notices of Certain Changes. Promptly, but in any event within ten (10) Business Days after the execution thereof, copies of any amendment, modification or supplement to the certificate or articles of incorporation, by-laws, any preferred stock designation or any other Organic Document of any Borrower or any Restricted Subsidiary.

(m) Trade Payables. At Administrative Agent's request, a listing of each Borrower's trade payables specifying the trade creditor and balance due, and a detailed trade payable aging, all in form satisfactory to Administrative Agent.

(n) Other Requested Information. Promptly following any request therefor, such other information regarding the operations, business affairs, Collateral and financial condition of any Borrower or any Restricted Subsidiary or any other Obligor (including, without limitation, any Plan and any reports or other information required to be filed with respect thereto under the Code or under ERISA), or compliance with the terms of this Agreement or any other Loan Document, as the Administrative Agent or any of the Co-Collateral Agents may reasonably request.

10.1.3. Notices of Material Events. The Borrowers will furnish to Administrative Agent prompt and, in any event, within ten (10) Business Days after acquiring knowledge thereof, written notice of the following:

(a) the occurrence of any Default of which any Borrower has knowledge;

(b) the filing or commencement of, or the threat in writing of, any action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority against or affecting any Borrower or any Affiliate thereof not previously disclosed in writing to Administrative Agent or any material adverse development in any action, suit, proceeding, investigation or arbitration (whether or not previously disclosed to the Administrative Agent) that, in either case, could reasonably be expected to result in a Material Adverse Effect;

(c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrowers and their Subsidiaries in an aggregate amount exceeding \$10,000,000; and

(d) any other development that results in, or could reasonably be expected to result

in, a Material Adverse Effect.

Each notice delivered under this **Section 10.1.3** shall be accompanied by a statement of a Senior Officer of the Borrowers setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

10.1.4. Existence; Conduct of Business. Each Borrower will, and will cause each Restricted Subsidiary to, do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, consents, privileges and franchises material to the conduct of its business and maintain, including, if necessary, its qualification to do business in each other jurisdiction in which its Properties are located or the ownership of its Properties requires such qualification, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under **Section 10.2.8**.

10.1.5. Payment of Tax Liabilities. Each Borrower will, and will cause each Restricted Subsidiary to, pay its Tax liabilities before the same shall become delinquent or in default, except where such Tax liabilities are being Properly Contested.

10.1.6. Performance of Obligations under Loan Documents. The Borrowers will repay the Loans according to the reading, tenor and effect thereof, and each Borrower will, and will cause each Restricted Subsidiary to, do and perform every act and discharge all of the obligations to be performed and discharged by them under the Loan Documents, including, without limitation, this Agreement, at the time or times and in the manner specified.

10.1.7. Operation and Maintenance of Properties. Except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect, each Borrower, at its own expense, will, and will cause each Restricted Subsidiary to:

(a) operate its Properties or cause such Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Applicable Law, including, without limitation, applicable Environmental Laws; and

(b) preserve, maintain and keep in good repair, condition and working order (ordinary wear and tear excepted) all Property material to the conduct of its business, including, without limitation, all equipment, machinery and facilities.

10.1.8. Insurance.

(a) The Borrowers will, and will cause each Restricted Subsidiary to, maintain (after giving effect to any self-insurance), with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations (including hazard insurance). The loss payable clauses or provisions in any insurance policy or policies insuring any of the Collateral for the Loans shall be endorsed in favor of and made payable to Administrative Agent as its interests may appear and such policies shall name Administrative Agent as an “additional insured” and “loss payee”, as applicable, and provide that the insurer will give at least thirty (30) days’ prior notice of any cancellation to Administrative Agent (or at least 10 days’ prior notice in the case of cancellation of such insurance due to non-payment of premiums).

(b) If any building that forms a part of Mortgaged Property is located in an area designated a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency

Management Agency (or any successor agency), obtain flood insurance in such reasonable total amount as the Administrative Agent may from time to time reasonably require, and otherwise to ensure compliance with Applicable Law (including any applicable Flood Laws).

10.1.9. Books and Records. Each Borrower will, and will cause each Restricted Subsidiary to, keep proper books of record and account in which full, true and correct entries in all material respects are made of all dealings and transactions in relation to its business and activities.

10.1.10. Compliance with Laws. The Borrowers will, and will cause each Subsidiary to, comply with all Applicable Laws, including FLSA, OSHA, Environmental Laws, and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Borrowers will maintain in effect and enforce policies and procedures designed to ensure compliance by the Borrowers, their Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

10.1.11. Compliance with Material Contracts. Each Borrower will, and will cause each Restricted Subsidiary to, comply with all Material Contracts, except to the extent that such noncompliance could not reasonably be expected to have a Material Adverse Effect.

10.1.12. Environmental Matters.

(a) Except for matters that individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, each Borrower shall at its sole expense: (i) comply, and shall cause its Properties and operations and each Restricted Subsidiary and each Restricted Subsidiary's Properties and operations to comply, with applicable Environmental Laws; (ii) not cause a Release or threatened Release, and shall cause each Restricted Subsidiary not to cause a Release or threatened Release, of any Hazardous Material on, under, about or from any of such Borrower's or its Restricted Subsidiaries' Properties except in compliance with, and in a manner not reasonably likely to give rise to liability under, applicable Environmental Laws; (iii) timely obtain or file, and shall cause each Restricted Subsidiary to timely obtain or file, Environmental Permits, if any, required under applicable Environmental Laws to be obtained or filed in connection with the operation or use of such Borrower's or its Restricted Subsidiaries' Properties; (iv) promptly commence and diligently prosecute to completion, and shall cause each Restricted Subsidiary to promptly commence and diligently prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations (collectively, the "Remedial Work") if such Remedial Work is required under applicable Environmental Laws because of or in connection with the actual or suspected past, present or future Release or threatened Release of any Hazardous Material on, under, about or from any of the Borrower's or its Restricted Subsidiaries' Properties; and (v) conduct, and cause each of its Restricted Subsidiaries to conduct, their respective operations and businesses in a manner that will not expose any Property or Person to Hazardous Materials that could reasonably be expected to form the basis for a claim for damages or compensation.

(b) The Borrowers will promptly, but in no event later than ten (10) Business Days after the receipt of notice by any member of the executive management team of the occurrence of a triggering event, notify the Administrative Agent and the Lenders in writing of any threatened action, investigation or inquiry by any Governmental Authority or any threatened demand or lawsuit by any Person against any Borrower or any Restricted Subsidiary or their Properties of which any Borrower has knowledge in connection with any Environmental Laws if any Borrower could reasonably anticipate that such action will result in liability (whether individually or in the aggregate) in excess of \$10,000,000, not fully covered by insurance, subject to normal deductibles.

10.1.13. Future Subsidiaries; Subsidiary No Longer Immaterial Domestic Subsidiaries. The Borrowers will promptly notify Administrative Agent upon any Person becoming a Subsidiary (and upon any Subsidiary that is an Immaterial Domestic Subsidiary ceasing to be an Immaterial Domestic Subsidiary) and, if such Person is not an Excluded Subsidiary, cause it (and cause any Subsidiary that is an Immaterial Domestic Subsidiary that ceased to be an Immaterial Domestic Subsidiary) to either (a) become a Borrower (provided, however, that no such Subsidiary shall become a Borrower unless such Subsidiary is wholly owned, directly or indirectly, by one or more Obligors) or (b) guaranty the Obligations, in each case in a manner reasonably satisfactory to Administrative Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Administrative Agent shall reasonably require to evidence and perfect a Lien in favor of Administrative Agent on the Collateral of such Person, including delivery of such legal opinions, in form and substance reasonably satisfactory to Administrative Agent, as it shall deem appropriate.

10.1.14. ERISA Compliance.

(a) The Borrowers will promptly furnish and will cause the Subsidiaries and any ERISA Affiliate to promptly furnish to the Administrative Agent immediately upon becoming aware of the occurrence of any “prohibited transaction,” as described in section 406 of ERISA or in section 4975 of the Code, in connection with any Plan or any trust created thereunder, a written notice signed by a Senior Officer of the Borrower, such Restricted Subsidiary or such ERISA Affiliate, as the case may be, specifying the nature thereof, what action the Borrower, such Subsidiary or such ERISA Affiliate is taking or proposes to take with respect thereto, and, when known, any action taken or proposed by the Internal Revenue Service or the Department of Labor with respect thereto.

(b) Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, each Borrower will ensure that neither it nor any of its Subsidiaries, at any time:

(i) engages in, or permits any ERISA Affiliate to engage in, any transaction in connection with which a Borrower, a Subsidiary or any ERISA Affiliate could be subjected to either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed by Chapter 43 of Subtitle D of the Code.

(ii) fails to make, or permits any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Plan, agreement relating thereto or applicable law, a Borrower, a Subsidiary or any ERISA Affiliate is required to pay as contributions thereto.

(iii) contributes to or assumes an obligation to contribute to, or permits any ERISA Affiliate to contribute to or assume an obligation to contribute to (i) any employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that may not be terminated by such entities in their sole discretion at any time without any material liability, or (ii) any employee pension benefit plan, as defined in section 3(2) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

10.1.15. Compliance with Terms of Leaseholds. Each Borrower will, and will cause all of its Restricted Subsidiaries to, make all payments and otherwise perform all obligations in respect of all material leases of real property to which any Borrower or any of its Restricted Subsidiaries is or is to be a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify Administrative Agent of any default by any party with respect to such leases of which any Borrower has knowledge and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Restricted

Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

10.1.16. [Reserved.]

10.1.17. PP&E Value Reports. Borrowers will deliver within five (5) Business Days after delivering a PP&E Value Report to the Term Loan Agent pursuant to the Term Loan Credit Agreement a copy of such PP&E Value Report to Administrative Agent.

10.1.18. Company Calls. Unless the Company holds a quarterly public earnings call with a “Q&A” component, the Company shall following delivery of the financial statements required pursuant to **Section 10.1.2**, participate in one conference call per quarter with Administrative Agent and the Lenders, collectively, in each case at such times as may be agreed to by the Company and Administrative Agent or the Required Lenders.

10.2. Negative Covenants. Until Full Payment of all Obligations, each Borrower (on behalf of itself and its Restricted Subsidiaries) and each Guarantor by its execution of this Agreement, covenants and agrees with the Administrative Agent, Issuing Banks and the Lenders that:

10.2.1. Debt. It will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, incur, guarantee or suffer to exist any Debt, except:

(a) the Obligations arising under the Loan Documents or any guaranty of or suretyship arrangement for the Obligations arising under the Loan Documents;

(b) accounts payable and accrued expenses, liabilities or other obligations to pay the deferred purchase price of Property or services, from time to time incurred in the Ordinary Course of Business to the extent, in each case, not past due for more than ninety (90) days after the date on which such accounts payable, accrued expenses, liabilities or other obligations were created or incurred unless being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP;

(c) Permitted Purchase Money Debt;

(d) Debt arising from performance or appeal bonds or surety obligations required by Applicable Law in connection with the operation of the Properties of any Borrower or any Restricted Subsidiary and in the Ordinary Course of Business;

(e) to the extent permitted by **Section 10.2.4(d)** and with respect to Foreign Subsidiaries, **Section 10.2.4(l)**, (X) intercompany Debt between the Borrowers, between any Borrower and any Restricted Subsidiary or between Restricted Subsidiaries; provided, that all such Debt shall be (i) evidenced by a master intercompany note, in form and substance reasonably satisfactory to Administrative Agent (the “Intercompany Note”), and, if owed to an Obligor, which shall be subject to a first priority (or, subject to the Intercreditor Agreement, second priority) perfected Lien in favor of Administrative Agent pursuant to the Loan Documents, and (ii) unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the Intercompany Note and (Y) intercompany Debt owing by any Borrower or any Restricted Subsidiary to any Excluded Subsidiary, provided that such Debt is evidenced by the Intercompany Note to which such Excluded Subsidiary is a party and is unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the Intercompany Note;

(f) Debt issued to insurance companies, or their affiliates, to finance insurance premiums payable to such insurance companies in connection with insurance policies purchased by a Obligor in the Ordinary Course of Business;

(g) Debt (i) with respect to (X) the Term Loans made or deemed made on the Closing Date pursuant to the Term Loan Credit Agreement in an aggregate principal amount not to exceed \$250,000,000 at any time outstanding plus (Y) any increase in the principal amount of the Term Loans solely as a result of paid-in-kind interest thereon and (ii) incurred in connection with any financing from any lender in respect of the Term Loans under Section 364 of the Bankruptcy Code to the extent permitted pursuant to the Intercreditor Agreement;

(h) Debt with respect to Permitted Junior Priority Secured/Unsecured Debt (and any Permitted Junior Priority Secured/Unsecured Debt or Permitted Unsecured Debt which refinances or replaces such Permitted Junior Priority Secured/Unsecured Debt) in an aggregate principal amount not to exceed \$200,000,000 at any time outstanding for all such Debt (including any such refinancing or replacement Debt) that is incurred in reliance on this **Section 10.2.1(h)**;

(i) Debt with respect to Permitted Junior Priority Secured/Unsecured Debt to the extent the proceeds of such Debt are used to refinance, in whole or in part, any unsecured Debt as long as (i) each of the Refinancing Conditions (other than with respect to clause (e) of the definition of "Refinancing Conditions") are satisfied and (ii) after giving effect to the incurrence of such Debt (including any such refinancing or replacement Debt), the ratio of (X) the PP&E Value to (Y) the aggregate principal amount of Debt permitted by **Section 10.2.1(g)** that is outstanding on such date and all Permitted Junior Priority Secured/Unsecured Debt incurred prior to the date of determination in reliance on this **Section 10.2.1(i)** (including, for the avoidance of doubt, any such Permitted Junior Priority Secured/Unsecured Debt that is unsecured) is at least 1.35 to 1.00 and Administrative Agent receives a certificate of a Senior Officer, in form and substance reasonably satisfactory to Administrative Agent, certifying and demonstrating in reasonable detail that all of the requirements set forth in subclauses (i) and (ii) of this clause (i) have been satisfied or will be satisfied on or prior to the incurrence of such Debt;

(j) Debt with respect to Borrowed Money owing by Foreign Subsidiaries to non-Affiliates in an aggregate principal amount not to exceed \$10,000,000 as long as (a) no Obligor (i) provides any guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Debt) or (ii) is directly or indirectly liable (as a guarantor or otherwise) for such Debt; (b) the incurrence of which will not result in any recourse against any of the assets of any Obligor and (c) no default with respect to which would permit (upon notice, lapse of time or both) any holder of any other Debt of any Obligor to declare pursuant to the express terms governing such Debt a default on such other Debt or cause the payment thereof to be accelerated or payable prior to its stated maturity;

(k) Borrowed Money (other than the Obligations, Term Loans and Permitted Purchase Money Debt) set forth on **Schedule 10.2.1(k)**, but only to the extent outstanding on the Closing Date;

(l) Debt with respect to Bank Products incurred in the Ordinary Course of Business;

(m) Debt that is in existence when a Person becomes a Restricted Subsidiary or that is secured by an asset (other than Accounts) when acquired by a Borrower or a Restricted Subsidiary, as long as such Debt was not incurred in contemplation of such Person becoming a Subsidiary or such acquisition; provided that, after giving pro forma effect to such incurrence of Debt and acquisition of such Restricted Subsidiary or asset pursuant to this **clause (m)**, (i) the Fixed Charge Coverage Ratio on a pro forma basis (x) for the four-Fiscal Quarter period ending on the last day of the most recent Fiscal Quarter prior to the date of such payment or transaction, in each case for which Administrative Agent has received financial statements in accordance with **Section 10.1.2(a)** or **10.1.2(b)** or (y) during the Reporting Trigger Period, for the 12-month period ending on the last day of the most recent month prior to the date of such payment or transaction (on the basis of internally prepared monthly financial statements for the 12-month

period then ended), is at least 1.00 to 1.00 and (ii) the Asset Coverage Ratio (which shall be calculated excluding the value of the assets acquired that are subject to Liens other than liens in favor of Administrative Agent or Permitted Liens that have priority by operation of law, to the extent of the amount of the obligation secured by such Liens) exceeds the Asset Coverage Ratio calculated immediately prior to such incurrence of Debt and acquisition of such Restricted Subsidiary or asset pursuant to this **clause (m)** and Administrative Agent receives a certificate of a Senior Officer certifying and demonstrating in reasonable detail that all of the requirements set forth in clauses (i) and (ii) of this **clause (m)** have been satisfied or will be satisfied on or prior to the incurrence of such Debt;

(n) Permitted Contingent Obligations;

(o) Refinancing Debt as long as each Refinancing Condition is satisfied;

(p) Permitted Unsecured Debt that is not included in any of the preceding clauses of this Section so long as, giving pro forma effect to any incurrence of Debt pursuant to this **clause (p)**, the Fixed Charge Coverage Ratio on a pro forma basis (x) for the four-Fiscal Quarter period ending on the last day of the most recent Fiscal Quarter for which Administrative Agent has received financial statements in accordance with **Section 10.1.2(a) or 10.1.2(b)** or (y) during the Reporting Trigger Period, for the 12-month period ending on the last day of the most recent month (on the basis of internally prepared monthly financial statements for the 12-month period then ended), prior to the date of such payment or transaction, is at least 1.00 to 1.00 and Administrative Agent receives a certificate of a Senior Officer certifying and demonstrating in reasonable detail that all of the requirements set forth in this **clause (p)** have been satisfied or will be satisfied on or prior to the incurrence of such Debt;

(q) Debt with respect to Hedging Agreements entered into in compliance with **Section 10.2.14**; and

(r) unsecured subordinated Debt incurred (or any subordinated Disqualified Capital Stock issued) pursuant to Section 10.3.3(c) of the Term Loan Credit Agreement (as in effect on the Closing Date) solely to extent necessary in accordance with Section 10.3.3(c) of the Term Loan Credit Agreement to bring the Company and its Subsidiaries in compliance with Section 10.3.1 or 10.3.2 of the Term Loan Credit Agreement, as applicable, which shall be subordinated in right of payment to the Obligations upon subordination terms as are reasonably satisfactory to the Administrative Agent.

10.2.2. Liens. Each Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any of its Properties (now owned or hereafter acquired), except the following (collectively, "Permitted Liens"):

(a) Liens securing the payment of any Obligations pursuant to the Loan Documents;

(b) Excepted Liens;

(c) Purchase Money Liens securing Permitted Purchase Money Debt;

(d) non-exclusive licenses of Intellectual Property in the Ordinary Course of Business;

(e) Liens on property (other than Accounts) existing at the time such property is acquired by a Borrower or a Restricted Subsidiary of a Borrower; provided that (i) such Liens were not created in contemplation of such acquisition, (ii) such Liens do not extend to any assets other than those being acquired by such Borrower or such Restricted Subsidiary and (iii) the applicable Debt secured by such Lien is permitted under **Section 10.2.1(m)**;

(f) any interest or title of a lessor under any lease entered into by any Borrower or any Restricted Subsidiary in the Ordinary Course of Business and covering only the assets so leased;

(g) Liens on the assets of any Foreign Subsidiary which secure Debt permitted pursuant to **Section 10.2.1(j)**;

(h) Liens on unearned premiums in respect of insurance policies securing insurance premium financing permitted under **Section 10.2.1(f)**;

(i) subject to the terms of the Intercreditor Agreement, Liens securing Debt permitted by **Section 10.2.1(g)**;

(j) subject to the terms of the applicable intercreditor agreement, Liens securing Permitted Junior Priority Secured/Unsecured Debt to the extent permitted by **Section 10.2.1(h)** or **Section 10.2.1(i)**;

(k) subject to the terms of the Intercreditor Agreement, Liens securing Debt permitted by **Section 10.2.1(l)**;

(l) Liens not otherwise permitted by this **Section 10.2.2** so long as securing obligations other than Borrowed Money and neither (i) the aggregate outstanding principal amount of the obligations secured thereby nor (ii) the aggregate book value (determined, in the case of each such Lien, as of the date such Lien is incurred) of the assets subject thereto exceeds (as to the Borrowers and all Restricted Subsidiaries) \$15,000,000 at any one time, provided that no such Lien shall extend to or cover any Collateral (other than cash); and

(m) Liens with respect to Hedging Agreements entered into in compliance with **Section 10.2.14**.

10.2.3. Distributions; Upstream Payments. The Borrowers will not, and will not permit any of their Restricted Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Distributions except (1) Upstream Payments, and (2):

(a) the Company may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its Equity Interests (other than Disqualified Capital Stock);

(b) the Borrowers and each Restricted Subsidiary may purchase, redeem or otherwise acquire its common Equity Interests with the proceeds received from the substantially concurrent issue of new common Equity Interests;

(c) if no Event of Default then exists or would result from the making of such Distribution, the Company may repurchase or redeem its Equity Interests owned by employees, officers or directors of the Company or its Subsidiaries or make payments to employees, officers or directors of the Company or its Subsidiaries upon termination of employment or service in connection with the exercise of stock options, stock appreciation rights or similar equity incentives or equity based incentives pursuant to management incentive plans or in connection with the death or disability of such employees, officers or directors in an aggregate amount not to exceed \$2,500,000 in any Fiscal Year (with unused amounts in any Fiscal Year being carried over to succeeding calendar years, but not to exceed \$5,000,000 of repurchases or redemptions in any Fiscal Year);

(d) the Company may repurchase its Equity Interests in connection with the administration of its equity-based compensation plans from time to time in effect in connection with the repurchase of Equity Interests from employees, directors and other such recipients to satisfy federal, state

or local tax withholding obligations of such employees, directors and other recipients with respect to income deemed earned as the result of options, stock grants or other awards made under such plans; and

(e) other Distributions (other than repurchases or redemptions of Equity Interests or cash distributions to holders of Equity Interests) in an aggregate amount not to exceed \$15,000,000 during the term of this Agreement.

10.2.4. Investments, Loans and Advances. The Borrowers will not, and will not permit any Restricted Subsidiary to, make or permit to remain outstanding any Investments in or to any Person, except:

(a) Investments in Restricted Subsidiaries or disclosed on **Schedule 10.2.4**, in each case to the extent existing on the Closing Date;

(b) Accounts arising in the Ordinary Course of Business;

(c) Cash Equivalents;

(d) Investments (i) made by any Borrower in or to any Guarantors or another Borrower, (ii) made by any Restricted Subsidiary in or to any Borrower or any Guarantor, or (iii) made by any Excluded Subsidiary in or to another Subsidiary or a Borrower;

(e) Investments in stock, obligations or securities received in settlement of debts arising from Investments permitted under **Section 10.2.4(b)** owing to any Borrower or any Restricted Subsidiary as a result of a bankruptcy or other insolvency proceeding of the obligor in respect of such debts or upon the enforcement of any Lien in favor of any Borrower or any of its Restricted Subsidiaries; provided that the Borrower Agent shall give Administrative Agent prompt written notice in the event that the aggregate amount of all Investments held at any one time under this **Section 10.2.4(e)** exceeds \$10,000,000;

(f) Investments received in consideration for any Asset Disposition permitted under **Section 10.2.9**; provided that the Obligors shall take appropriate steps to grant a first priority (or, subject to the Intercreditor Agreement, second priority) perfected Lien in such Investments in favor of Administrative Agent for the benefit of the Secured Parties;

(g) advances to officers, directors and employees of the Borrowers and their Restricted Subsidiaries in an aggregate amount not to exceed \$10,000,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(h) any purchases of Equity Interests permitted under **Section 10.2.3**;

(i) Investments by Foreign Subsidiaries in the Ordinary Course of Business;

(j) Permitted Acquisitions (or, if consideration therefor consists solely of the proceeds of Equity Interests issued by the Company, Permitted Acquisitions for which clauses (b), (c)(i) and (e) of the definition of "Permitted Acquisitions" are satisfied and the Administrative Agent has received a certificate of a Senior Officer of the Borrower Agent certifying as to compliance with the preceding clauses);

(k) Investments (including Debt and other obligations) received in connection with the bankruptcy or reorganization of suppliers or in settlement of delinquent obligations of, and other disputes with, suppliers in the Ordinary Course of Business;

(l) Investments in the SPV pursuant to **Sections 7.3.1** and **7.3.3**; and

(m) other Investments (including controlling interests in Persons in the same or a similar line of business as the Borrower) not to exceed \$25,000,000 in the aggregate at any time, *provided* that (i) after giving effect to such Investment, no Default would exist and (ii) no more than \$5,000,000 in the aggregate under this **Section 10.2.4(m)** may be used for Investments in Foreign Subsidiaries.

10.2.5. Fundamental Changes. Each Borrower will not, and will not permit any Restricted Subsidiary to, (a) engage (directly or indirectly) in any business other than those businesses in which the Borrowers and their Restricted Subsidiaries are engaged on the Closing Date (or which are reasonably related thereto or are reasonable extensions thereof but not any trading business or similar activities) or allow any material change to be made in the character of its business; (b) change its name or conduct business under any fictitious name; (c) change its tax, charter or organizational identification number; or (d) change its form or state of organization; provided, in the case of clause (b), (c), and (d), Borrowers have (i) complied with **Section 10.1.2(k)** and given written notice of such change in accordance therewith and (ii) have taken all actions necessary or advisable to maintain the continuous validity, perfection and the same or better priority of Administrative Agent's security interest in the Collateral granted or intended to be granted and agreed to hereby or as Administrative Agent may reasonably request.

10.2.6. Proceeds of Loans. Each Borrower will not permit the proceeds of the Loans to be used for any purpose other than those permitted by **Section 9.1.26**. Neither any Borrower nor any Person acting on behalf of any Borrower has taken or will take any action which might cause any of the Loan Documents to violate Regulations T, U or X or any other regulation of the Board of Governors or to violate Section 7 of the Securities Exchange Act of 1934 or any rule or regulation thereunder, in each case as now in effect or as the same may hereinafter be in effect. Borrowers shall not, directly or indirectly, use any Letter of Credit or Loan proceeds, nor use, lend, contribute or otherwise make available any Letter of Credit or Loan proceeds to any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such issuance of the Letter of Credit or such funding of a Loan, is the subject of any Sanction; (ii) in any manner that would result in a violation of any Sanctions by any Person (including any Secured Party or other Person participating in a transaction); or (iii) for any purpose that would breach any Anti-Corruption Law.

10.2.7. [Reserved.]

10.2.8. Mergers, Etc. Each Borrower will not, and will not permit any Restricted Subsidiary to, merge into or with or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, lease or otherwise dispose of (whether in one transaction or in a series of transactions) all or substantially all of its Property to any other Person (whether now owned or hereafter acquired) (any such transaction, a "consolidation"), or liquidate or dissolve; except that (a) any Restricted Subsidiary of a Borrower may participate in a consolidation with any other Restricted Subsidiary of a Borrower or a Borrower (provided that if a Borrower or Guarantor is consolidated with such Restricted Subsidiary, such Borrower or such Guarantor, as applicable, shall be the continuing or surviving corporation and if a Borrower is consolidated with a Guarantor, such Borrower shall be the continuing or surviving corporation) and (b) any Excluded Subsidiary may participate in a consolidation with any other Subsidiary of a Borrower or a Borrower (provided that if a Borrower, a Guarantor or a Restricted Subsidiary is consolidated with such Excluded Subsidiary, such Borrower, such Guarantor or such Restricted Subsidiary shall be the continuing or surviving corporation).

10.2.9. Sales of Properties. The Borrowers will not, and will not permit any Restricted Subsidiary to make any Asset Disposition except for:

- (a) the sale of Inventory in the Ordinary Course of Business;

(b) the sale or transfer of Equipment or other goods that is obsolete, worn out or no longer necessary for, or used or useful in, the business of the Borrowers or such Restricted Subsidiary or is replaced by Equipment or other goods;

(c) any Asset Disposition (other than an Asset Disposition of Accounts) the consideration for which is at least equal to the fair market value thereof and (i) at least 75% of such consideration received is in the form of cash, Cash Equivalents or Deemed Cash Equivalents and (ii) the fair market value of all forms of consideration other than cash or Cash Equivalents or Deemed Cash Equivalents received for such Asset Disposition does not exceed \$15,000,000 in the aggregate for all such dispositions;

(d) the sale, transfer, lease or other disposition of Property by a Subsidiary or a Guarantor to any Borrower or another Guarantor or by a non-Guarantor to another non-Guarantor;

(e) the sale of the Borrowers' treasury stock and the sale or issuance of any Subsidiary's Equity Interests to a Borrower or any Guarantor;

(f) an exchange or "swap" of assets of any Borrower or any Restricted Subsidiary for the assets of a Person other than a Borrower or any Restricted Subsidiary in the Ordinary Course of Business, provided that (i) the assets received will be used or useful in its business, (ii) such Borrower or such Restricted Subsidiary, as applicable, shall have received reasonably equivalent value for such assets, such value to be demonstrated to the reasonable satisfaction of Administrative Agent;

(g) Asset Dispositions constituting Investments permitted under **Section 10.2.4** or constituting Distributions permitted by **Section 10.2.3**;

(h) non-exclusive licenses of Intellectual Property;

(i) abandonment or allowing to lapse of any Intellectual Property determined in good faith by the management of the Company to be no longer economically desirable in the Ordinary Course of Business of the Borrowers or any of the Consolidated Subsidiaries;

(j) Asset Dispositions of drill pipe or down hole equipment lost, abandoned or destroyed in the Ordinary Course of Business;

(k) Asset Dispositions of Accounts obtained by any Borrower or any Restricted Subsidiary out of the Ordinary Course of Business or the settlement of joint interest billing accounts in the Ordinary Course of Business or discounts granted to settle collection of Accounts or the sale of defaulted Accounts arising in the Ordinary Course of Business in connection with the compromise or collection thereof and not in connection with any financing transaction as long as (i) such Accounts are not Eligible Accounts and (ii) the aggregate amount of all such Accounts so disposed does not exceed \$5,000,000 in any Fiscal Year; and

(l) Asset Dispositions of tangible Property to the extent located outside of the United States on the Closing Date and Equity Interests in Foreign Subsidiaries or non-Affiliates in existence on the Closing Date; and

(m) transactions contemplated by the Prepackaged Plan on the Closing Date.

10.2.10. Transactions with Affiliates. The Borrowers will not, and will not permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Company (other than the Company or another Restricted Subsidiary) (each, an "Affiliate

Transaction”), involving aggregate consideration in excess of \$1,000,000, unless:

(a) the Affiliate Transaction is on terms that taken as a whole are not materially less favorable to the Company or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by a Borrower or such Restricted Subsidiary with an unrelated Person; and

(b) the Borrower Agent delivers to the Administrative Agent with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$40,000,000, a resolution of the board of directors of the Borrower Agent certifying that such Affiliate Transaction complies with this covenant and that such Affiliate Transaction has been approved by a majority of the disinterested members, if any, of the board of directors of the Borrower Agent;

provided that the foregoing shall not apply to (i) reimbursements for out-of-pocket expenses paid to Platinum by the Borrowers or any Restricted Subsidiary in an aggregate amount not to exceed \$1,000,000 in any Fiscal Year and (ii) management, consulting, advisory and monitoring fees (such fees, the “Management Fees”) and related indemnities, charges and expenses paid or accrued to or on behalf of Platinum payable pursuant to the term of the Advisory Agreement as in effect on the Closing Date so long as, in the case of a payment of the Management Fees, (A) no Event of Default (both before and immediately after giving effect thereto) shall exist and (B) the aggregate amount of the Management Fees paid shall not exceed \$3,500,000 in any Fiscal Year; provided, further that that upon the occurrence and during the continuance of an Event of Default, Management Fees may accrue (in an amount not to exceed \$3,500,000 in any Fiscal Year) on a subordinated basis, but shall not be paid or be payable in cash during such period, but all such accrued amounts of the Management Fees (plus accrued interest, if any, with respect thereto) may be paid in cash upon the cure or waiver of such Event of Default.

10.2.11. Subsidiaries. Each Borrower will not, and will not permit any Subsidiary to, create or acquire any additional Subsidiary unless such Borrower gives prior written notice to the Administrative Agent of such creation or acquisition and complies with **Section 10.1.13**. Each Borrower shall not, and shall not permit any Restricted Subsidiary to, sell, assign or otherwise dispose of any Equity Interests in any Subsidiary except in compliance with **Section 10.2.9(c)** and except that Equity Interests in Foreign Subsidiaries owned on the Closing Date may be sold, assigned or otherwise disposed of in connection with Asset Dispositions permitted by **Section 10.2.9(k)**.

10.2.12. Limitation on Issuance of Equity Interests. Each Borrower shall not permit any Restricted Subsidiary to issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest, except for (i) issuances of Equity Interests to an Obligor or another Restricted Subsidiary or (ii) stock splits, stock dividends and other issuances which (A) do not decrease the percentage ownership of Borrower and its Restricted Subsidiaries in any class of the Equity Interests of such Restricted Subsidiary and (B) do not result in a Change of Control. The Borrowers and the Subsidiaries shall comply with **Section 10.1.13** with respect to any such issued Equity Interests.

10.2.13. Restrictive Agreements. Each Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or suffer to exist any Restrictive Agreement (other than this Agreement, the Security Documents, documents governing Purchase Money Liens securing Permitted Purchase Money Debt, the Term Loan Credit Agreement or documents governing Permitted Junior Priority Secured/Unsecured Debt and other Debt permitted hereunder); provided that the foregoing shall not prohibit any Borrower or any Restricted Subsidiary from creating, incurring, assuming or suffering any agreement which contains restrictions existing by reason of (i) restrictions imposed by Applicable Law, (ii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures entered into in the Ordinary Course of Business and applicable solely to such joint venture (iii) customary provisions contained in licenses, sublicenses, covenants not to sue, releases and other agreements in connection with Intellectual Property and other similar agreements entered into in

the Ordinary Course of Business, (iv) customary provisions restricting subletting or assignment of any lease governing a leasehold interest of any Borrower or a Restricted Subsidiary, (v) customary provisions restricting assignment of any agreement entered into in the Ordinary Course of Business, (vi) customary restrictions and conditions contained in any agreement relating to the sale, transfer, lease or other disposition of any asset permitted under Section 10.2.9 pending the consummation of such sale, transfer, lease or other disposition, (vii) customary net worth provisions contained in real property leases entered into by any Borrower or its Restricted Subsidiaries, so long as such Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of such Borrower and its Restricted Subsidiaries to meet their ongoing obligations and (viii) restrictions on cash or other deposits imposed by customers under contracts entered into in the Ordinary Course of Business.

10.2.14. Hedging Agreements. Each Borrower will not, and will not permit any Restricted Subsidiary to, enter into any Hedging Agreements except to hedge risks arising in the Ordinary Course of Business and not for speculative purposes.

10.2.15. Sale and Leaseback. Each Borrower shall not, and shall not permit any Restricted Subsidiary to, enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any Property, whether now owned or hereafter acquired, and thereafter rent or lease such Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred.

10.2.16. Amendments to Organic Documents or Fiscal Year End.

(a) Each Borrower shall not, and shall not permit any Restricted Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) its Organic Documents in a manner that would be adverse to the Lenders in any material respect.

(b) Each Borrower shall not, and shall not permit any Restricted Subsidiary to, (i) change the last day of its Fiscal Year from December 31 of each year, or the last days of the first three Fiscal Quarters in each of its Fiscal Years from March 31, June 30 and September 30 of each year, respectively or (ii) make any material change in accounting treatment or reporting practices, except as required by GAAP.

(c) Each Borrower shall not, and shall not permit any Restricted Subsidiary to, prior to the date that is ninety-one (91) days after the Revolver Termination Date: (x) make any optional or voluntary repayment of the Term Loans unless the Payment Conditions are satisfied or (y) amend, modify, waive or otherwise change, consent or agree to any amendment, supplement, modification, waiver or other change to, any of the terms of the Term Loan Credit Agreement to (1) shorten or hasten the maturity date of the Term Loan Credit Agreement, (2) shorten or hasten the date scheduled for any principal payment thereunder, or (3) increase the amount of any required principal payment thereunder (or change the methodology by which any such principal amount is determined, unless the same shall have in all cases the effect of reducing the amount of any required principal payment thereunder or extending the date on which such required principal payment becomes due).

10.2.17. Tax Consolidation. Each Borrower shall not, and shall not permit any Restricted Subsidiary to, file or consent to the filing of any consolidated income tax return with any Person other than the Borrowers and their Restricted Subsidiaries.

10.2.18. Plans. Each Borrower shall not, and shall not permit any Restricted Subsidiary to, become a party to any Multiemployer Plan or Foreign Plan, other than any in existence on the Closing Date, except where becoming such a party could not reasonably be expected to have a Material Adverse Effect.

10.2.19. Additional Deposits in the TL Proceeds and Priority Collateral Account Prohibited. Each Borrower shall not, and shall not permit any Restricted Subsidiary to, deposit any funds or other Property in, or credit any funds or other Property to, the TL Proceeds and Priority Collateral Account other than up to \$[] on the Closing Date, identifiable proceeds of Asset Dispositions of Term Priority Collateral, and identifiable proceeds of insurance resulting from casualty of the Term Priority Collateral and of awards arising from condemnation of the Term Priority Collateral.

10.2.20. SPV. No Borrower shall permit the SPV to (a) engage in any activity, other than holding certain real property of the Obligors transferred to the SPV pursuant to **Section 7.3** and activities related to the maintenance of its corporate existence, (b) incur any Debt, other than (i) intercompany obligations subject to subordination agreements reasonably acceptable to Administrative Agent, (ii) pursuant to leases governing any leasehold interests held by the SPV and (iii) providing guarantees in favor of Administrative Agent or (c) grant any Liens, other than Liens that arise pursuant to leases governing any leasehold interests held by the SPV or by operation of law; provided, that, for the avoidance of doubt, in no event shall the SPV be required to qualify as a “bankruptcy remote” entity.

10.2.21. Transactions Contemplated by the Prepackaged Plan. Notwithstanding any other provision of this Agreement, the implementation of the transactions specifically provided for in the Prepackaged Plan in accordance with the terms of the Prepackaged Plan, shall be deemed to be permitted by this Agreement so long as they are consummated in a manner not inconsistent with the terms of this Agreement.

10.3. Financial Covenants. As long as any Commitments or Obligations are outstanding, Borrowers shall:

10.3.1. Fixed Charge Coverage Ratio. Have a Fixed Charge Coverage Ratio of at least 1.00 to 1.00 as of the last day of each month, calculated for the 12-month period then ending, commencing with the last day of the most recently completed month ending at least 30 days before the commencement of a Covenant Trigger Period and continuing for each month ending thereafter until the Covenant Trigger Period is no longer in effect.

SECTION 11. GUARANTY

11.1. Guaranty. For value received, the sufficiency of which is hereby acknowledged, and in consideration of credit and/or financial accommodation heretofore or hereafter from time to time made or granted to the Borrowers by the Secured Parties, each Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Administrative Agent, for the ratable benefit of the Secured Parties, the full and prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of the Guaranteed Obligations (as hereafter defined) and the punctual performance of all of the terms contained in the documents executed by one or more Borrowers in favor of one or more Secured Parties in connection with the Guaranteed Obligations. This Guaranty is a guaranty of payment and performance and is not merely a guaranty of collection. As used herein, the term “Guaranteed Obligations” means any and all existing and future Obligations of any Borrower to any Secured Party, whether associated with any credit or other financial accommodation made to or for the benefit of any Borrower by any Secured Party or otherwise and whenever created, arising, evidenced or acquired (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); provided, however, that the definition of “Guaranteed Obligations” shall not create any guarantee by any Guarantor of (or grant of security interest by any Guarantor to support, as applicable) any Excluded Swap Obligations of such Guarantor for purposes of determining any obligations of any Guarantor. Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such Debt, obligations, and liabilities which may be or hereafter become unenforceable or shall be an allowed or disallowed claim under any proceeding or

case commenced by or against any Guarantor or any Borrower under the Bankruptcy Code, any successor statute or any 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 (collectively, "Debtor Relief Laws"), and shall include interest that accrues after the commencement by or against any Borrower of any proceeding under any Debtor Relief Laws. Anything contained herein to the contrary notwithstanding, the obligations of each Guarantor hereunder at any time shall be limited to an aggregate amount equal to the largest amount that would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code or any comparable provisions of any similar federal or state law.

11.2. No Setoff or Deductions; Taxes; Payments. Each Guarantor shall make all payments hereunder without setoff or counterclaim and free and clear of and without deduction for any levies, imposts, duties, charges, fees, deductions, withholdings, compulsory loans, restrictions or conditions of any nature (other than Taxes, which shall be governed by Section 5.9) now or hereafter imposed or levied by any jurisdiction or any political subdivision thereof or authority therein unless such Guarantor is compelled by law to make such deduction or withholding. If any such obligation (other than one arising with respect to Taxes) is imposed upon a Guarantor with respect to any amount payable by it hereunder, such Guarantor will pay to the applicable Secured Party, on the date on which such amount is due and payable hereunder, such additional amount in U.S. dollars as shall be necessary to enable such Secured Party to receive the same net amount which such Secured Party would have received on such due date had no such obligation been imposed upon such Guarantor. Each Guarantor will deliver promptly to such Secured Party certificates or other valid vouchers for all charges deducted from or paid with respect to payments made by such Guarantor hereunder. The obligations of each Guarantor under this paragraph shall survive the payment in full of the Guaranteed Obligations and termination of this Guaranty.

11.3. Rights of Secured Parties. 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 (including increase), modify, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guaranteed 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 Guaranteed Obligations; (c) apply such security and direct the order or manner of sale thereof as the Secured Parties in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guaranteed 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 such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

11.4. Certain Waivers. Each Guarantor waives to the fullest extent permitted by law (a) any defense arising by reason of any disability or other defense of any Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of any Borrower; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of any Borrower; (c) the benefit of any statute of limitations affecting such Guarantor's liability hereunder; (d) any right to require any Secured Party to proceed against any Borrower, proceed against or exhaust any security for the Guaranteed Obligations, or pursue any other remedy in any Secured Party's power whatsoever and any defense based upon the doctrines of marshalling of assets or of election of remedies; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; (f) any defense relating to the failure of any Secured Party to comply with the applicable laws in connection with the sale or other disposition of Collateral for all or any part of the Guaranteed Obligations; (g) any amendment or waiver of the term of any Guaranteed Obligation; (h) any law or regulation of any jurisdiction or any other event affecting any term of a Guaranteed Obligation; (i) any fact or circumstance related to the Guaranteed Obligations which might

otherwise constitute a defense to the obligations of such Guarantor under this Guaranty and (j) 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, other than the defense that the Guaranteed Obligations have been fully performed and indefeasibly paid in full in cash.

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 Guaranteed Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrance of new or additional Guaranteed Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any instrument or agreement evidencing any Guaranteed 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 Guaranteed 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.

11.5. Obligations Independent. The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Guaranteed 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 the Borrowers or any other person or entity is joined as a party.

11.6. 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 Full Payment of all Guaranteed Obligations and any amounts payable under this Guaranty. 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 Administrative Agent (for the benefit of itself and the other Secured Parties) to reduce the amount of the Guaranteed Obligations, whether matured or unmatured.

11.7. 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 Full Payment of all Guaranteed Obligations and any amounts payable under this Guaranty. 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 any Borrower or any Guarantor is made, or any Secured Party 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 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 Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether or not such Secured Party is in possession of or has 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.

11.8. Subordination. Each Guarantor hereby subordinates the payment of all obligations and Debt of any Borrower owing to such Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of any Borrower to such Guarantor as subrogee of any Secured Party or resulting from such Guarantor's performance under this Guaranty, to the Full Payment of all Guaranteed Obligations. If the Administrative Agent so requests, any such obligation or Debt of any Borrower to any Guarantor shall be enforced and performance received by such Guarantor as trustee for the Administrative Agent and the proceeds thereof, as well as any other amounts received by such Guarantor in violation of this Section, shall be paid over to the Administrative Agent on account of the Guaranteed Obligations, but without reducing or affecting in any manner the liability of such Guarantor under this Guaranty.

11.9. Stay of Acceleration. In the event that 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 any Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by any Guarantor immediately upon demand by Administrative Agent.

11.10. Expenses. Each Guarantor shall pay on demand all reasonable and documented out-of-pocket expenses (including reasonable attorneys' fees and expenses) in any way relating to the enforcement or protection of the any Secured Party's rights under this Guaranty or in respect of the Guaranteed Obligations, including any incurred during any "workout" or restructuring in respect of the Guaranteed Obligations and any incurred in the preservation, protection or enforcement of any rights of any Secured Party in any proceeding under any Debtor Relief Laws. The obligations of each Guarantor under this paragraph shall survive the Full Payment of the Guaranteed Obligations and termination of this Guaranty.

11.11. Miscellaneous. Administrative Agent's books and records showing the amount of the Guaranteed Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor and conclusive, absent manifest error, for the purpose of establishing the amount of the Guaranteed Obligations. No failure by any Secured Party to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy or power hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein provided are cumulative and not exclusive of any remedies provided by law or in equity. The unenforceability or invalidity of any provision of this Guaranty shall not affect the enforceability or validity of any other provision herein. Unless otherwise agreed by the Administrative Agent and each Guarantor in writing, this Guaranty is not intended to supersede or otherwise affect any other guaranty now or hereafter given by any Guarantor or any other guarantor for the benefit of the Secured Parties or any term or provision thereof.

11.12. 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 the Secured Parties have no duty, and each Guarantor is not relying on any Secured Party at any time, to disclose to such Guarantor any information relating to the business, operations or financial condition of the Borrowers or any other guarantor (the guarantor waiving any duty on the part of any Secured Party to disclose such information and any defense relating to the failure to provide the same).

11.13. Additional Guarantors. Each Person that is required to become a party to this Guaranty pursuant to **Section 10.1.13** shall become a Guarantor for all purposes of this Guaranty upon execution and delivery by such Person of a supplement in form reasonably satisfactory to Administrative Agent.

SECTION 12. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

12.1. Events of Default. Each of the following shall be an "Event of Default" if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) (i) any Borrower fails to pay principal on any Loan when due (whether at stated maturity, on demand, upon acceleration or otherwise), (ii) any Borrower fails to pay the applicable Issuing Bank on the same day (or by 11:00 am Central time on the next Business Day with respect to draws as to which Borrowers receive notice of such draws after 3:00 pm Central time) such Issuing Bank honors any request for payment under a Letter of Credit the amount paid by such Issuing Bank under such Letter of Credit or (iii) any Borrower fails to pay any interest, fee or any other Obligation, and such failure continues unremedied for a period of three (3) Business Days;

(b) any representation, warranty or other written statement of an Obligor made in connection with any Loan Documents or transactions contemplated thereby is incorrect or misleading in any material respect when given;

(c) a Borrower breaches or fail to perform any covenant contained in **Section 7.2, 7.3, 7.4, 7.6, 8.1, 8.2.4, 8.2.5, 8.3, 8.6.2, 10.1.1, 10.1.2, 10.1.3, 10.1.4, 10.1.18, 10.1.20, 10.2** or **10.3**;

(d) an Obligor breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within 30 days after a Senior Officer of such Obligor has knowledge thereof or receives notice thereof from Administrative Agent, whichever is sooner; provided, however, that such notice and opportunity to cure shall not apply if the breach or failure to perform is not capable of being cured within such period or is a willful breach by an Obligor;

(e) a Guarantor repudiates, revokes or attempts to revoke its Guaranty; an Obligor or third party denies or contests the validity or enforceability of any Loan Documents (or any material provision thereof) or Obligations, or the perfection or priority of any Lien granted to Administrative Agent; or any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Administrative Agent and Lenders) or any Security Document ceases to create a perfected security interest having the priority required by this Agreement in a material portion of the Collateral in favor of Administrative Agent for any reason (other than pursuant to the terms hereof or thereof or a waiver or release by Administrative Agent and Lenders);

(f) any (i) failure of any Obligor to make any payment or (ii) other breach or default of an Obligor occurs under any instrument or agreement to which it is a party or by which it or any of its Properties is bound, in each case relating to any Material Debt, if, in the case of clause (ii), the maturity of or any payment with respect to such Material Debt may be accelerated or demanded due to such breach;

(g) any failure by any Borrower or any of its Restricted Subsidiaries to pay final judgments aggregating in excess of \$30,000,000 (excluding amounts covered by insurance), which judgments are either (i) not paid within sixty (60) days after the date payment is due or (ii) not discharged or stayed for a period of sixty (60) days from the date of such judgment;

(h) an Insolvency Proceeding is commenced by an Obligor; an Obligor makes an offer of settlement, extension or composition to its unsecured creditors generally; a trustee is appointed to take possession of any substantial Property of or to operate any of the business of an Obligor; or an Insolvency Proceeding is commenced against an Obligor and: the Obligor consents to institution of the proceeding, the petition commencing the proceeding is not timely contested by the Obligor, the petition is not dismissed within 30 days after filing, or an order for relief is entered in the proceeding;

(i) an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that, when taken together with all other ERISA Events that have occurred, has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC in an amount exceeding \$30,000,000 in the aggregate, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or any event similar to the foregoing occurs or exists with respect to a Foreign Plan;

(j) the Company fails to receive a cash equity contribution in an amount equal to the entire amount of the Expected Asset Sale Proceeds within 30 days after the Closing Date and deliver an officer certificate (in form and substance reasonably satisfactory to Administrative Agent) certifying receipt of the same in the event that (i) the Specified Asset Sale occurs, (ii) the Expected Asset Sale Proceeds are required to satisfy the minimum liquidity certification under **Section 6.1(o)** and (iii) the

entire Expected Asset Sale Proceeds are not received by the Company in cash within 30 days after the Closing Date; or

(k) a Change of Control occurs; or any event occurs or condition exists that has a Material Adverse Effect.

12.2. Remedies upon Default. If an Event of Default described in **Section 12.1(h)** occurs with respect to any Borrower, then to the extent permitted by Applicable Law, all Obligations (other than Secured Bank Product Obligations) shall become automatically due and payable and all Commitments shall terminate, without any action by Administrative Agent or notice of any kind. In addition, or if any other Event of Default exists, Administrative Agent may in its discretion (and shall upon written direction of Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations (other than Secured Bank Product Obligations) immediately due and payable, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrowers to the fullest extent permitted by law;

(b) terminate, reduce or condition any Commitment, or make any adjustment to the Borrowing Base;

(c) require Obligor to Cash Collateralize their LC Obligations, Secured Bank Product Obligations and other Obligations that are contingent or not yet due and payable, and if Obligor fail to deposit such Cash Collateral, Administrative Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolver Loans (whether or not an Overadvance exists or is created thereby, or the conditions in **Section 6** are satisfied); and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Borrowers to assemble Collateral, at Borrowers' expense, and make it available to Administrative Agent at a place designated by Administrative Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by a Borrower, Borrowers agree not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Administrative Agent, in its discretion, deems advisable. Each Borrower agrees that 10 days' notice of any proposed sale or other disposition of Collateral by Administrative Agent shall be reasonable, and that any sale conducted on the internet or to a licensor of Intellectual Property shall be commercially reasonable. Administrative Agent may conduct sales on any Obligor's premises, without charge, and any sale may be adjourned from time to time in accordance with Applicable Law. Administrative Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Administrative Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

12.3. License. Administrative Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of Royalties or other compensation to any Person) any or all Intellectual Property of Borrowers, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. Each Borrower's rights and interests under Intellectual Property shall inure to Administrative Agent's benefit.

12.4. Setoff. At any time during an Event of Default, Administrative Agent, Issuing Bank, Lenders, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Administrative Agent, such Issuing Bank, such Lender or such Affiliate to or for the credit or the account of an Obligor against its Obligations, whether or not Administrative Agent, such Issuing Bank, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmaturing or are owed to a branch or office of Administrative Agent, such Issuing Bank, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such Debt. The rights of Administrative Agent, each Issuing Bank, each Lender and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

12.5. Remedies Cumulative; No Waiver.

12.5.1. Cumulative Rights. All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and not in derogation of each other. The rights and remedies of Administrative Agent and Lenders under the Loan Documents are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

12.5.2. Waivers. No waiver or course of dealing shall be established by (a) the failure or delay of Administrative Agent or any Lender to require strict performance by any Obligor under any Loan Document, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Loan or issuance of any Letter of Credit during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Administrative Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. Any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date.

SECTION 13. AGENTS

13.1. Appointment, Authority and Duties of Agents.

13.1.1. Appointment and Authority. Each Secured Party appoints and designates Bank of America as Administrative Agent and Co-Collateral Agent under all Loan Documents and Wells Fargo, as Co-Collateral Agent under the Loan Documents. Each Agent may, and each Secured Party authorizes each Agent to, enter into all Loan Documents to which such Agent is intended to be a party and accept all Security Documents. Any action taken by any Agent in accordance with the provisions of the Loan Documents, and the exercise by such Agent of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Secured Parties. Without limiting the generality of the foregoing, Administrative Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver, as Administrative Agent, each Loan Document, including the Intercreditor Agreement and any other intercreditor or subordination agreement, and accept delivery of each Loan Document; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents, Applicable Law or otherwise. Agents alone shall be authorized to determine eligibility and applicable advance rates under the Borrowing Base in accordance with the terms of this Agreement, whether to impose or release any reserve, or whether any conditions to funding or

issuance of a Letter of Credit have been satisfied, which determinations and judgments, if exercised in good faith, shall exonerate each Agent from liability to any Secured Party or other Person for any error in judgment. In addition to the foregoing, each Secured Party hereby irrevocably authorizes the Administrative Agent (x) to enter into the Intercreditor Agreement and (y) with the consent of Required Lenders, such consent not to be unreasonably withheld or delayed, (i) to amend the Intercreditor Agreement, (ii) enter into, or amend, similar agreements with the same or similar purpose, as agent for and on its behalf in accordance with the terms specified in this Agreement and (iii) to enter into, or amend, any other subordination or intercreditor agreement to effect the subordination of Liens securing Obligations under the Loan Documents contemplated by Sections **10.2.1(h)** and **10.2.1(i)** as agent for and on its behalf in accordance with the terms specified in this Agreement. Any such Intercreditor Agreement or subordination or intercreditor agreement entered into by Administrative Agent on behalf of the Secured Parties shall be binding upon each Secured Party. Each Lender (and each Person that becomes a Lender hereunder pursuant to Section 14.3) and each other Secured Party hereby authorizes and directs the Administrative Agent to enter into the Intercreditor Agreement and any such subordination and intercreditor agreement on behalf of such Secured Party and agrees that the Administrative Agent may take such actions on its behalf as is contemplated by the terms of the Intercreditor Agreement and any such subordination or intercreditor agreement. Administrative Agent shall notify the Secured Parties of the effectiveness of the Intercreditor Agreement and any such subordination or intercreditor agreement when executed and shall provide a copy of the executed Intercreditor Agreement and any such subordination or intercreditor agreement to the Secured Parties as and when effective.

13.1.2. Duties. The title of “Administrative Agent” and “Co-Collateral Agent” is used solely as a matter of market custom and the duties of Agents are administrative in nature only. No Agent has any duties except those expressly set forth in the Loan Documents, and in no event does any Agent have any agency, fiduciary or implied duty to or relationship with any Secured Party or other Person by reason of any Loan Document or related transaction. The conferral upon any Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Required Lenders in accordance with this Agreement.

13.1.3. Agent Professionals. Each Agent may perform its duties through agents and employees. Each Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. No Agent shall be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

13.1.4. Instructions of Required Lenders. The rights and remedies conferred upon Agents under the Loan Documents may be exercised without the necessity of joining any other party, unless required by Applicable Law. In determining compliance with a condition for any action hereunder, including satisfaction of any condition in **Section 6**, each Agent may presume that the condition is satisfactory to a Secured Party unless such Agent has received notice to the contrary from such Secured Party before such Agent takes the action. Any Agent may request instructions from Required Lenders or other Secured Parties with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Secured Parties of their indemnification obligations against Claims that could be incurred by such Agent. Any Agent may refrain from any act until it has received such instructions or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Secured Parties, and no Secured Party shall have any right of action whatsoever against any Agent as a result of such Agent acting or refraining from acting pursuant to instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 15.1.1**. In no event shall any Agent be required to take any action that it determines in its discretion is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to liability.

13.2. Agreements Regarding Collateral and Borrower Materials.

13.2.1. Lien Releases; Care of Collateral. Secured Parties authorize Administrative Agent to release any Lien with respect to any Collateral (a) upon Full Payment of the Obligations; (b) that is the subject of a disposition or Lien that Borrower Agent certifies in writing is an Asset Disposition permitted pursuant to Section 10.2.9 or a Permitted Lien entitled to priority over Administrative Agent's Liens (and Administrative Agent may rely conclusively on any such certificate without further inquiry); (c) that does not constitute a material part of the Collateral; or (d) subject to Section 15.1, with the consent of Required Lenders. Secured Parties authorize Administrative Agent to subordinate its Liens to any Purchase Money Lien or other Lien entitled to priority hereunder. Administrative Agent has no obligation to assure that any Collateral exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that 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.

13.2.2. Possession of Collateral. 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 Administrative Agent thereof and, promptly upon Administrative Agent's request, deliver such Collateral to Administrative Agent or otherwise deal with it in accordance with Administrative Agent's instructions.

13.2.3. Reports. Administrative Agent shall promptly provide to Lenders, when complete, any field examination, audit or appraisal report prepared for Administrative Agent with respect to any Obligor or Collateral ("Report"). Reports and other Borrower Materials may be made available to Lenders by providing access to them on the Platform, but Administrative Agent shall not be responsible for system failures or access issues that may occur from time to time. Each Lender agrees (a) that Reports are not intended to be comprehensive audits or examinations, and that Administrative Agent or any other Person performing an audit or examination will inspect only limited information and will rely significantly upon Borrowers' books, records and representations; (b) that Administrative Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials and shall not be liable for any information contained in or omitted from any Borrower Materials, including any Report; and (c) to keep all Borrower Materials confidential and strictly for such Lender's internal use, not to distribute any Report or other Borrower Materials (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants), and to use all Borrower Materials solely for administration of the Obligations. Each Lender shall indemnify and hold harmless 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 Borrower Materials, as well as from any Claims arising as a direct or indirect result of Administrative Agent furnishing same to such Lender, via the Platform or otherwise.

13.3. Reliance By Administrative Agent. Administrative Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. Administrative Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.

13.4. Action Upon Default. Administrative Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in Section 6, unless it has received written notice from a Borrower or Required Lenders specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Administrative Agent and the other Lenders thereof in writing. Each Secured Party agrees that, except as otherwise provided in any Loan Documents or with the written consent of

Administrative Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations (other than Secured Bank Product Obligations) or assert any rights relating to any Collateral.

13.5. Ratable Sharing. If any Lender obtains any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its ratable share of such Obligation, such Lender shall forthwith purchase from Secured Parties participations in the affected Obligation as are necessary to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.6.2**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the full amount thereof to Administrative Agent for application under **Section 4.2.2** and it shall provide a written statement to Administrative Agent describing the Obligation affected by such payment or reduction. No Lender shall set off against a Dominion Account without Administrative Agent's prior consent.

13.6. Indemnification. EACH SECURED PARTY SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES AND ISSUING BANK INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE, PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In Administrative Agent's Permitted Discretion, it may reserve for any Claims made against an Agent Indemnitee or an Issuing Bank Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Administrative Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by 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 Administrative Agent by each Secured Party to the extent of its Pro Rata share.

13.7. Limitation on Responsibilities of Administrative Agent. Administrative Agent shall not be liable to any Secured Party for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Administrative Agent's gross negligence or willful misconduct. Administrative Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor, Lender or other Secured Party of any obligations under the Loan Documents. Administrative Agent does not make any express or implied representation, warranty or guarantee to Secured Parties with respect to any Obligations, Collateral, Liens, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents or Borrower Materials; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

13.8. Successor Administrative Agent and Co-Agents.

13.8.1. **Resignation; Successor Administrative Agent.** Administrative Agent may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrowers. Any such resignation shall also constitute a resignation of the Administrative Agent in its capacity as Co-Collateral

Agent. If Administrative Agent is a Defaulting Lender under clause (d) of the definition thereof, Required Lenders may, to the extent permitted by Applicable Law, remove such Administrative Agent by written notice to Borrowers and Administrative Agent. Required Lenders may appoint a successor to replace the resigning or removed Administrative Agent, which successor shall be (a) a Lender or an Affiliate of a Lender; or (b) a financial institution reasonably acceptable to Required Lenders and (provided no Default or Event of Default exists) Borrowers. If no successor agent is appointed prior to the effective date of Administrative Agent's resignation or removal, then Administrative Agent may appoint a successor agent that is a financial institution acceptable to it (which shall be a Lender unless no Lender accepts the role) or in the absence of such appointment, Required Lenders shall on such date assume all rights and duties of Administrative Agent hereunder. Upon acceptance by any successor Administrative Agent of its appointment hereunder, such successor Administrative Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Administrative Agent without further act. On the effective date of its resignation or removal, the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder but shall continue to have all rights and protections under the Loan Documents with respect to actions taken or omitted to be taken by it while Administrative Agent, including the indemnification set forth in **Sections 13.6 and 15.2**, and all rights and protections under this **Section 13**. Any successor to Bank of America by merger or acquisition of stock or this loan shall continue to be Administrative Agent hereunder without further act on the part of any Secured Party or Obligor. Any Co-Collateral Agent that is not also the Administrative Agent may resign at any time upon written notice to Borrower Agent and Administrative Agent, and the resignation of such Co-Collateral Agent shall become effective immediately upon the delivery of such written notice. If any Co-Collateral Agent (other than Administrative Agent) is a Defaulting Lender, such Co-Collateral Agent may be removed as a Co-Collateral Agent by Required Lenders upon written notice to it as Co-Collateral Agent and with such removal to become effective immediately upon the delivery of such written notice.

13.8.2. Co-Agent. If appropriate under Applicable Law, Administrative Agent may appoint a Person to serve as a co-collateral agent or separate collateral agent under any Loan Document. Each right, remedy and protection intended to be available to Administrative Agent under the Loan Documents shall also be vested in such agent. Secured Parties shall execute and deliver any instrument or agreement that Administrative Agent may request to effect such appointment. If any such agent shall die, dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of the agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Administrative Agent until appointment of a new agent.

13.9. Due Diligence and Non-Reliance. Each Lender acknowledges and agrees that it has, independently and without reliance upon Administrative Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans and participate in LC Obligations hereunder. Each Secured Party has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Secured Party acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Secured Party will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans and participating in LC Obligations, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Administrative Agent shall have no duty or responsibility to provide any Secured Party with any notices, reports or certificates furnished to Administrative Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Administrative Agent or its Affiliates.

13.10. Remittance of Payments and Collections.

13.10.1. Remittances Generally. All payments by any Lender to Administrative Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Administrative Agent and request for payment is made by Administrative Agent by 1:00 p.m. on a Business Day, payment shall be made by Lender not later than 3:00 p.m. on such day, and if request is made after 1:00 p.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Administrative Agent to any Secured Party shall be made by wire transfer, in the type of funds received by Administrative Agent. Any such payment shall be subject to Administrative Agent's right of offset for any amounts due from such payee under the Loan Documents.

13.10.2. Failure to Pay. If any Secured Party fails to pay any amount when due by it to Administrative Agent pursuant to the terms hereof, such amount shall bear interest, from the due date until paid in full, at the greater of the Federal Funds Rate or the rate determined by Administrative Agent as customary for interbank compensation for two Business Days and thereafter at the Default Rate for Base Rate Revolver Loans. In no event shall Borrowers be entitled to credit for any interest paid by a Secured Party to Administrative Agent, nor shall a Defaulting Lender be entitled to interest on amounts held by Administrative Agent pursuant to **Section 4.2**.

13.10.3. Recovery of Payments. If Administrative Agent pays an amount to a Secured Party in the expectation that a related payment will be received by Administrative Agent from an Obligor and such related payment is not received, then Administrative Agent may recover such amount from the Secured Party. If Administrative Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then Administrative Agent shall not be required to distribute such amount to any Secured Party. If any amounts received and applied by Administrative Agent to Obligations held by a Secured Party are later required to be returned by Administrative Agent pursuant to Applicable Law, such Secured Party shall pay to Administrative Agent, on demand, its share of the amounts required to be returned.

13.11. Individual Capacities. As a Lender, Bank of America shall have the same rights and remedies under the Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include Bank of America in its capacity as a Lender. Administrative Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Administrative Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Administrative Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.

13.12. Titles. Each Lender, other than Bank of America, that is designated in connection with this credit facility as an "Arranger," "Bookrunner" or "Administrative Agent" of any kind shall have no right or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event have any fiduciary duty to any Secured Party.

13.13. Bank Product Providers. Each Secured Bank Product Provider, by delivery of a notice to Administrative Agent of a Bank Product, agrees to be bound by the Loan Documents, including **Sections 5.6, 15.3.3 and 13**. Each Secured Bank Product Provider shall indemnify and hold harmless Agent Indemnitees, to the extent not reimbursed by Obligors, against all Claims that may be incurred by or asserted against any Agent Indemnitee in connection with such provider's Secured Bank Product Obligations.

13.14. Co-Collateral Agents

Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary, all determinations under this Agreement and the other Loan Documents related, directly or indirectly, to the Collateral, Borrowing Base eligibility standards or criteria, reserves or the implementation or adjustment of reserves, collateral information rights, access rights, appraisal rights, audit rights, cash management and cash dominion rights and control agreement rights (including, for the avoidance of doubt, any such determinations which are assigned to the Administrative Agent pursuant to this Agreement and other Loan Documents) shall, be made by Co-Collateral Agents as set forth in this Section 13.14 (hereinafter collectively referred to as a “Collateral Matter”). If a Co-Collateral Agent makes any proposal with respect to a Collateral Matter (including without limitation, any proposal to adjust or revise, or interpret, any borrowing base eligibility standards or reserves), the other Co-Collateral Agent shall respond to such proposal within three (3) Business Days. If the Co-Collateral Agents cannot agree on a determination with respect to a Collateral Matter, the determination shall be made by the individual Co-Collateral Agent either asserting the more conservative credit judgment or declining to permit the requested action for which consent is being sought by any of the Borrowers or the Obligors; provided, however, that, if an issue cannot be resolved by either the more conservative credit judgment or declining to permit a requested action by any of the Borrowers or the Obligors (such as the selection or replacement of an appraisal firm), then the decision of the Administrative Agent shall be final. Administrative Agent shall implement any decision on determination by Co-Collateral Agents as arrived at pursuant to the terms hereof. To effectuate the intent of this Section 13.14, Administrative Agent agrees that it shall, upon request from any Co-Collateral Agent, promptly deliver to the requesting Co-Collateral Agent any and all copies of all documents, notices, and other information delivered by a Borrower or a Obligor to Administrative Agent with respect to each Collateral Matter, including without limitation, Borrowing Base Certificates, reports related to sales, collections, the administration of Accounts, and requests by any of the Borrowers or Obligors for particular action on or relating to, or constituting, a Collateral Matter and all information submitted in connection therewith. Likewise, if Administrative Agent is entitled to request additional information from a Borrower or Obligor with respect to a Collateral Matter, Administrative Agent shall, if requested to do so by a Co-Collateral Agent, submit to the Borrowers and Obligors, as applicable, any request requested by a Co-Collateral Agent. Any of the foregoing to the contrary notwithstanding, nothing contained in this Section 13.14 shall be deemed to expand the rights of Administrative Agent, any Co-Collateral Agent or any Lender with respect to Borrowing Base eligibility standards or advance rates applicable to the Borrowing Base or reserves.

13.15. No Third Party Beneficiaries. This Section 13 is an agreement solely among Secured Parties and Administrative Agent, and shall survive Full Payment of the Obligations. Except as set forth in Section 13.8 with respect to the Borrowers, this Section 13 does not confer any rights or benefits upon Borrowers or any other Person. As between Borrowers and Administrative Agent, any action that Administrative Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by Secured Parties.

SECTION 14. BENEFIT OF AGREEMENT; ASSIGNMENTS

14.1. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of Borrowers, Administrative Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) no Borrower shall have the right to assign its rights or delegate its obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with **Section 14.3**. Administrative Agent may treat the Person which made any Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 14.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

14.2. Participations.

14.2.1. Permitted Participants; Effect. Subject to **Section 14.3.3**, any Lender may sell to a financial institution (“Participant”) a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of participating interests to a Participant, such Lender’s obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Loans and Commitments for all purposes, all amounts payable by Borrowers shall be determined as if it had not sold such participating interests, and Borrowers and Administrative Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Administrative Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of **Section 5.9** unless Borrowers agree otherwise in writing.

14.2.2. Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Loan or Commitment in which such Participant has an interest, postpones the Commitment Termination Date or any date fixed for any regularly scheduled payment of principal, interest or fees on such Loan or Commitment, or releases any Borrower, Guarantor or substantially all Collateral.

14.2.3. Participant Register. Each Lender that sells a participation shall, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), maintain a register in which it enters the Participant’s name, address and interest in Commitments, Loans (including principal and stated interest) and LC Obligations. Entries in the register shall be conclusive, absent manifest error, and such Lender shall treat each Person recorded in the register as the owner of the participation for all purposes, notwithstanding any notice to the contrary. No Lender shall have an obligation to disclose any information in such register except to the extent necessary to establish that a Participant’s interest is in registered form under the Code.

14.2.4. Benefit of Setoff. Borrowers agree that each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 13.5** as if such Participant were a Lender.

14.3. Assignments.

14.3.1. Permitted Assignments. A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender’s rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of \$5,000,000 (unless otherwise agreed by Administrative Agent in its discretion) and integral multiples of \$1,000,000 in excess of that amount; (b) except in the case of an assignment in whole of a Lender’s rights and obligations, the aggregate amount of the Commitments retained by the transferor Lender is at least \$10,000,000 (unless otherwise agreed by Administrative Agent in its discretion); and (c) the parties to each such assignment shall execute and deliver an Assignment to Administrative Agent for acceptance and recording. Nothing herein shall limit the right of a Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender, including a pledge or assignment to a Federal Reserve Bank; provided, however, that no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledge or assignee for such Lender as a party hereto.

14.3.2. Effect; Effective Date. Upon delivery to Administrative Agent of a fully executed Assignment in the form of **Exhibit A** and a processing fee of \$3,500 (unless otherwise agreed or

waived by Administrative Agent in its discretion), the assignment shall become effective as specified in the notice, if it complies with this **Section 14.3**. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Administrative Agent and Borrowers shall make appropriate arrangements for issuance of replacement and/or new notes, if applicable. The transferee Lender shall comply with **Section 5.10** and deliver, upon request, an administrative questionnaire satisfactory to Administrative Agent.

14.3.3. Certain Assignees. No assignment or participation may be made to a Borrower, Affiliate of a Borrower, Defaulting Lender or natural person. Administrative Agent shall have no obligation to determine whether any assignee is permitted under the Loan Documents. Assignment by a Defaulting Lender shall be effective only if there is concurrent satisfaction of all outstanding obligations of the Defaulting Lender under the Loan Documents in a manner satisfactory to Administrative Agent, including payment by the Eligible Assignee or Defaulting Lender to Administrative Agent of an aggregate amount sufficient upon distribution (through direct payment, purchases of participations or other methods acceptable to Administrative Agent) to satisfy all funding and payment liabilities of the Defaulting Lender. If assignment by a Defaulting Lender occurs (by operation of law or otherwise) without compliance with the foregoing sentence, the assignee shall be deemed a Defaulting Lender for all purposes until compliance occurs.

14.3.4. Register. Administrative Agent, acting as a non-fiduciary agent of Borrowers (solely for tax purposes), shall maintain (a) a copy (or electronic equivalent) of each Assignment delivered to it, and (b) a register for recordation of the names, addresses and Commitments of, and the Loans, principal interest and LC Obligations owing to, each Lender. Entries in the register shall be conclusive, absent manifest error, and Borrowers, Administrative Agent and Lenders shall treat each Person recorded in such register as a Lender for all purposes under the Loan Documents, notwithstanding any notice to the contrary. Administrative Agent may choose to show only one Borrower as the borrower in the register, without any effect on the liability of any Obligor with respect to the Obligations. The register shall be available for inspection by Borrowers or any Lender, from time to time upon reasonable notice.

14.4. Replacement of Certain Lenders. If a Lender (a) within the last 120 days failed to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, (b) is a Defaulting Lender, or (c) within the last 120 days gave a notice under **Section 3.5** or requested payment or compensation under **Section 3.7** or **5.9** (and has not designated a different Lending Office pursuant to **Section 3.8**), then Administrative Agent or Borrower Agent may, upon 10 days' notice to such Lender, require it to assign its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment(s), within 20 days after such notice. Administrative Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment.

SECTION 15. MISCELLANEOUS

15.1. Consents, Amendments and Waivers.

15.1.1. Amendment. No modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of Administrative Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; provided, that

(a) without the prior written consent of Administrative Agent, no modification shall alter any provision in a Loan Document that relates to any rights, duties or discretion of Administrative

Agent;

(b) without the prior written consent of each applicable Issuing Bank, no modification shall alter **Section 2.3** or any other provision in a Loan Document that relates to Letters of Credit or any rights, duties or discretion of such Issuing Bank;

(c) without the prior written consent of each affected Lender, including a Defaulting Lender, no modification shall (i) increase the Commitment of such Lender; (ii) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2**); (iii) extend the Revolver Termination Date; or (iv) amend this clause (c);

(d) without the prior written consent of all Lenders (except any Defaulting Lender), no modification shall (i) waive the conditions precedent contained in **Section 6.1**; (ii) alter **Section 5.6.2, 7.1** (except to add Collateral), **13.5** or **15.1.1**; (iii) change any provision of this **Section 15.1.1(d)** or the definition of "Required Lenders", or any other provision hereof specifying the number or percentages of Lenders required to amend, waive or otherwise modify any rights hereunder or any other Loan Document or make any determination or grant any consent hereunder; (iv) amend the definition of Borrowing Base (or any defined term used in such definition) if the effect of such amendment is to increase borrowing availability; (v) increase the advance rates in the Borrowing Base or modify this Agreement in any way that would have the effect of increasing the advance rates in the Borrowing Base, in each case, beyond such advance rates in effect on the Closing Date; (vi) release all or substantially all Collateral; or (vii) except in connection with a merger, disposition or similar transaction expressly permitted hereby, release any Obligor from liability for any Obligations;

(e) without the prior written consent of a Secured Bank Product Provider, no modification shall affect its relative payment priority under **Section 5.6.2**; and

(f) if Real Estate secures any Obligations, no modifications or a Loan Document shall add, increase, renew or extend any credit line hereunder until the completion of flood diligence and documentation as required by the Flood Disaster Protection Act or otherwise satisfactory to all Co-Collateral Agents.

15.1.2. Limitations. The agreement of Borrowers shall not be required for any modification of a Loan Document that deals solely with the rights and duties of Lenders, Administrative Agent and/or Issuing Bank as among themselves but the parties to such shall provide prompt written notice thereof to the Borrowers. Only the consent of the parties to any agreement relating to fees or a Bank Product shall be required for modification of such agreement, and no Bank Product provider (in such capacity) shall have any right to consent to modification of any Loan Document other than its Bank Product agreement. Any waiver or consent granted by Administrative Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.

15.1.3. Payment for Consents. No Borrower will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

15.2. Indemnity. EACH BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON AND, IN ALL CASES, WHETHER OR NOT CAUSED OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE OR SOLE NEGLIGENCE OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder

to indemnify or hold harmless an Indemnitee with respect to a Claim (a) that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result directly from the bad faith, gross negligence or willful misconduct of such Indemnitee or (b) arises out of or is in connection with any claim, litigation, loss or proceeding not involving an act or omission of any Borrower or any of its Affiliates and that is brought by an Indemnitee against another Indemnitee (other than against any Agent in its capacity as such); and Claims consisting of attorneys' fees and expenses incurred by the Indemnitees will be limited to the reasonable and documented fees, disbursements and other charges of one firm of counsel to the Indemnitees taken as a whole and one firm of local counsel to the Indemnitees taken as a whole in each appropriate jurisdiction and, in the case of an actual or potential conflict of interest as determined by the affected Indemnitee Party, one additional counsel to such affected Indemnitee.

15.3. Notices and Communications.

15.3.1. Notice Address. Subject to **Section 4.1.4**, all notices and other communications by or to a party hereto shall be in writing and shall be given to any Borrower, at Borrower Agent's address shown on the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment), or at such other address as a party may hereafter specify by notice in accordance with this **Section 15.3**. Each communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the U.S. mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to Administrative Agent pursuant to **Section 2.1.4, 2.3, 3.1.2** or **4.1.1** shall be effective until actually received by the individual to whose attention at Administrative Agent such notice is required to be sent. Any written communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party. Any notice received by Borrower Agent shall be deemed received by all Borrowers.

15.3.2. Communications. Electronic communications (including e-mail, messaging and websites) may be used only in a manner acceptable to Administrative Agent and only for routine communications, such as delivery of Borrower Materials, administrative matters, distribution of Loan Documents and matters permitted under **Section 4.1.4**. Secured Parties make no assurance as to the privacy or security of electronic communications. E-mail and voice mail shall not be effective notices under the Loan Documents.

15.3.3. Platform. Borrower Materials shall be delivered pursuant to procedures approved by Administrative Agent, including electronic delivery (if possible) upon request by Administrative Agent to an electronic system maintained by Administrative Agent ("Platform"). Borrowers shall notify Administrative Agent of each posting of Borrower Materials on the Platform and the materials shall be deemed received by Administrative Agent only upon its receipt of such notice. Borrower Materials and other information relating to this credit facility may be made available to Secured Parties on the Platform. The Platform is provided "as is" and "as available." Administrative Agent does not warrant the accuracy or completeness of any information on the Platform nor the adequacy or functioning of the Platform, and expressly disclaims liability for any errors or omissions in the Borrower Materials or any issues involving the Platform. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY AGENT WITH RESPECT TO BORROWER MATERIALS OR THE PLATFORM. No Agent Indemnitee shall have any liability to Borrowers, Secured Parties or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) relating to use by any Person of the Platform, including any

unintended recipient, nor for delivery of Borrower Materials and other information via the Platform, internet, e-mail, or any other electronic platform or messaging system.

15.3.4. Public Information. Obligors and Secured Parties acknowledge that “public” information may not be segregated from material non-public information on the Platform. Secured Parties acknowledge that Borrower Materials may include Obligors’ material non-public information, and should not be made available to personnel who do not wish to receive such information or may be engaged in investment or other market-related activities with respect to an Obligor’s securities.

15.3.5. Non-Conforming Communications. Administrative Agent and Lenders may rely upon any communications purportedly given by or on behalf of any Borrower even if they were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. Each Borrower shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any electronic or telephonic communication purportedly given by or on behalf of a Borrower.

15.4. Performance of Borrowers’ Obligations. Administrative Agent may, in its discretion at any time and from time to time, at Borrowers’ expense, pay any amount or, upon notice to Borrower Agent unless an Event of Default exists, do any act required of a Borrower under any Loan Documents or otherwise lawfully requested by Administrative Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Administrative Agent’s Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All reasonable and documented payments, costs and expenses (including Extraordinary Expenses) of Administrative Agent under this Section shall be reimbursed to Administrative Agent by Borrowers, on demand, with interest from the date incurred until paid in full, at the Default Rate applicable to Base Rate Revolver Loans. Any payment made or action taken by Administrative Agent under this Section shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

15.5. Credit Inquiries. Administrative Agent and Lenders may (but shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

15.6. Severability. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

15.7. Cumulative Effect; Conflict of Terms. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document (other than the Intercreditor Agreement), the provision herein shall govern and control.

15.8. Counterparts; Execution. Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Administrative Agent has received counterparts bearing the signatures of all parties hereto. Delivery of a signature page of any Loan Document by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of such agreement. Any signature, contract formation or record-keeping through electronic means shall have

the same legal validity and enforceability as manual or paper-based methods, to the fullest extent permitted by Applicable Law, including the Federal Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act.

15.9. Entire Agreement. Time is of the essence with respect to all Loan Documents and Obligations. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter hereof and thereof.

15.10. Relationship with Lenders. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations or Commitments of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Administrative Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Administrative Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Administrative Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.

15.11. No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated by any Loan Document, Borrowers acknowledge and agree that (a)(i) this credit facility and any arranging or other services by Administrative Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Borrowers and their Affiliates, on one hand, and Administrative Agent, any Lender, any of their Affiliates or any arranger, on the other hand; (ii) Borrowers have consulted their own legal, accounting, regulatory and tax advisors to the extent they have deemed appropriate; and (iii) Borrowers are capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Administrative Agent, Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrowers, their Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Administrative Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Borrowers and their Affiliates, and have no obligation to disclose any of such interests to Borrowers or their Affiliates. To the fullest extent permitted by Applicable Law, each Borrower hereby waives and releases any claims that it may have against Administrative Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document. Each Borrower hereby agrees that it will not claim that Administrative Agent, Lenders, their Affiliates or any arranger has rendered advisory services of any nature or owes any agency or fiduciary or similar duty to it in connection with any transaction contemplated by a Loan Document.

15.12. Confidentiality. Each of Administrative Agent, Lenders and Issuing Banks shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, advisors and representatives (provided they are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates; provided that unless specifically prohibited by Applicable Law, each of Administrative Agent and each Lender shall endeavor to notify the Borrowers (without any liability for a failure to so notify the Borrower) of any request made to such Lender or Administrative Agent, as applicable, by any governmental, regulatory or self-regulatory agency or representative thereof (other than any such request in connection with an examination of the financial condition of such Lender by such governmental agency) for disclosure of any such Information prior to disclosure of such Information; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto; (e) in connection with any action or proceeding

relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this Section, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product or to any swap, derivative or other transaction under which payments are to be made by reference to an Obligor or Obligor's obligations; (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) is available to Administrative Agent, any Lender, any Issuing Bank or any of their Affiliates on a nonconfidential basis from a source other than Borrowers; (h) on a confidential basis to a provider of a Platform; or (i) with the consent of Borrower Agent. Notwithstanding the foregoing, Administrative Agent and Lenders may publish or disseminate general information concerning this credit facility for league table, tombstone and advertising purposes, and may use Borrowers' logos, trademarks or product photographs approved by Borrower Agent in advertising materials; provided, however that such general information does not include any Information required to be kept confidential pursuant to this **Section 15.12**. As used herein, "Information" means information received from an Obligor or Subsidiary relating to it or its business that is identified as confidential when delivered. A Person required to maintain the confidentiality of Information pursuant to this Section shall be deemed to have complied if it exercises a degree of care similar to that accorded its own confidential information. Each of Administrative Agent, Lenders and Issuing Bank acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of such information; and (iii) it will handle the material non-public information in accordance with Applicable Law.

15.13. [Reserved.]

15.14. GOVERNING LAW. UNLESS EXPRESSLY PROVIDED IN ANY LOAN DOCUMENT, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ALL CLAIMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

15.15. Consent to Forum; Bail-In of EEA Financial Institutions.

15.15.1. Forum. **EACH BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN NEW YORK COUNTY OR THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. EACH BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 15.3.1.** A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.

15.15.2. Other Jurisdictions. Nothing herein shall limit the right of Administrative Agent or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Administrative Agent of any judgment or order obtained in any forum or jurisdiction.

15.15.3. 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 the parties, each party hereto (including each Secured Party) acknowledges that any liability arising under a Loan Document of any Secured Party that is an EEA Financial Institution, 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 under any Loan Documents which may be payable to it by any Secured Party that is an EEA Financial Institution; and (b) the effects of any Bail-in Action on any such liability, including (i) a reduction in full or in part or cancellation of any such liability; (ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such 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 any Loan Document; or (iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

15.16. Waivers by Borrowers. To the fullest extent permitted by Applicable Law, each Borrower waives (a) the right to trial by jury (which Administrative Agent, each Issuing Bank and each Lender hereby also waives) in any proceeding or dispute of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Administrative Agent on which a Borrower may in any way be liable, and hereby ratifies anything Administrative Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Administrative Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisal and exemption laws; (f) any claim against any party hereto on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto (which Administrative Agent, each Issuing Bank and each Lender hereby also waives); and (g) notice of acceptance hereof. Each Borrower acknowledges that the foregoing waivers are a material inducement to Administrative Agent, Issuing Bank and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with Borrowers. Each Borrower has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

15.17. PATRIOT Act Notice. Administrative Agent and Lenders hereby notify Borrowers that pursuant to the Patriot Act, Administrative Agent and Lenders are required to obtain, verify and record information that identifies each Borrower, including its legal name, address, tax ID number and other information that will allow Administrative Agent and Lenders to identify it in accordance with the Patriot Act. Administrative Agent and Lenders will also require information regarding each personal guarantor, if any, and may require information regarding Borrowers' management and owners, such as legal name, address, social security number and date of birth. Borrowers shall, promptly upon request, provide all documentation and other information as Administrative Agent, any Issuing Bank or any Lender may request from time to time in order to comply with any obligations under any "know your customer," anti-money laundering or other requirements of Applicable Law.

15.18. NO ORAL AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth above.

BORROWERS:

KEY ENERGY SERVICES, INC.

By: _____

Title: _____

KEY ENERGY SERVICES, LLC.

By: _____

Title: _____

Address for all Borrowers:

1301 McKinney Street, Suite 1800
Houston, TX 77010
Attn: Marshall Dodson
Telecopy: 713.651.4556

AGENT AND LENDERS:

BANK OF AMERICA, N.A.,
as Administrative Agent, Issuing Bank, Co-Collateral
Agent and Lender

By: _____

Title: _____

Address:

Attn: _____

Telecopy: _____

WELLS FARGO BANK, N.A.,
Issuing Bank, Co-Collateral Agent and Lender

By: _____

Title: _____

Address:

Attn: _____

Telecopy: _____

_____,
as a Lender

By: _____

Title: _____

Address: _____

Attn: _____

Telecopy: _____

Blackline for Amended Exhibit N to Plan Supplement

New Term Loan Credit Agreement

TERM LOAN AND SECURITY AGREEMENT

Dated as of [●], [201\[●\]](#)

KEY ENERGY SERVICES, INC.,
as Borrower

CORTLAND PRODUCTS CORP.,
as Agent

and

CERTAIN FINANCIAL INSTITUTIONS,
as Lenders

TABLE OF CONTENTS

	<u>Page</u>
SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION	2
1.1 Definitions.....	2
1.2 Accounting Terms.....	3639
1.3 Uniform Commercial Code.....	3640
1.4 Certain Matters of Construction.....	3640
1.5 Pro Forma Calculations.....	3741
SECTION 2. CREDIT FACILITY	3842
2.1 Loans.....	3842
2.2 Notes	3842
2.3 [Reserved].....	3842
2.4 [Reserved].....	3842
2.5 Extension of Maturity Date.....	3842
SECTION 3. INTEREST, FEES AND CHARGES	4044
3.1 Interest.....	4044
3.2 Fees	4246
3.3 Computation of Interest, Fees, Yield Protection.....	4246
3.4 Reimbursement Obligations.....	4346
3.5 Illegality	4347
3.6 Inability to Determine Rates	4347
3.7 Increased Costs; Capital Adequacy	4447
3.8 Mitigation.....	4549
3.9 Funding Losses	4549
3.10 Maximum Interest.....	4549
SECTION 4. LOAN ADMINISTRATION	4649
4.1 [Reserved].....	4649
4.2 Defaulting Lender	4649
4.3 Number and Amount of LIBOR Loans; Determination of Rate.....	4650
4.4 One Obligation.....	4650
4.5 Effect of Termination.....	4750
SECTION 5. PAYMENTS	4750
5.1 General Payment Provisions	4750
5.2 Repayment of Loans	4751
5.3 Prepayments.....	4851
5.4 Offers to Repurchase Loans.....	4952
5.5 Payment of Applicable Premium.....	5155

5.6 Payment of Other Obligations	<u>5255</u>
5.7 Marshaling; Payments Set Aside	<u>5255</u>
5.8 Application and Allocation of Payments	<u>5255</u>
5.9 Account Stated	<u>5356</u>
5.10 Taxes	<u>5357</u>
5.11 Lender Tax Information	<u>5558</u>
 SECTION 6. CONDITIONS PRECEDENT	 <u>5760</u>
6.1 Conditions Precedent to Effectiveness.....	<u>5760</u>
 SECTION 7. COLLATERAL	 <u>5963</u>
7.1 Grant of Security Interest.....	<u>5963</u>
7.2 Lien on Deposit Accounts; Cash Collateral.....	<u>6064</u>
7.3 Real Estate Collateral and Vehicles	<u>6164</u>
7.4 Other Collateral.....	<u>6366</u>
7.5 Limitations	<u>6367</u>
7.6 Further Assurances.....	<u>6367</u>
7.7 Certain Limited Exclusions.....	<u>6367</u>
7.8 Intercreditor Agreement.....	<u>6569</u>
 SECTION 8. COLLATERAL ADMINISTRATION.....	 <u>6569</u>
8.1 TL Proceeds and Priority Collateral Account.....	<u>6569</u>
8.2 Equipment.....	<u>6669</u>
8.3 Deposit Accounts and Securities Accounts	<u>6670</u>
8.4 General Provisions	<u>6670</u>
8.5 Power of Attorney.....	<u>6771</u>
 SECTION 9. REPRESENTATIONS AND WARRANTIES.....	 <u>6872</u>
9.1 General Representations and Warranties	<u>6872</u>
 SECTION 10. COVENANTS AND CONTINUING AGREEMENTS.....	 <u>7680</u>
10.1 Affirmative Covenants.....	<u>7680</u>
10.2 Negative Covenants	<u>8588</u>
10.3 Financial Covenants.....	<u>9599</u>
 SECTION 11. GUARANTY	 <u>96100</u>
11.1 Guaranty.....	<u>96100</u>
11.2 No Setoff or Deductions; Taxes; Payments	<u>97101</u>
11.3 Rights of Secured Parties	<u>97101</u>
11.4 Certain Waivers	<u>98102</u>
11.5 Obligations Independent	<u>98102</u>
11.6 Subrogation.....	<u>98102</u>

11.7 Termination; Reinstatement.....	99 <u>103</u>
11.8 Subordination.....	99 <u>103</u>
11.9 Stay of Acceleration.....	99 <u>103</u>
11.10 Expenses.....	99 <u>103</u>
11.11 Miscellaneous.....	99 <u>103</u>
11.12 Condition of Borrower.....	100 <u>104</u>
11.13 Additional Guarantors.....	100 <u>104</u>
 SECTION 12. EVENTS OF DEFAULT; REMEDIES ON DEFAULT.....	 100 <u>104</u>
12.1 Events of Default.....	100 <u>104</u>
12.2 Remedies upon Default.....	101 <u>105</u>
12.3 License.....	102 <u>106</u>
12.4 Setoff.....	102 <u>106</u>
12.5 Remedies Cumulative; No Waiver.....	103 <u>107</u>
 SECTION 13. AGENT.....	 103 <u>107</u>
13.1 Appointment, Authority and Duties of Agent.....	103 <u>107</u>
13.2 Agreements Regarding Collateral and Borrower Materials.....	105 <u>109</u>
13.3 Reliance By Agent.....	105 <u>109</u>
13.4 Action Upon Default.....	106 <u>110</u>
13.5 Ratable Sharing.....	106 <u>110</u>
13.6 Indemnification; Waiver.....	106 <u>110</u>
13.7 Limitation on Responsibilities of Agent.....	107 <u>111</u>
13.8 Successor Agent and Co-Agents.....	107 <u>111</u>
13.9 Due Diligence and Non-Reliance.....	108 <u>112</u>
13.10 Remittance of Payments and Collections.....	108 <u>112</u>
13.11 Individual Capacities.....	109 <u>113</u>
13.12 Titles.....	109 <u>113</u>
13.13 No Third Party Beneficiaries.....	109 <u>113</u>
 SECTION 14. BENEFIT OF AGREEMENT; ASSIGNMENTS.....	 110 <u>113</u>
14.1 Successors and Assigns.....	110 <u>113</u>
14.2 Participations.....	110 <u>114</u>
14.3 Assignments.....	111 <u>114</u>
14.4 Replacement of Certain Lenders.....	113 <u>117</u>
 SECTION 15. MISCELLANEOUS.....	 113 <u>117</u>
15.1 Consents, Amendments and Waivers.....	113 <u>117</u>
15.2 Indemnity.....	114 <u>118</u>
15.3 Notices and Communications.....	115 <u>119</u>
15.4 Performance of Borrower’s Obligations.....	116 <u>120</u>
15.5 Credit Inquiries.....	116 <u>120</u>
15.6 Severability.....	116 <u>120</u>

15.7 Cumulative Effect; Conflict of Terms	117120
15.8 Counterparts; Execution.....	117121
15.9 Entire Agreement.....	117121
15.10 Relationship with Lenders	117121
15.11 No Advisory or Fiduciary Responsibility	117121
15.12 Confidentiality	118122
15.13 GOVERNING LAW.....	118122
15.14 Consent to Forum.....	119122
15.15 Waivers by Borrower.....	119123
15.16 PATRIOT Act Notice	120123
15.17 NO ORAL AGREEMENT	120124

LIST OF EXHIBITS AND SCHEDULES

Exhibit A-1	Form of Assignment
Exhibit A-2	Form of Affiliated Lender Assignment and Assumption
Exhibit B	Form of Notice of Conversion/Continuation
Exhibit C	Form of Compliance Certificate
Exhibit D	Form of Note
Schedule 1.1(A)	Closing Date Unrestricted Subsidiaries
Schedule 1.1(B)	Closing Date Immaterial Domestic Subsidiaries
Schedule 1.1(C)	Mortgaged Real Property as of Closing Date
Schedule 2.1	Initial Loans
Schedule 7.4.1	Commercial Tort Claims
Schedule 8.3	Deposit Accounts
Schedule 9.1.4	Existing Liabilities
Schedule 9.1.14	Restrictive Agreements
Schedule 9.1.16	Names and Capital Structure
Schedule 9.1.17	Locations of Offices
Schedule 9.1.18	Patents, Trademarks, Copyrights and Licenses
Schedule 9.1.20	Hedging Agreements
Schedule 9.1.21(a)	Filing Offices
Schedule 10.1.18	Post-Closing Undertakings
Schedule 10.2.1(k)	Closing Date Borrowed Money
Schedule 10.2.4	Investments

TERM LOAN AND SECURITY AGREEMENT

THIS TERM LOAN AND SECURITY AGREEMENT (this “Agreement”) is dated as of [\[●\], 201\[●\]](#), among **KEY ENERGY SERVICES, INC.**, a Delaware corporation (the “Borrower”), certain subsidiaries of the Borrower named as guarantors herein, the financial institutions party to this Agreement from time to time as Lenders, **CORTLAND PRODUCTS CORP.**, a Delaware corporation, as agent for the Lenders and **CORTLAND CAPITAL MARKET SERVICES LLC**, a Delaware limited liability company, as agent for the Lenders solely with respect to Vehicles (collectively, “Agent”).

RECITALS:

WHEREAS, the Borrower, the Guarantors, Agent and certain financial institutions or entities party thereto as lenders were party to that certain Term Loan and Security Agreement (as amended, restated, amended and restated, supplemented or otherwise modified prior to the date hereof, the “Original Credit Agreement”), dated as of June 1, 2015, pursuant to which the lenders party thereto extended credit in the form of term loans to the Borrower in an aggregate principal amount of \$315,000,000;

WHEREAS, on October 24, 2016, the Borrower and certain of its Subsidiaries commenced voluntary cases under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), which cases are being jointly administered under Case No. 16-12306 (the “Chapter 11 Cases”);

WHEREAS, in connection with the Chapter 11 Cases, the Borrower, the Lenders and certain other parties entered into the Plan Support Agreement on August 24, 2016, which provides for the implementation of a restructuring involving the Borrower and certain of its Subsidiaries on the terms set forth in the Fundamental Implementation Agreements (as defined in the Plan Support Agreement), including the Joint Prepackaged Chapter 11 Plan of Reorganization of Key Energy Services, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code filed with the Bankruptcy Court distributed on September 21, 2016 (including all annexes, exhibits, schedules and supplements thereto, in each case, as may be amended, modified or supplemented from time to time only in accordance with the terms thereof, the “Prepackaged Plan”);

WHEREAS, on [\[●\]December 6, 2016](#), the Bankruptcy Court entered the Confirmation Order confirming the Prepackaged Plan; and

WHEREAS, substantially concurrently with the effective date of the Prepackaged Plan and pursuant to the Prepackaged Plan, in exchange for the release and discharge of the loans outstanding under the Original Credit Agreement and their other prepetition claims, the Lenders are receiving, among other things, new term loans issued under this Agreement by the Borrower in the initial aggregate principal amount of \$250,000,000.

NOW, THEREFORE, for valuable consideration hereby acknowledged, the parties agree as follows:

SECTION 1. DEFINITIONS; RULES OF CONSTRUCTION

1.1 Definitions. As used herein, the following terms have the meanings set forth below:

ABL Agent: the “Agent” under the ABL Credit Agreement.

ABL Bank Products: the obligations of the Borrower and its Restricted Subsidiaries with respect to Bank Products secured by the collateral under the ABL Credit Agreement.

ABL Borrowers: the Borrower and Key Energy Services, LLC, a Texas limited liability company.

ABL Credit Agreement: that certain Loan and Security Agreement, dated of even date herewith, by and among the ABL Borrowers, the lenders party thereto, and the ABL Agent.

ABL Loans: “Loans” under the ABL Credit Agreement.

ABL Obligations: “Obligations” under the ABL Credit Agreement as in effect on the Closing Date.

acceleration: as defined in **Section 12.2(a)**.

Acceptance Notice: as defined in **Section 5.4.1(b)**.

Accepted Appraiser: each of Great American Appraisal & Valuation Services, LLC, Tiger Valuation Services, LLC, Hilco Appraisal Services LLC, Gordon Brothers Asset Advisors, LLC and each of their Affiliates.

Account: as defined in the UCC, including all rights to payment for goods sold or leased, or for services rendered.

Account Debtor: a Person obligated under an Account, Chattel Paper or General Intangible.

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

Affiliate: 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. “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 correlative meanings.

Affiliate Transaction: as defined in **Section 10.2.10**.

Affiliated Lender: as defined in **Section 14.3.3(b)**.

Agency Letter: that certain letter agreement, dated as of [●]⁺, 201[●], executed and delivered by Borrower and Agent, as amended, modified or replaced from time to time in accordance with the terms thereof.

Agent: as defined in the preamble hereto.

Agent Indemnitees: Agent and its officers, directors, employees, Affiliates, agents and attorneys.

Agent Professionals: attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, turnaround consultants, and other professionals and experts retained by Agent.

Agreement: as defined in the preamble hereto.

All-In-Yield: means, as to any Debt, the total yield thereof (exclusive of base rate and LIBOR), including interest margins, upfront fees and original issue discount and any underwriting, commitment, arrangement or other fees payable in connection therewith, in each case, incurred or payable by the Borrower or the Subsidiaries generally to all lenders of such Debt; provided that (a) original issue discount and upfront fees shall be equated to interest margins assuming a four-year life to maturity (or, if less, the stated life to maturity at the time of its incurrence of the applicable Debt) and (b) if there is a LIBOR floor greater than 100 basis points, any excess above 100 basis points will be included in All-In-Yield.

Anti-Corruption Laws: all laws, rules and regulations of any jurisdiction applicable to the Borrower or its Subsidiaries from time to time concerning or relating to bribery or corruption.

Anti-Terrorism Law: any law relating to terrorism or money laundering, including the PATRIOT Act.

Applicable Law: all laws, rules, regulations and binding governmental guidelines applicable to the Person, conduct, transaction, agreement or matter in question, including all applicable statutory law, common law and equitable principles, and all provisions of constitutions, treaties, statutes, rules, regulations, orders and decrees of Governmental Authorities.

Applicable Margin: (a) 10.25% per annum in the case of LIBOR Loans and (b) 9.25% per annum in the case of Base Rate Loans.

Applicable Premium: as defined in **Section 5.5**.

Approved Fund: any Person (other than a natural Person) engaged in making, purchasing, holding or otherwise investing in commercial loans in its ordinary course of activities and that is

⁺NTD: To match closing date.

administered or managed by a Lender, an entity that administers or manages a Lender or an Affiliate of either.

Asset Coverage Ratio: as of any date of determination, the ratio, determined on a consolidated basis for the Borrower and its Consolidated Subsidiaries, of (a) PP&E Value with respect to Term Priority Collateral in which Agent has a perfected first-priority Lien, subject to Permitted Liens (which shall be deemed to include (i) the Post-Closing Collateral solely during the Post-Closing Collateral Period and (ii) all assets transferred to the SPV pursuant to **Section 7.3.3(b)**) to (b) the outstanding principal amount of the Debt under the Loan Documents.

Asset Disposition: a sale, lease, license, consignment, transfer or other disposition, including any disposition in connection with a sale-leaseback transaction or synthetic lease, to any Person other than an Obligor of any Property of such Person (other than (i) inventory, damaged, obsolete or worn out assets, scrap and Cash Equivalents, in each case disposed of in the Ordinary Course of Business, (ii) dispositions between or among Unrestricted Subsidiaries, (iii) assets referred to in **Section 10.2.9(I)**, and (iv) any sale, transfer or other disposition or series of related sales, transfers or other dispositions having a value not in excess of \$15,000,000 in the aggregate for all such sales, transfers or other dispositions).

Asset Disposition Offer: as defined in **Section 5.4.1(a)**.

Assignment: an assignment and acceptance agreement between a Lender and Eligible Assignee, in the form of **Exhibit A-1**, or in the event such Eligible Assignee is an Affiliated Lender, **Exhibit A-2**, or otherwise reasonably satisfactory to Agent.

Availability: has the meaning assigned in the ABL Credit Agreement.

Backstop Agreement: the Backstop Commitment Agreement, dated as of September 21, 2016, among the Borrower, certain subsidiaries of the Borrower and the backstop participants party thereto.

Bank Product: any of the following products, services or facilities extended to the Borrower or an Affiliate of the Borrower by a Lender, an Affiliate of a Lender or any Person who, at the time of establishing any of the following was a Lender or an Affiliate of a Lender: (a) Cash Management Services; (b) products under Hedging Agreements; and (c) other banking products or services.

Bankruptcy Code: as defined in the recitals hereto.

Bankruptcy Court: as defined in the recitals hereto.

Base Rate: for any day, a per annum rate equal to the greatest of (a) the Prime Rate for such day; (b) the Federal Funds Rate for such day, plus 0.50%; or (c) LIBOR for a 1 month interest period as of such day, plus 1.0%.

Base Rate Loan: any Loan that bears interest based on the Base Rate.

Board of Governors: the Board of Governors of the Federal Reserve System.

Borrowed Money: with respect to any Obligor, without duplication, its (a) Debt that (i) arises from the lending of money by any Person to such Obligor or (ii) is evidenced by notes, drafts, bonds, debentures, credit documents or similar instruments; (b) Capital Leases; and (c) reimbursement obligations with respect to drawn letters of credit.

Borrower: as defined in the preamble hereto.

Borrower Materials: Compliance Certificates and other information, reports, financial statements and other materials delivered by Borrower hereunder, as well as other Reports and information provided by Agent to Lenders.

Borrowing: a group of Loans that are made or converted together on the same day and have the same interest option and, if applicable, Interest Period.

Borrowing Base: has the meaning assigned to such term in the ABL Credit Agreement.

Business Day: 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, New York, and if such day relates to a LIBOR Loan, any such day on which dealings in Dollar deposits are conducted in the London interbank market.

Capital Expenditures: all expenditures made by the Borrower or Restricted Subsidiary for the acquisition of fixed assets, or any improvements, replacements, substitutions or additions thereto with a useful life of more than one year and which are accounted for as “capital expenditures” in accordance with GAAP.

Capital Lease: any lease that is required to be capitalized for financial reporting purposes in accordance with GAAP.

Cash Collateral: cash, and any interest or other income earned thereon, that is delivered to Agent to Cash Collateralize any Obligations.

Cash Collateral Account: a demand deposit, money market or other account established by Agent at such commercial bank as Agent may select in its reasonable discretion, which account shall be subject to a Lien in favor of Agent.

Cash Collateralize: the delivery of cash to Agent, as security for the payment of any inchoate, contingent or other Obligations, in an amount equal to Agent’s good faith estimate of the amount due or to become due, including fees, expenses and indemnification hereunder. “Cash Collateralization” has a correlative meaning.

Cash Equivalents: (a) direct obligations of the United States or any agency thereof, or obligations guaranteed by the United States or any agency thereof, in each case maturing within one (1) year from the date of creation thereof; (b) deposits maturing within one (1) year from the date of creation thereof with, including certificates of deposit issued by, any Lender or any office located in the United States of any other bank or trust company which is organized under the laws of the United States or any state thereof having capital, surplus and undivided profits aggregating at least \$100,000,000 (as of the date of such bank or trust company’s most recent

financial reports) and a short term deposit rating of no lower than A2 or P2, as such rating is set forth from time to time, by S&P or Moody's, respectively or, in the case of any Foreign Subsidiary, a bank organized in a jurisdiction in which the Foreign Subsidiary conducts operations having assets in excess of \$500,000,000; (c) repurchase obligations of any Lender or of any commercial bank satisfying the requirements of clause (b) hereof, having a term of not more than 30 days with respect to securities issued or fully guaranteed or insured by the United States government; (d) commercial paper maturing within one year from the date of creation thereof rated in the highest grade by S&P or Moody's; (e) securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any Lender or any commercial bank satisfying the requirements of clause (b) hereof; (f) deposits in money market funds investing exclusively in Investments described in clauses (a) through (e) hereof and (g) instruments equivalent to those referred to in clauses (a) through (f) above of comparable tenor to those referred to above, (i) denominated in Canadian dollars, pounds sterling, euros, the national currency of any participating member state of the European Union or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business, and (ii) used in the ordinary course of business of the Borrower and its Subsidiaries for cash management purposes in any jurisdiction outside the United States of America to the extent reasonably required or advisable in connection with any business conducted by the Borrower or any Subsidiary.

Cash Management Services: services relating to operating, cash management collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, treasury services, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

CERCLA: the Comprehensive Environmental Response Compensation and Liability Act (42 U.S.C. § 9601 et seq.).

CFC: as defined in the definition of "Foreign Subsidiary".

Change in Law: the occurrence, after the date hereof, of (a) the adoption, taking effect or phasing in of any law, rule, regulation or treaty; (b) any change in any law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making, issuance or application of any request, guideline, requirement or directive (whether or not having the force of law) by any Governmental Authority; provided, however, that "Change in Law" shall include, regardless of the date enacted, adopted or issued, all requests, rules, guidelines, requirements or directives (i) under or relating to the Dodd-Frank Wall Street Reform and Consumer Protection Act, or (ii) promulgated pursuant to Basel III by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any similar authority) or any other Governmental Authority.

Change of Control: the occurrence of one or more of the following events:

(a) any sale, lease, transfer, conveyance or other disposition (in one transaction or a series of related transactions) of all or substantially all of the properties or assets of the Borrower and its Restricted Subsidiaries taken as a whole to any Person or group of related Persons for purposes of Section 13(d) of the Exchange Act (a "Group") together with any

Affiliates thereof (whether or not otherwise in compliance with the provisions of this Agreement) unless immediately following such sale, lease, transfer, conveyance or other disposition in compliance with this Agreement such properties or assets are owned, directly or indirectly, by (i) the Borrower or a Restricted Subsidiary of the Borrower or (ii) a Person controlled by the Borrower or a Restricted Subsidiary of the Borrower;

(b) the approval by the holders of Equity Interests of the Borrower of any plan or proposal for the liquidation or dissolution of the Borrower;

(c) the acquisition, in one or more transactions, of beneficial ownership (within the meaning of Rule 13d-3 under the Exchange Act) of the Equity Interests of the Borrower by any Person or Group (other than Permitted Holders) that, as a result of such acquisition, either (i) beneficially owns (within the meaning of Rule 13d-3 under the Exchange Act), directly or indirectly, 50.1% or more of the Borrower's then outstanding Equity Interests or Voting Stock or (ii) otherwise has the ability to elect, directly or indirectly, a majority of the members of the board of directors of the Borrower, including, without limitation, by the acquisition of revocable proxies for the election of directors;

(d) a "change in control" or any comparable term under, and as defined in, the ABL Credit Agreement (to the extent then in effect); or

(e) the Borrower ceases to own and control, beneficially and of record, directly or indirectly, all Equity Interests in Key Energy Services, LLC;

provided, that, none of the transactions contemplated or expressly authorized by the Prepackaged Plan shall constitute, or be deemed to constitute, a Change of Control.

Change of Control Offer: as defined in **Section 5.4.3(a)**.

Change of Control Payment Date: as defined in **Section 5.4.3(b)**.

Chapter 11 Cases: as defined in the recitals hereto.

Claims: all claims, liabilities, obligations, losses, damages, penalties, judgments, proceedings, interest, costs and expenses of any kind (including remedial response costs, reasonable attorneys' fees and Extraordinary Expenses) at any time (including after Full Payment of the Obligations or replacement of Agent or any Lender) incurred by any Indemnatee or asserted against any Indemnatee by any Obligor or other Person, in any way relating to (a) any Loans, Loan Documents, Borrower Materials, or the use thereof or transactions relating thereto, (b) any action taken or omitted to be taken by any Indemnatee in connection with any Loan Documents, (c) the existence or perfection of any Liens, or realization upon any Collateral, (d) exercise of any rights or remedies under any Loan Documents or Applicable Law, or (e) failure by any Obligor to perform or observe any terms of any Loan Document, in each case including all costs and expenses relating to any investigation, litigation, arbitration or other proceeding (including an Insolvency Proceeding or appellate proceedings), whether or not the applicable Indemnatee is a party thereto.

Closing Date: as defined in **Section 6.1**.

Closing Date Mortgaged Real Property: as defined in **Section 7.3.3(a)**.

Code: the Internal Revenue Code of 1986, as amended.

Collateral: all Property described in **Section 7.1** (and not excluded by **Section 7.7**), all Property described in any Security Documents as security for any Obligations, and all other Property that now or hereafter secures (or is intended to secure) any Obligations.

Compliance Certificate: a certificate, in substantially the form attached hereto as Exhibit C or such other form reasonably satisfactory to Agent, by which Borrower (a) certifies compliance with **Section 10.3**, (b) calculates the Asset Coverage Ratio and Liquidity for the applicable date (regardless of whether compliance with the Asset Coverage Ratio or Liquidity is tested for such date), (c) to the extent applicable, attaches related consolidating financial statements reflecting the adjustments necessary to eliminate (1) the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements and (2) the financial and other operational results of Unrestricted Subsidiaries (if any), (d) sets forth reasonably detailed calculations satisfactory to Agent demonstrating that the aggregate value of the Excluded Property designated under clause (i) of the definition thereof as of the last day of the period covered by such Compliance Certificate does not exceed \$5,000,000, and (e) lists any office or place of business that was opened or was closed during the period covered by the certificate.

Confirmation Order: has the meaning assigned to such term in the Prepackaged Plan.

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

Consolidated Depreciation and Amortization Expense: with respect to the Borrower, for any period, the total amount of depreciation and amortization expense, including (i) amortization of deferred financing fees and debt issuance costs, commissions, fees and expenses, (ii) amortization of unrecognized prior service costs and actuarial gains and losses related to pensions and other post-employment benefits and (iii) amortization of intangibles (including goodwill and organizational costs) (excluding any such adjustment to the extent that it represents an accrual of or reserve for cash expenditures in any future period except to the extent such adjustment is subsequently reversed), in each case of the Borrower and its Consolidated Subsidiaries for such period on a consolidated basis and otherwise determined in accordance with GAAP.

Consolidated Interest Expense: for any period, the sum (determined without duplication) of the aggregate gross interest expense of the Borrower and the Consolidated Subsidiaries for such period, whether paid or accrued, including to the extent included in interest expense under GAAP: (a) amortization of debt issuance costs and original issue discount, non-cash interest payments, the interest component of any deferred payment obligations, commissions, discounts and other fees (excluding expenses resulting from the discounting of any outstanding Debt in connection with the application of fresh start accounting in relation to the Prepackaged Plan or transactions related thereto) and charges incurred in respect of letter of credit or bankers'

acceptance financings, and net payments (if any) pursuant to Hedging Agreement; (b) any interest expense on Debt of another Person that is guaranteed by the Borrower or any Consolidated Subsidiary or secured by a Lien on assets of the Borrower or any Consolidated Subsidiary (whether or not such guarantee or Lien is called upon); (c) capitalized interest and (d) the portion of any payments or accruals under Capital Leases allocable to interest expense, *plus* the portion of any payments or accruals under synthetic leases allocable to interest expense whether or not the same constitutes interest expense under GAAP.

~~Consolidated Net Income: for any period of determination, the aggregate of the net income (or loss) of the Borrower and the Consolidated Subsidiaries after allowances for taxes for such period determined on a consolidated basis in accordance with GAAP; provided that there shall be excluded from such net income (to the extent otherwise included therein) the following: (a) the net income of any Person in which the Borrower or any Consolidated Subsidiary has an interest (which interest does not cause the net income of such other Person to be consolidated with the net income of the Borrower and the Consolidated Subsidiaries in accordance with GAAP), except to the extent of the amount of dividends or distributions actually paid in cash during such period by such other Person to the Borrower or to a Consolidated Subsidiary, as the case may be; (b) the net income (but not loss) during such period of any Consolidated Subsidiary to the extent that the declaration or payment of dividends or similar distributions or transfers or loans by that Consolidated Subsidiary is not at the time permitted by operation of the terms of its charter or any agreement, instrument or Applicable Law applicable to such Consolidated Subsidiary or is otherwise restricted or prohibited, in each case determined in accordance with GAAP; (c) any non-cash gains or losses during such period, including any under ASC 718 or ASC 815 and (d) any non-cash gains or losses attributable to writeups or writedowns of assets.~~²

Consolidated Net Income: with respect to the Borrower for any period, the aggregate of the net income (loss) of the Borrower and its Consolidated Subsidiaries for such period, on a consolidated basis, determined in accordance with GAAP; provided that (without duplication):

(i) any after-tax effect of all extraordinary, nonrecurring or unusual gains or losses or income or expenses (including related to the Transactions on the Closing Date) or any restructuring changes or reserves, including, without limitation, any expenses related to any reconstruction, recommissioning or reconfiguration of fixed assets for alternate uses, retention, severance, system establishment cost, contract termination costs, costs to consolidate facilities and relocate employees, advisor fees and other out of pocket costs and non-cash charges to assess and execute operational improvement plans and restructuring programs, will be excluded;

(ii) any expenses, costs or charges incurred, or any amortization thereof for such period, in connection with any equity issuance, Investment, acquisition, disposition, recapitalization or incurrence or repayment of Debt, including a refinancing thereof (in each case whether or not consummated) (including any such costs and charges incurred in connection with the Transactions on the Closing Date and the Chapter 11 Cases), and all gains and losses realized in connection with any business disposition or any disposition of assets outside the ordinary

² ~~NTD: ABL financial definitions to be reviewed once they have been negotiated in the ABL.~~

course of business or the disposition of securities or the early extinguishment of Debt, together with any related provision for taxes on any such gain, loss, income or expense will be excluded;

(iii) the net income (or loss) of any Person that is not a Consolidated Subsidiary or that is accounted for by the equity method of accounting will be excluded, provided that the income of the Borrower will be included to the extent of the amount of dividends or similar distributions paid in cash (or converted to cash) to the specified Person or a Consolidated Subsidiary of the Person;

(iv) effects of non-cash adjustments (including the effects of such adjustments pushed down to the Borrower and its Consolidated Subsidiaries) in the Borrower's consolidated financial statements (including to property, equipment, inventory and other assets) pursuant to GAAP resulting from the application of purchase accounting and/or fresh start accounting in relation to the Transactions on the Closing Date, the Prepackaged Plan, the Chapter 11 Cases or any consummated acquisition or the amortization or write-off of any amounts thereof (including the impact on net income (or loss) arising from mark-to-market adjustments with respect to earnings), net of taxes, will be excluded;

(v) the net income (or loss) of the Borrower and its Consolidated Subsidiaries will be calculated without deducting the income attributed to, or adding the losses attributed to, the minority equity interests of third parties in any non-wholly-owned Consolidated Subsidiary except to the extent of the dividends paid in cash (or convertible into cash) during such period on the shares of Equity Interests of such Consolidated Subsidiary held by such third parties;

(vi) the cumulative effect of any change in accounting principles will be excluded;

(vii) (a) any non-cash expenses resulting from the grant or periodic remeasurement of stock options, restricted stock grants or other equity incentive programs (including any stock appreciation and similar rights) and (b) any costs or expenses incurred pursuant to any management equity plan or stock option plan or other management or employee benefit plan or agreement or any stock subscription or shareholder agreement, to the extent, in the case of clause (b), that such costs or expenses are funded with cash proceeds contributed to the common equity capital of the Borrower or a Consolidated Subsidiary of the Borrower, will be excluded;

(viii) the effect of any non-cash impairment charges or write-ups, write-downs or write-offs of assets or liabilities resulting from the application of GAAP and the amortization of intangibles arising from the application of GAAP, including pursuant to ASC 805, Business Combinations, ASC 350, Intangibles- Goodwill and Other, or ASC 360, Property, Plant and Equipment, as applicable, will be excluded;

(ix) any net after-tax income or loss from disposed, abandoned or discontinued operations or assets and any net after-tax gains or losses on disposed, abandoned or discontinued, transferred or closed operations or assets will be excluded;

(x) any increase in amortization or depreciation, or effect of any adjustments to inventory, property, plant or equipment, software, goodwill and other intangibles, debt line items, deferred revenue or rent expense, any one time cash charges (such as purchased in process research and development or capitalized manufacturing profit in inventory) or any other effects, in each case, resulting from purchase accounting in connection with the Transactions on the Closing Date or any other acquisition prior to or following the Closing Date will be excluded;

(xi) unrealized gains and losses relating to foreign currency transactions, including those relating to mark- to-market of Debt resulting from the application of GAAP, including pursuant to ASC 830, Foreign Currency Matters (including any net loss or gain resulting from hedge arrangements for currency exchange risk) will be excluded;

(xii) any net gain or loss from Obligations or in connection with the early extinguishment of obligations under Hedging Agreements (including of ASC 815, Derivatives and Hedging) shall be excluded;

(xiii) subject to the Cost Savings Cap, the amount of any costs and charges related to restructuring, business optimization, acquisition and integration (including, without limitation, retention, severance, systems establishment costs, excess pension charges, information technology costs, rebranding costs, contract termination costs, including future lease commitments, costs related to the start-up, closure or relocation or consolidation of facilities and costs to relocate employees) shall be excluded;

(xiv) costs, charges and expenses related to the closure, disposition or wind-down of any operations or assets located or conducted outside of the United States, including severance and contract termination costs, shall be excluded as long as the aggregate amount excluded pursuant this clause (xiv) does not exceed \$5,000,000 in the aggregate; and

(xv) accruals and reserves that are established or adjusted within 12 months after the Closing Date that are so required to be established as a result of the Transactions on the Closing Date in accordance with GAAP shall be excluded.

Consolidated Subsidiaries: means each Restricted Subsidiary of the Borrower (whether now existing or hereafter created or acquired) the financial statements of which shall be consolidated with the financial statements of the Borrower in accordance with GAAP.

Contingent Obligation: any obligation of a Person arising from a guaranty, indemnity or other assurance of payment or performance of any Debt, lease, dividend or other obligation (“primary obligations”) of another obligor (“primary obligor”) in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty, endorsement, co-making or sale with recourse of an obligation of a primary obligor; (b) obligation to make take-or-pay or similar payments regardless of nonperformance by any other party to an agreement; and (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth or solvency of the primary obligor, (iv) to purchase Property or services for the purpose of assuring the ability of the primary obligor to perform a primary obligation, or (v) otherwise to assure or hold harmless the holder of any primary obligation

against loss in respect thereof. The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

Contract Consideration: as defined in the definition of “Excess Cash Flow”.

Cortland Corp.: Cortland Products Corp., a Delaware corporation, and its successors and assigns.

Cortland LLC: Cortland Capital Market Services LLC, a Delaware limited liability company, and its successors and assigns.

Cost Savings Cap: as defined in the definition of the term “Pro Forma Cost Savings.”

Cure Period: as defined in **Section 10.3.3**.

Current Assets: at any time, the consolidated current assets (other than cash and Cash Equivalents) of the Borrower and its Consolidated Subsidiaries.

Current Liabilities: at any time, the consolidated current liabilities of the Borrower and its Consolidated Subsidiaries at such time, but excluding, without duplication, (a) the current portion of any long-term Debt and (b) outstanding ABL Loans.

CWA: the Clean Water Act (33 U.S.C. §§ 1251 et seq.).

Debt: for any Person, the sum of the following (without duplication): (a) all obligations of such Person for Borrowed Money and obligations evidenced by bonds, notes, debentures and other debt securities of such Person; (b) all accounts payable and all accrued expenses, liabilities or other obligations of such Person to pay the deferred purchase price of Property or services; (c) all obligations under synthetic leases; (d) all Debt (as defined in the other clauses of this definition) of others secured by (or for which the holder of such Debt has an existing right, contingent or otherwise, to be secured by) a Lien on any Property of such Person, whether or not such Debt is assumed by such Person; (e) all Debt (as defined in the other clauses of this definition) of others guaranteed by such Person or in which such Person otherwise assures a creditor against loss of the Debt (howsoever such assurance shall be made) to the extent of the lesser of the amount of such Debt and the maximum stated amount of such guarantee or assurance against loss; (f) all obligations or undertakings of such Person to maintain or cause to be maintained the financial position or covenants of others or to purchase the Debt or Property of others; (g) obligations to pay for goods or services even if such goods or services are not actually received or utilized by such Person; (h) any Debt of a partnership for which such Person is liable either by agreement or by Applicable Law but only to the extent of such liability; and (i) Disqualified Capital Stock; provided that Debt shall not include (i) prepaid or deferred revenue arising in the ordinary course of business and not overdue for more than 60 days, (ii) purchase price holdbacks arising in the ordinary course of business in respect of a portion of the purchase price of an asset to satisfy unperformed obligations of the seller of such asset or (iii) earn-out

obligations until such obligations become a liability on the balance sheet of such Person in accordance with GAAP.

Debt Fund Affiliate: an Affiliated Lender that is a bona fide debt fund or an investment vehicle that is primarily engaged in making, purchasing, holding or otherwise investing in loans, bonds and similar extensions of credit in the ordinary course of business and with respect to which none of the Borrower or the Affiliated Lenders or any Affiliate of the Borrower or the Affiliated Lenders makes investment decisions or has the power, directly or indirectly, to direct or cause the direction of such Affiliated Lender's investment decisions.

Debtor Relief Laws: as defined in **Section 11.1**.

Debtors: as defined in the Prepackaged Plan.

Declined Amounts: as defined in **Section 5.4.1(b)**.

Deemed Cash Equivalents: each of the following:

(a) the assumption of any liabilities (as shown on the Borrower's or the Restricted Subsidiary's most recent balance sheet) of the Borrower or any Restricted Subsidiary of the Borrower (other than liabilities that are by their terms subordinated to Loans or any Guaranty) by the transferee of any such assets pursuant to a customary novation agreement that releases the Borrower or the Restricted Subsidiary from further liability;

(b) any securities, notes or other obligations received by the Borrower or any such Restricted Subsidiary from such transferee that are converted by the Borrower or the Restricted Subsidiary into cash or Cash Equivalents within 180 days following their receipt (to the extent of cash or Cash Equivalents received); and

(c) accounts receivable of a business retained by the Borrower or any of its Restricted Subsidiaries following the sale of such business; provided, that such accounts receivable (i) are not past due more than 60 days and (ii) do not have a payment date greater than 90 days from the date of the invoice creating such accounts receivable.

Default: any event or condition which constitutes an Event of Default or which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

Default Rate: for any Obligation (including, to the extent permitted by law, interest not paid when due), 2% plus the interest rate otherwise applicable thereto.

Defaulting Lender: any Lender that has, or has a direct or indirect parent company that has, become the subject of an Insolvency Proceeding (including reorganization, liquidation, or appointment of a receiver, custodian, administrator or similar Person by the Federal Deposit Insurance Corporation or any other regulatory authority); provided, however, that a Lender shall not be a Defaulting Lender solely by virtue of a Governmental Authority's ownership of an equity interest in such Lender or parent company unless the ownership provides immunity for such Lender from jurisdiction of courts within the United States or from enforcement of

judgments or writs of attachment on its assets, or permits such Lender or Governmental Authority to repudiate or otherwise to reject such Lender's agreements.

Deposit Account Control Agreement: control agreement satisfactory to Agent executed by an institution maintaining a Deposit Account for an Obligor, to perfect Agent's Lien on such account.

Designated Jurisdiction: any country or territory that is itself the subject (or becomes the subject) of Sanctions (currently, Crimea, Cuba, Iran, North Korea, Sudan and Syria).

Disqualified Capital Stock: 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, matures or is mandatorily redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock), pursuant to a sinking fund obligation or otherwise, or is convertible or exchangeable for Debt or redeemable for any consideration other than other Equity Interests (which would not constitute Disqualified Capital Stock) at the option of the holder thereof, in whole or in part, on or prior to the date that is one year after the latest Maturity Date in effect at the date of issuance of such Equity Interest.

Disqualified Institutions: (a) (i) persons identified by name in writing to Agent by the Borrower on or prior to the date hereof and (ii) any strategic competitor of the Borrower or any of its Subsidiaries, in each case of this clause (a)(ii), identified by name in writing to Agent by the Borrower from time to time and (b) any Affiliate of a person identified pursuant to clause (a) that is either (x) identified in writing by the Borrower to Agent or (y) readily identifiable by the Lenders or Agent by name (excluding in the case of clauses (x) and (y), Affiliates that are bona fide debt funds or investment vehicles that purchase commercial loans in the ordinary course of business and with respect to which none of the persons identified in clauses (a) or (b) (other than such debt fund affiliates or investment vehicles) makes investment decisions or has the power, directly or indirectly, to direct or cause the direction of such debt fund affiliate's or investment vehicle's investment decisions); it being understood and agreed that the term "Disqualified Institutions" shall not include the Lenders as of the Closing Date (or any of their Affiliates) (it being understood and agreed that (x) Agent (a) shall not have any responsibility or obligation to determine, monitor or inquire as to whether any person or any potential assignee (or any Affiliate thereof) is a Disqualified Institution and (b) shall not have any liability with respect to any assignment or participation of any Loan made to a Disqualified Institution and (y) no action or inaction by Agent shall be deemed to alter the persons constituting Disqualified Institutions).

Distribution: any payment of a distribution, interest or dividend on any Equity Interest (other than payment-in-kind); distribution, advance or repayment of Debt to a holder of Equity Interests; or purchase, redemption, or other acquisition or retirement for value of any Equity Interest.

Dollars: lawful money of the United States.

Domestic Subsidiary: any Subsidiary that is organized under the laws of the United States of America or any state thereof or the District of Columbia.

~~EBITDA: for any period of determination, the sum of (without duplication), the following determined on a consolidated basis: (a) Consolidated Net Income during such period; plus (b) to the extent deducted from Consolidated Net Income in such period: (i) income tax expense, (ii) franchise tax expense, (iii) Consolidated Interest Expense, (iv) amortization and depreciation during such period, (v) all non-cash charges and adjustments, (vi) non-recurring cash expenses related to the Transactions, (vii) non-recurring cash expenses relating to transactions permitted pursuant to Section 10.2.9(i) provided that the aggregate expenses added back pursuant to this clause (vii) shall not exceed \$10,000,000 through the Maturity Date and (viii) the amount of FCPA Settlement; minus (c) the amount of any cash payment of any settlement of the FCPA Matter in excess of the Net Liquidity, determined immediately prior to such cash payment;~~

EBITDA: with respect to the Borrower for any period, Consolidated Net Income of the Borrower for such period; plus (without duplication):

(i) provision for taxes based on income, profits or capital (including state, franchise, excise and similar taxes in the nature of income taxes) of the Borrower and its Consolidated Subsidiaries for such period, franchise taxes and foreign withholding taxes; plus

(ii) Consolidated Depreciation and Amortization Expense (as defined below) of the Borrower and its Consolidated Subsidiaries for such period, to the extent such expenses were deducted in computing such Consolidated Net Income; plus

(iii) the Consolidated Interest Expense of the Borrower and its Consolidated Subsidiaries for such period, to the extent that such Consolidated Interest Expense was deducted in computing such Consolidated Net Income; plus

(iv) any other consolidated non-cash charges of the Borrower and its Consolidated Subsidiaries for such period, to the extent that such consolidated non-cash charges were included in computing such Consolidated Net Income; provided that if any such non-cash charge represents an accrual or reserve for anticipated cash charges in any future period, the cash payment in respect thereof in such future period shall be subtracted from EBITDA to such extent, and excluding amortization of a prepaid cash item that was paid in a prior period; plus

(v) any losses from foreign currency transactions (including losses related to currency remeasurements of Debt) of the Borrower and its Consolidated Subsidiaries for such period, to the extent that such losses were taken into account in computing such Consolidated Net Income; plus

(vi) any (a) salary, benefit and other direct savings resulting from workforce reductions or shutdown of operations by the Borrower implemented during or reasonably expected to be implemented within the 12 months following such period, (b) severance or relocation costs or expenses of the Borrower during such period and (c) costs and expenses incurred after the Closing Date related to employment of terminated employees incurred by the Borrower during such period; in each case to the extent that such costs and expenses were deducted in computing such Consolidated Net Income and, in each case, subject to the Cost Savings Cap; plus

(vii) losses in respect of post-retirement benefits of the Borrower, as a result of the application of ASC 715, Compensation-Retirement Benefits, to the extent that such losses were deducted in computing such Consolidated Net Income; plus

(viii) the amount of management, monitoring, consulting and advisory fees and related indemnities, charges and expenses paid or accrued to or on behalf of any of the Permitted Holders, in each case, to the extent permitted hereunder and, in any event, the amount added back pursuant to this clause (viii) shall not exceed \$3,500,000 in any Fiscal Year; plus

(ix) any proceeds from business interruption insurance received by the Borrower during such period, to the extent the associated losses arising out of the event that resulted in the payment of such business interruption insurance proceeds were included in computing Consolidated Net Income; plus

(x) expenses incurred prior to the Closing Date in connection with the matters that are subject to the FCPA Settlement not to exceed \$6,000,000 in the aggregate and the amount of the FCPA Settlement not to exceed \$5,000,000 in the aggregate, in each case, incurred or paid on or prior to March 31, 2017; plus

(xi) fees, costs, charges, commissions, operating losses, write-downs and expenses (including (i) fees, costs and expenses related to legal, financial, restructuring and other advisors, auditors and accountants, (ii) printer costs and expenses, (iii) SEC and other filing fees and (iv) underwriting, arrangement, syndication, issuance backstop and placement premiums, discounts, fees, costs and expenses) paid, reimbursed or incurred during such period in connection with the Chapter 11 Cases, the Transactions, obtaining confirmation, effectiveness and implementation of the Prepackaged Plan, negotiation and execution of the Loan Documents (and any Refinancing Debt with respect to the foregoing), and, in each case, any transaction (including any financing, acquisition or disposition, whether or not consummated) or litigation related thereto or contemplated by any of the foregoing, in each case, regardless of whether initially incurred by the Borrower or paid by the Borrower to reimburse others for such fees, costs and expenses, in each case incurred prior to December 31, 2017 as long as the total amount added back pursuant to this clause (xii) does not exceed \$50,000,000 in the aggregate; minus

(xii) the amount of any gain in respect of post-retirement benefits as a result of the application of ASC 715, to the extent such gains were taken into account in computing such Consolidated Net Income; minus

(xiii) any gains from foreign currency transactions (including gains related to currency remeasurements of Debt) of the Borrower and its Consolidated Subsidiaries for such period, to the extent that such gains were taken into account in computing such Consolidated Net Income; minus

(xiv) non-cash gains increasing such Consolidated Net Income for such period, other than the accrual of revenue in the ordinary course of business and other than reversals of an accrual or reserve for a potential cash item that reduced EBITDA in any prior period,

in each case, on a consolidated basis and determined in accordance with GAAP.

Notwithstanding any of the foregoing to the contrary, for purposes of calculating all financial ratios and tests for any four-Fiscal Quarter period that includes the Fiscal Quarter ending March 31, 2016, June 30, 2016 and September 30, 2016, EBITDA shall be based on the sum of (a) the applicable amounts specified below for such Fiscal Quarter, and (b) EBITDA for the portion of such four-Fiscal Quarter period not including such Fiscal Quarter:

<u>Fiscal Quarter Ending</u>	<u>EBITDA</u>
<u>March 31, 2016</u>	<u>\$2,823,000</u>
<u>June 30, 2016</u>	<u>\$(10,646,000)</u>
<u>September 30, 2016</u>	<u>\$(4,002,000)</u>

~~provided, that if the Borrower or any Consolidated Subsidiary shall acquire or dispose of any Property in an aggregate amount of at least \$15,000,000 during such period (other than (A) pursuant to clauses (a), (b), (d), (e), (f), (h) and (i) of **Section 10.2.9** and (B) acquisitions and dispositions of Equipment in the Ordinary Course of Business), then EBITDA shall be calculated, with calculation in form and substance reasonably satisfactory to Agent, after giving pro forma effect to such acquisition or disposition, as if such acquisition or disposition had occurred on the first day of such period (provided that Agent is reasonably satisfied with the form and substance of the related projections).]~~

ECF Amount: as defined in **Section 5.4.2(a)**.

ECF Offer: as defined in **Section 5.4.2(a)**.

Eligible Assignee: a Person that is (a) a Lender (except for any Defaulting Lender and its Affiliates), any Affiliate of a Lender, any Approved Fund or, subject to the restrictions of **Section 14.3.4(a)**, an Affiliated Lender (to the extent such Lender, Affiliate of a Lender, Approved Fund or Affiliated Lender is not subsequently designated as a Disqualified Institution); (b) so long as no Event of Default has occurred and is continuing and subject to the restrictions of **Section 14.3.4(c)**, the Borrower or any of its Subsidiaries; (c) any other assignee (other than a Disqualified Institution (to the extent the list of Disqualified Institutions is made available to all Lenders) or natural Person) subject to (i) so long as no Event of Default has occurred and is continuing, approval by the Borrower (which shall be deemed given if no objection is made within 10 Business Days after notice of the proposed assignment is given to the Borrower) and (ii) approval by Agent, in each case, not to be unreasonably withheld, delayed or conditioned; and (d) during an Event of Default, any Person acceptable to Agent in its discretion.

Enforcement Action: any action to enforce any Obligations or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of Account Debtors, setoff or recoupment, credit bid, action in an Obligor's Insolvency Proceeding or otherwise).

Environmental Laws: Applicable Laws (including permits and legally-binding guidance promulgated by regulators) relating to public health as it relates to Hazardous Material exposure, or the protection or pollution of the environment, including CERCLA, RCRA and CWA.

Environmental Permit: any permit, registration, license, notice, approval, consent, variance, spill or response plan, or other authorization required under or issued pursuant to applicable Environmental Laws.

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

ERISA: the Employee Retirement Income Security Act of 1974.

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

ERISA Event: (a) a Reportable Event with respect to a Pension Plan; (b) withdrawal of an Obligor or ERISA Affiliate from a Pension Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer (as defined in Section 4001(a)(2) of ERISA) or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA; (c) complete or partial withdrawal by an Obligor or ERISA Affiliate from a Multiemployer Plan; (d) filing of a notice of intent to terminate, the treatment of a Pension Plan amendment as a termination under Section 4041 of ERISA, or the institution of proceedings by the PBGC to terminate a Pension Plan; (e) determination that any Pension Plan is considered an at-risk plan or a plan in critical or endangered status under the Code or ERISA; (f) an event or condition that constitutes grounds under Section 4042 of ERISA for termination of, or appointment of a trustee to administer, any Pension Plan; (g) imposition of any liability under Title IV of ERISA, other than for PBGC premiums due but not delinquent under Section 4007 of ERISA, upon any Obligor or ERISA Affiliate; or (h) failure by an Obligor or ERISA Affiliate to meet all applicable requirements under the Pension Funding Rules in respect of a Pension Plan, whether or not waived, or to make a required contribution to a Multiemployer Plan.

Event of Default: as defined in **Section 12.1**.

Excepted Liens: (a) Liens for Taxes, assessments or other governmental charges or levies which are not delinquent or which are being Properly Contested; (b) Liens in connection with workers' compensation, unemployment insurance or other social security, old age pension or public liability obligations which are not delinquent or which are being Properly Contested; (c) landlord's liens, maritime liens, liens granted under storage contracts, operators', vendors', carriers', warehousemen's, repairmen's, mechanics', suppliers', workers', materialmen's, construction or other like Liens, in each case arising in the Ordinary Course of Business or incident to the operation and maintenance of Properties each of which is in respect of obligations that are not delinquent or which are being Properly Contested; (d) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained with a creditor depository institution, provided that no such deposit account is a dedicated cash collateral account or is subject to restrictions against access by the depositor in excess of those set forth by regulations promulgated by the Board of Governors and no such deposit account is

intended by the Borrower or any Restricted Subsidiaries to provide collateral to the depository institution; (e) easements, zoning restrictions, servitudes, permits, conditions, covenants, exceptions or reservations in any Property of the Borrower or any Restricted Subsidiary for the purpose of roads, pipelines, transmission lines, transportation lines or distribution lines, or for the joint or common use of real estate, rights of way, facilities and equipment, that do not secure any monetary obligations and which in the aggregate do not materially impair the use of such Property for the purposes of which such Property is held by the Borrower or any Restricted Subsidiary or materially impair the value of such Property subject thereto; (f) Liens on cash or securities pledged to secure performance of tenders, surety and appeal bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations and other obligations of a like nature, in each case incurred in the Ordinary Course of Business and (g) judgment and attachment Liens not giving rise to an Event of Default, provided that any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired and no action to enforce such Lien has been commenced; provided, further that Liens described in clauses (a) through (d), (f) and (g) shall remain “Excepted Liens” only for so long as no action to enforce such Lien has been commenced and no intention to subordinate the first priority Lien granted in favor of Agent and the Lenders is to be hereby implied or expressed by the permitted existence of such Excepted Liens (other than such Excepted Liens that have priority by operation of law).

Excess Cash Flow: for any Fiscal Year, for the Borrower and the Consolidated Subsidiaries, an amount equal to the excess (if any) of (a) the sum of (i) EBITDA for such Fiscal Year and (ii) reductions to noncash working capital of the Borrower and its Consolidated Subsidiaries for such fiscal year (i.e., the decrease, if any, in Current Assets minus Current Liabilities from the beginning to the end of such fiscal year) over (b) the sum (for such Fiscal Year) of (i) Fixed Charges actually paid in cash by the Borrower and its Consolidated Subsidiaries, (ii) permanent repayments of Loans (other than mandatory prepayment or offers to purchase under **Section 5.3.2** or **5.4**) and regularly scheduled principal payments of other Debt, in each case, made in cash by the Borrower and its Consolidated Subsidiaries during such Fiscal Year, but only to the extent not financed with the proceeds of Borrowed Money, equity issuances, casualty proceeds, condemnation proceeds or other proceeds that would not be included in EBITDA, (iii) Capital Expenditures made in cash by the Borrower and its Consolidated Subsidiaries during such Fiscal Year, except to the extent financed with the proceeds of Borrowed Money, equity issuances, casualty proceeds, condemnation proceeds or other proceeds that would not be included in EBITDA, (iv) without duplication of amounts deducted from Excess Cash Flow in prior periods, the aggregate consideration required to be paid in cash by the Borrower or any of the Consolidated Subsidiaries pursuant to binding contracts (the “Contract Consideration”) entered into prior to or during such Fiscal Year relating to Permitted Acquisitions or similar Investments to be consummated or made during the period of four consecutive Fiscal Quarters of the Borrower following the end of such Fiscal Year, provided that to the extent the aggregate amount of cash (excluding the proceeds of Borrowed Money, equity issuances, casualty proceeds, condemnation proceeds or other proceeds that would not be included in EBITDA) actually utilized to finance such Permitted Acquisitions or similar Investments during such period of four consecutive Fiscal Quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess

Cash Flow at the end of such period of four consecutive Fiscal Quarters, (v) additions to working capital for such Fiscal Year (i.e., the increase, if any, in Current Assets minus Current Liabilities from the beginning to the end of such Fiscal Year), (vi) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash during such Fiscal Year that is required to be made in connection with any prepayment of Debt, (vii) the amount of cash Taxes (including penalties and interest) paid or tax reserves set aside or payable without duplication in such Fiscal Year, (viii) any Asset Disposition proceeds or casualty proceeds to the extent otherwise included in the definition of Excess Cash Flow and to the extent the Borrower is in compliance with the applicable mandatory prepayment requirements set forth in **Section 5.4.1**, (ix) the fees, premiums, expenses and costs payable by the Borrower and its Consolidated Subsidiaries in connection with their entrance into the Loan Documents and the consummation of the Prepackaged Plan and other transaction costs and expenses related to items (ii)-(iv) above and (x) losses, charges and expenses related to internal software development that are expensed but could have been capitalized under alternative accounting policies in accordance with GAAP.

Excluded Accounts: as defined in **Section 8.3**.

Excluded Property: (i) any Real Estate and Vehicles owned by an Obligor that are designated by such Obligor as Excluded Property (provided that no Obligor may designate any individual Real Property owned as of the Closing Date with a fair market value in excess of \$175,000 or any individual Real Property acquired after the Closing Date with a fair market value in excess of \$500,000 as Excluded Property) and (ii) any asset held by the SPV (but not the Equity Interests issued by the SPV); provided that the aggregate value of all Real Estate and Vehicles owned by Obligors that constitute Excluded Property under clause (i) above may not exceed \$5,000,000 (it being understood and agreed that if the aggregate value of all such Real Estate and Vehicles exceeds \$5,000,000, Obligors shall subject one or more pieces of Real Estate to the Mortgages pursuant to **Section 7.3.1(a)** or **(b)**, as applicable and/or subject one or more Vehicles to the Lien in favor of Agent pursuant to **Section 7.3.2** such that the aggregate value of all such Real Estate and Vehicles that are not subject to a Mortgage is less than \$5,000,000); provided further that in no event shall (x) any Specified Vehicle or (y) any Vehicle owned by any Obligor as of the date hereof constitute Excluded Property unless, in the case of clause (y), the Borrower, after use of commercially reasonable efforts, is unable to perfect the Lien thereon. For purposes of calculating the aggregate value of the Property described above, (a) the value assigned to any Real Estate shall be the individual net book value of such Real Estate and (b) the value assigned to any Vehicle shall be the value assigned to such Vehicle in the most recent PP&E Value Report.

Excluded Subsidiary: (a) an Immaterial Domestic Subsidiary, (b) a captive insurance Subsidiary, (c) a Foreign Subsidiary or, subject to **Section 10.1.17**, a Subsidiary of a Foreign Subsidiary and (d) an Unrestricted Subsidiary.

Excluded Taxes: any of the following Taxes imposed on or with respect to a Recipient or required to be withheld or deducted from a payment to a Recipient, (a) Taxes imposed on or measured by 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 applicable Lending Office located in, the jurisdiction imposing such Tax (or any political subdivision thereof) or (ii) that are Other

Connection Taxes, (b) U.S. federal withholding Taxes imposed on amounts payable to or for the account of a Lender with respect to an applicable interest in a Loan pursuant to a law in effect on the date on which (i) such Lender acquires such interest in the Loan (other than pursuant to an assignment request by the Borrower under **Section 14.4**) or (ii) such Lender changes its Lending Office, except in each case to the extent that, pursuant to **Section 5.10**, amounts with respect to such Taxes were payable either to such Lender's assignor immediately prior to such assignment or to such Lender immediately prior to its change in Lending Office, (c) Taxes attributable to such Recipient's failure to comply with **Section 5.11** and (d) any U.S. federal withholding Taxes imposed under FATCA.

Expected Asset Sale Proceeds: has the meaning assigned in the Prepackaged Plan.

Extended Maturity Date: as defined in **Section 2.5.1**.

Extension: as defined in **Section 2.5.1**.

Extension Amendments: as defined in **Section 2.5.4**.

Extension Loan: a Loan that is subject to an Extension Amendment.

Extension Offer: as defined in **Section 2.5.1**.

Extraordinary Expenses: all reasonable and documented costs, expenses or advances that Agent may incur during an Event of Default, or during the pendency of an Insolvency Proceeding of an Obligor, including those relating to (a) any audit, inspection, repossession, storage, repair, appraisal, insurance, manufacture, preparation or advertising for sale, sale, collection, or other preservation of or realization upon any Collateral; (b) any action, arbitration or other proceeding (whether instituted by or against Agent, any Lender, any Obligor, any representative of creditors of an Obligor or any other Person) in any way relating to any Collateral (including the validity, perfection, priority or avoidability of Agent's Liens with respect to any Collateral), Loan Documents or Obligations, including any lender liability or other Claims; (c) the exercise of any rights or remedies of Agent in, or the monitoring of, any Insolvency Proceeding; (d) settlement or satisfaction of taxes, charges or Liens with respect to any Collateral; (e) any Enforcement Action; and (f) negotiation and documentation of any modification, waiver, workout, restructuring or forbearance with respect to any Loan Documents or Obligations. Such costs, expenses and advances include transfer fees, Other Taxes, storage fees, insurance costs, permit fees, utility reservation and reasonable and documented standby fees, legal fees, appraisal fees, brokers' and auctioneers' fees and commissions, accountants' fees, environmental study fees, wages and salaries paid to employees of any Obligor or independent contractors in liquidating any Collateral, and travel expenses.

FATCA: Sections 1471 through 1474 of the Code (including any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, any intergovernmental agreement entered into in connection with the implementation of such Sections of the Code and any fiscal or regulatory legislation, rules or practices adopted pursuant to such intergovernmental agreement.

FCPA Settlement: the cease and desist order entered by the Securities and Exchange Commission with respect to the Borrower on August 11, 2016 and effective as of August 11, 2016.

Federal Funds Rate: the weighted average of interest rates on overnight federal funds transactions with members of the Federal Reserve System on the applicable Business Day (or on the preceding Business Day, if the applicable day is not a Business Day), as published by the Federal Reserve Bank of New York on the next Business Day, as determined by Agent in its sole discretion.

Final Order: has the meaning assigned to such term in the Prepackaged Plan.

Fiscal Quarter: each period of three months, commencing on the first day of a Fiscal Year.

Fiscal Year: the fiscal year of Borrower and Restricted Subsidiaries for accounting and tax purposes, ending on December 31 of each year.

Fixed Charge Coverage Ratio: the ratio, determined on a consolidated basis for the Borrower and its Consolidated Subsidiaries for the most recently completed ~~four Fiscal~~ trailing 12-month or four Fiscal Quarter period ~~for which financial statements have been delivered pursuant to Section 10.1.2, of (a) EBITDA to (b) Fixed Charges. If the Borrower or any of its Consolidated Subsidiaries incurs, assumes, guarantees, redeems or repays any Debt (other than ABL Loans) or issues, repurchases or redeems preferred stock subsequent to the commencement of the period for which the Fixed Charge Coverage Ratio is being calculated but on or prior to the date on which the event for which the calculation of the Fixed Charge Coverage Ratio is made, then the Fixed Charge Coverage Ratio shall be calculated giving pro forma effect to such incurrence, assumption, guarantee, redemption or repayment of Debt, or such issuance, repurchase or redemption of preferred stock, as if the same had occurred at the beginning of the applicable four-quarter reference period, as applicable, of (a) EBITDA minus (i) Capital Expenditures (excluding (A) those financed or funded with Borrowed Money (other than ABL Loans), (B) the portion thereof funded with the Net Cash Proceeds from Asset Dispositions which Borrower is permitted to use to reinvest in the business pursuant to the definition of "Net Cash Proceeds" and (C) the portion thereof funded with the proceeds of casualty insurance or condemnation awards in respect of any Collateral which Borrower is permitted to use to reinvest in the business pursuant to the definition of "Net Cash Proceeds" and (ii) cash taxes paid (net of cash tax refunds received during such period), to (b) Fixed Charges.~~

Fixed Charges: the sum, without duplication, of: (a) the Consolidated Interest Expense for such period, and (b) all dividend payments, whether or not in cash, on any series of preferred stock of the Borrower and the Consolidated Subsidiaries, other than dividend payments on Equity Interests payable solely in Equity Interests of the Borrower (other than Disqualified Capital Stock).

Flood Laws: (a) the National Flood Insurance Act of 1994 (which comprehensively revised the National Flood Insurance Act of 1968 and the Flood Disaster Protection Act of 1973) as now or hereafter in effect or any successor statute thereto, (b) the Flood Insurance Reform Act

of 2004 as now or hereafter in effect or any successor statute thereto, (c) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto, and (d) all other Applicable Laws relating to policies and procedures that address requirements placed on federally regulated lenders relating to flood matters, in each case, as now or hereafter in effect or any successor statute thereto.

FLSA: the Fair Labor Standards Act of 1938.

Foreign Lender: any Lender that is not a U.S. Person.

Foreign Plan: any employee benefit plan or arrangement (a) maintained or contributed to by any Obligor or Subsidiary that is not subject to the laws of the United States; or (b) mandated by a government other than the United States for employees of any Obligor or Subsidiary.

Foreign Subsidiary: a Subsidiary that is a “controlled foreign corporation” under Section 957 of the Code (a “CFC”).

Full Payment: with respect to any Obligations or Guaranteed Obligations, as applicable, (a) the full cash payment thereof (other than inchoate or contingent or reimbursable obligations for which no claim has been asserted), including any interest, fees and other charges accruing during an Insolvency Proceeding (whether or not allowed in the proceeding); and (b) if such Obligations or Guaranteed Obligations are inchoate or contingent in nature (other than inchoate or contingent or reimbursable obligations for which no claim has been asserted), Cash Collateralization thereof (or delivery of a standby letter of credit acceptable to Agent in its discretion, in the amount of required Cash Collateral).

GAAP: generally accepted accounting principles in effect in the United States from time to time.

Governmental Approvals: all authorizations, consents, approvals, licenses and exemptions of, registrations and filings with, and required reports to, all Governmental Authorities.

Governmental Authority: the government of the United States of America, any other nation or 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 supranational bodies, such as the European Union or the European Central Bank).

Group: as defined in the definition of “Change of Control”.

Guaranteed Obligations: as defined in **Section 11.1**.

Guarantors: (a) Key Energy Services, LLC, a Texas limited liability company and (b) each other domestic Subsidiary, or, subject to the consent of the Agent in its reasonable discretion, any other Person that guarantees payment or performance of the Obligations; provided that, no Excluded Subsidiary or the SPV shall be a Guarantor.

Guaranty: the guaranty of each Guarantor set forth in **Section 11.1**.

Hazardous Material: any substance regulated or as to which liability might arise under any applicable Environmental Law including: (a) any chemical, compound, material, product, byproduct, substance or waste defined as or included in the definition or meaning of “hazardous substance,” “hazardous material,” “hazardous waste,” “solid waste,” “toxic waste,” “extremely hazardous substance,” “toxic substance,” “contaminant,” “pollutant,” or words of similar meaning or import found in any applicable Environmental Law; (b) hydrocarbons, petroleum products, petroleum substances, natural gas, oil, oil and gas waste, crude oil, and any components, fractions, or derivatives thereof; and (c) radioactive materials, explosives, asbestos or asbestos containing materials, polychlorinated biphenyls, radon, infectious or medical wastes, to the extent any of the foregoing are present in quantities or concentrations prohibited under applicable Environmental Laws.

Hedging Agreement: means any agreement with respect to any swap, forward, future or derivative transaction or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value or any similar transaction or any combination of these transactions, in each case, not entered into for speculative purposes.

Hedging Termination Value: in respect of any one or more Hedging Agreements, after taking into account the effect of any legally enforceable netting agreement relating to such Hedging Agreements, (a) for any date on or after the date such Hedging Agreements have been closed out and termination value(s) determined in accordance therewith, such termination value(s) and (b) for any date prior to the date referenced in clause (a), the amount(s) determined as the mark-to-market value(s) for such Hedging Agreements, as determined by the counterparties to such Hedging Agreements.

Immaterial Domestic Subsidiary: any Domestic Subsidiary of the Borrower (other than a Subsidiary that is a Guarantor on the Closing Date) designated by the Borrower in writing as an Immaterial Domestic Subsidiary which has assets with a net book value of \$1,000,000 or less and annual revenues of \$1,000,000 or less; provided that all Domestic Subsidiaries so designated as Immaterial Domestic Subsidiary may not have at any time, in the aggregate, assets with a net book value exceeding \$5,000,000 or annual revenues exceeding \$5,000,000; and in the event such thresholds are exceeded at any time, and the Borrower does not promptly deliver to Agent a written notice asserting that such Domestic Subsidiary shall no longer be deemed an Immaterial Domestic Subsidiary, then the most recently designated Immaterial Domestic Subsidiary shall no longer be deemed an Immaterial Domestic Subsidiary. All of the Immaterial Domestic Subsidiaries as of the Closing Date are listed on Schedule 1.1(B) and designated thereon as Immaterial Domestic Subsidiaries.

Indemnified Taxes: (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment on account of an Obligation; and (b) to the extent not otherwise described in clause (a), Other Taxes.

Indemnitees: Agent Indemnitees and Lender Indemnitees.

Information: as defined in **Section 15.12**.

Initial Loans: the term loans issued by the Borrower to the Lenders pursuant to **Section 2.1**.

Insolvency Proceeding: any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

Intellectual Property: all intellectual and similar Property of a Person, including inventions, designs, patents, copyrights, trademarks, service marks, trade names, trade secrets, confidential or proprietary information, customer lists, know-how, software and databases; all embodiments or fixations thereof and all related documentation, applications, registrations and franchises; all licenses or other rights to use any of the foregoing; and all books and records relating to the foregoing.

Intellectual Property Claim: any claim or assertion (whether in writing, by suit or otherwise) that the Borrower's or Restricted Subsidiary's ownership, use, marketing, sale or distribution of any Inventory, Equipment, Intellectual Property or other Property violates another Person's Intellectual Property.

Intercreditor Agreement: the intercreditor agreement of even date herewith, between the ABL Agent and Agent.

Intercompany Note: as defined in **Section 10.2.1(e)**.

Interest Period: as defined in **Section 3.1.3**.

Interim PP&E Value Report: as defined in **Section 10.1.2(m)(i)**.

Inventory: as defined in the UCC, including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in the Borrower's business (but excluding Equipment).

Investment: with respect to any Person, all direct or indirect investments by such Person in other Persons (including Affiliates) in the forms of loans (including guarantees or other obligations), advances or capital contributions (excluding commission, travel and similar advances to officers and employees made in the ordinary course of business), purchases or other acquisitions for consideration of Debt, Equity Interests or other securities, together with all items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP. If the Borrower or any Restricted Subsidiary of the Borrower sells or otherwise disposes of less than all of the Equity Interests of any direct or indirect Restricted Subsidiary of the

Borrower such that, after giving effect to any such sale or disposition, such Person is no longer a Restricted Subsidiary of the Borrower, the Borrower will be deemed to have made an Investment on the date of any such sale or disposition equal to the fair market value of the Borrower's Investments in such Subsidiary that were not disposed of or sold.

IP Assignment: a collateral assignment or security agreement pursuant to which an Obligor grants a Lien on its Intellectual Property to Agent, as security for its Obligations.

IRS: the United States Internal Revenue Service.

Lender Indemnitees: Lenders and their officers, directors, employees, Affiliates, agents and attorneys.

Lenders: lenders party to this Agreement and any Person who hereafter becomes a "Lender" pursuant to an Assignment, other than any Person that shall have ceased to be a party hereto pursuant to an Assignment.

Lending Office: the office (including any domestic or foreign Affiliate or branch) designated as such by a Lender by notice to Agent and the Borrower.

Leverage Ratio: the ratio, determined on a consolidated basis for the Borrower and its Consolidated Subsidiaries for the most recently completed four-Fiscal Quarter period for which financial statements have been delivered pursuant to **Section 10.1.2**, of (a) Total Debt as of such date (net of unrestricted cash and unrestricted Cash Equivalents (it being understood that, the existence of a Lien in favor of the Agent (and, at the Borrower's option, any additional Lien in favor of the ABL Agent or holders of Permitted Junior Priority Secured Debt (or their representative)) will not result in such cash or Cash Equivalents becoming restricted) held by Borrower and Guarantors in their Deposit Accounts or Securities Accounts located in the United States) to (b) EBITDA.

LIBOR: the per annum rate of interest (rounded up to the nearest 1/100th of 1.00%) determined by Agent at or about 11:00 a.m. (London time) two Business Days prior to an interest period, for a term equivalent to such period, equal to (a) the London Interbank Offered Rate, or comparable or successor rate approved by Agent, as published on the applicable Bloomberg screen page (or other commercially available source designated by Agent from time to time) or (b) if LIBOR is not available for any reason, the average interest rate (as quoted to Agent by three major banks in the London interbank LIBOR market selected by Agent) at which dollar deposits in the approximate amount of the LIBOR Loan would be offered to Agent; provided, that (i) any comparable or successor rate shall be applied by Agent, if administratively feasible, in a manner consistent with market practice and (ii) if LIBOR shall be less than 1.00%, such rate shall be deemed to be 1.00% for purposes of this Agreement.

LIBOR Loan: each set of Loans bearing interest based on LIBOR and having a common length and commencement of Interest Period.

License: any license or agreement under which an Obligor is authorized to use Intellectual Property in connection with any manufacture, marketing, distribution or disposition of Collateral, any use of Property or any other conduct of its business.

Licensor: any Person from whom an Obligor obtains the right to use any Intellectual Property.

Lien: a Person's interest in Property securing an obligation owed to, or a claim by, such Person, including any lien, security interest, pledge, hypothecation, assignment, trust, reservation, encroachment, easement, right-of-way, covenant, condition, restriction, lease, or other title exception or encumbrance.

Lien Waiver: an agreement, in form and substance reasonably satisfactory to Agent, by which (a) for any material Collateral located on leased premises, the lessor waives or subordinates any Lien it may have on the Collateral, and agrees to permit Agent to enter upon the premises and remove the Collateral or to use the premises to store or dispose of the Collateral; (b) for any Collateral held by a warehouseman, processor, shipper, customs broker or freight forwarder, such Person waives or subordinates any Lien it may have on the Collateral, agrees to hold any Documents in its possession relating to the Collateral as agent for Agent, and agrees to deliver the Collateral to Agent upon request; (c) for any Collateral held by a repairman, mechanic or bailee, such Person acknowledges Agent's Lien, waives or subordinates any Lien it may have on the Collateral, and agrees to deliver the Collateral to Agent upon request; and (d) for any Collateral subject to a Licensor's Intellectual Property rights, the Licensor grants to Agent the right, vis-à-vis such Licensor, to enforce Agent's Liens with respect to the Collateral, including the right to dispose of it with the benefit of the Intellectual Property, whether or not a default exists under any applicable License.

Liquidity: as of any time, the sum of (a) Availability as of such time, *plus* (b) all unrestricted cash and unrestricted Cash Equivalents (it being understood that, for the avoidance of doubt, the existence of a Lien in favor of the Agent (and, at the Borrower's option, any additional Lien in favor of the ABL Agent or holders of Permitted Junior Priority Secured Debt (or their representative)) will not result in such cash or Cash Equivalents becoming restricted) held by Borrower and Guarantors in their Deposit Accounts or Securities Accounts located in the United States as of such time.

Loans: the loans made by the Lenders to the Borrower pursuant to this Agreement, including for the avoidance of doubt, the Initial Loans and the Extension Loans.

Loan Documents: this Agreement, Other Agreements and Security Documents.

Make-Whole Amount: with respect to any Loan repaid or prepaid under **Sections 5.3.1, 5.3.2 or 5.4.3**, if applicable, accelerated pursuant to **Section 12.2** or assigned under **Section 14.4(a)**, whether voluntarily or mandatorily, on any prepayment, repayment, acceleration or assignment date, the greater of:

(a) 1.0% of the principal amount of the Loan repaid, prepaid, accelerated or assigned; and

(b) the excess of:

(i) the present value at such repayment, prepayment or assignment date of (i) (A) the principal amount of such Loans, plus (B) the Applicable Premium on such Loan on the first anniversary of the Closing Date set forth in **Section 5.5(b)**, plus (ii) each required interest payment on such Loan from the date of such repayment, prepayment or assignment (assuming that the rate for LIBOR Loans prevailing at the time of the notice of repayment, prepayment or assignment applies throughout such period) through the first anniversary of the Closing Date (excluding accrued but unpaid interest to the date of such repayment, prepayment or assignment), such present value to be computed using a discount rate equal to the Treasury Rate plus 50 basis points discounted to the repayment, prepayment or assignment date on a semi-annual basis (assuming a 360 day year consisting of twelve 30 day months), over

(ii) the principal amount of such Loans.

Market Disruption Event: as defined in **Section 3.6**.

Material Adverse Effect: a material adverse effect on (a) the business, Properties, condition (financial or otherwise) or results of operations of the Borrower and its Subsidiaries, taken as a whole; (b) the rights and remedies of Agent or any Lender under the Loan Documents, or of the ability of Obligors to perform their respective obligations under the Loan Documents, in each case, taken as a whole; or (c) the validity or enforceability against any Obligor of any Loan Document to which it is a party; provided, that, the Chapter 11 Cases and the events leading up to and following the commencement of the Chapter 11 Cases and any actions taken pursuant to the Prepackaged Plan shall not constitute a Material Adverse Effect.

Material Contract: any agreement or arrangement to which the Borrower or Restricted Subsidiary is party (other than the Loan Documents) (a) that is deemed to be a material contract under the Securities Act of 1933; (b) for which breach, termination, nonperformance or failure to renew could reasonably be expected to have a Material Adverse Effect; or (c) that relates to Material Debt.

Material Debt: Debt (other than the Loans), or obligations in respect of one or more Hedging Agreements, of any one or more of the Borrower and its Restricted Subsidiaries in an aggregate principal amount exceeding \$30,000,000. For purposes of determining Material Debt, the “principal amount” of the obligations of the Borrower or any Restricted Subsidiary in respect of any Hedging Agreement at any time shall be the Hedging Termination Value.

Material Real Property: any owned Real Estate with a net book value greater than \$250,000 located in any Mortgage State.

Maturity Date: (a) with respect to Initial Loans that have not been extended pursuant to **Section 2.5**, the fifth anniversary of the Closing Date and (b) with respect to Extension Loans, the applicable Extended Maturity Date.

Maximum Rate: as defined in **Section 3.10**.

Minimum Extension Condition: as defined in **Section 2.5.3**.

Minimum Liquidity: an amount equal to:

(a) \$100,000,000 of aggregate liquidity, consisting of (i) at least \$80,000,000, combined, of (1) domestic Unrestricted Cash (as defined in the Prepackaged Plan) in bank accounts of the Debtors (at least \$70,000,000 of which shall be deposited in the TL Proceeds and Priority Collateral Account) and (2) Expected Asset Sale Proceeds, if any, and (ii) Availability (as defined in the Original Credit Agreement as of October 24, 2016) under the ABL Credit Agreement; or

(b) \$110,000,000 of aggregate liquidity, consisting of (i) at least \$75,000,000, combined, of (1) domestic Unrestricted Cash (as defined in the Prepackaged Plan) in bank accounts of the Debtors (at least \$65,000,000 of which shall be deposited in the TL Proceeds and Priority Collateral Account) and (2) Expected Asset Sale Proceeds, if any, and (ii) Availability (as defined in the Original Credit Agreement as of October 24, 2016) under the ABL Credit Agreement;

provided, however, that no Unrestricted Cash (as defined in the Prepackaged Plan) shall be counted for purposes of satisfying Minimum Liquidity to the extent it (a) is held in a foreign bank account, or (b) serves to backstop letters of credit under the ABL Credit Agreement.

Moody's: Moody's Investors Service, Inc., and its successors.

Mortgage: a mortgage or deed of trust in which an Obligor grants a Lien on its Real Estate to Agent, as security for its Obligations.

Mortgage State: each of the following states: California, Louisiana, New Mexico, North Dakota, Oklahoma and Texas.

Mortgaged Property: any Real Estate owned by any Obligor that is subject to a Mortgage.

Multiemployer Plan: any employee benefit plan of the type described in Section 4001(a)(3) of ERISA, to which an Obligor or ERISA Affiliate makes or is obligated to make contributions, or during the preceding five plan years, has made or been obligated to make contributions.

Net Cash Proceeds: (a) with respect to an Asset Disposition, proceeds (including, when received, any deferred or escrowed payments) received by the Borrower or any Restricted Subsidiary in cash from such disposition (including cash proceeds subsequently received (as and when received) in respect of noncash consideration initially received), net of (i) reasonable and customary costs and expenses actually incurred in connection therewith, including legal fees and sales commissions; (ii) amounts applied to repayment of Debt secured by a Permitted Lien senior to Agent's Liens on Collateral sold; (iii) transfer or similar taxes; and (iv) reserves for indemnities, until such reserves are no longer needed; provided, however, that, with respect to up to \$20,000,000 of Net Cash Proceeds in any fiscal year and up to \$40,000,000 of Net Cash Proceeds in the aggregate, if (x) the Borrower shall deliver a certificate of a Senior Officer to

Agent promptly following receipt thereof setting forth the Borrower's intent to reinvest such proceeds in the business of the Borrower and the Restricted Subsidiaries or to permanently reduce any Obligations under the Loan Documents, in each case, within 365 days of receipt of such proceeds and (y) no Default or Event of Default shall have occurred and shall be continuing at the time of such certificate, such proceeds shall not constitute Net Cash Proceeds except to the extent not so used at the end of such 365-day period, at which time such proceeds shall be deemed to be Net Cash Proceeds and (b) with respect to the incurrence or issuance of any Debt by the Borrower or any of its Restricted Subsidiaries, the sum of the cash received in connection with such transaction, net of the underwriting discounts and commissions, and other reasonable and customary out-of-pocket expenses, incurred by the Borrower or such Subsidiary in connection therewith.

~~Net Liquidity: with respect to each cash payment of a settlement of, or fine assessed in connection with, the FCPA Matter (a) all unrestricted cash and unrestricted Cash Equivalents (it being understood that, for the avoidance of doubt, the existence of a Lien in favor of the Agent (which Lien, at the Borrower's option, may also be in favor of the ABL Agent or holders of Permitted Junior Priority Secured Debt (or their representative)) will not result in such cash or Cash Equivalents becoming restricted) held by Borrower and Guarantors in their Deposit Accounts or Securities Accounts located in the United States, determined immediately before such cash payment, minus (b) the aggregate principal amount of the ABL Loans (excluding outstanding undrawn letters of credit) outstanding immediately before such cash payment.~~

Non-Recourse Debt: Debt (a) as to which neither the Borrower nor any of its Restricted Subsidiaries, (i) provides any guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Debt) or (ii) is directly or indirectly liable (as a guarantor or otherwise); (b) the incurrence of which will not result in any recourse against any of the assets of the Borrower or its Restricted Subsidiaries; and (c) no default with respect to which would permit (upon notice, lapse of time or both) any holder of any other Debt ("Other Debt") of the Borrower or any of its Restricted Subsidiaries to declare pursuant to the express terms governing such Debt a default on such Other Debt or cause the payment thereof to be accelerated or payable prior to its stated maturity.

Note: a promissory note of the Borrower payable to any Lender or its registered assigns, in substantially the form of **Exhibit D** hereto, evidencing the aggregate Indebtedness of the Borrower to such Lender resulting from all Loans made by such Lender.

Notice of Conversion/Continuation: a request by the Borrower of a conversion or continuation of any Loans as LIBOR Loans substantially in the form of **Exhibit B** or such other form as shall be reasonably satisfactory to Agent.

Obligations: all (a) principal of and premium (including any Applicable Premium), if any, on the Loans, (b) interest, expenses, fees, indemnification obligations, Extraordinary Expenses and other amounts payable by Obligors under Loan Documents, and (c) other Debts, obligations and liabilities of any kind owing by Obligors pursuant to the Loan Documents, whether now existing or hereafter arising, whether evidenced by a note or other writing, whether allowed in any Insolvency Proceeding, whether arising from an extension of credit, issuance of a letter of

credit, acceptance, loan, guaranty, indemnification or otherwise, and whether direct or indirect, absolute or contingent, due or to become due, primary or secondary, or joint or several.

Obligor: the Borrower, Guarantor or other Person that is liable for payment of any Obligations or that has granted a Lien on its assets in favor of Agent to secure any Obligations.

OFAC: Office of Foreign Assets Control of the U.S. Treasury Department.

OFAC Lists: collectively, the List of Specially Designated Nationals and Blocked persons maintained by OFAC, as amended from time to time, or any similar lists issued by OFAC.

Ordinary Course of Business: the ordinary course of business of the Borrower or any Restricted Subsidiary, undertaken in good faith and consistent with Applicable Law and past practices.

Organic Documents: with respect to any Person, its charter, certificate or articles of incorporation, bylaws, articles of organization, limited liability company agreement, operating agreement, members agreement, shareholders agreement, partnership agreement, certificate of partnership, certificate of formation, voting trust agreement, or similar agreement or instrument governing the formation or operation of such Person.

Original Credit Agreement: as defined in the recitals hereto.

OSHA: the Occupational Safety and Hazard Act of 1970.

Other Agreement: the Agency Letter, the Intercreditor Agreement, each fee letter or any promissory note now or hereafter delivered by an Obligor or other Person to Agent or a Lender in connection with any transactions relating hereto.

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

Other Taxes: all present or future stamp, court, documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a Lien under, or otherwise with respect to, any Loan Document, except Other Connection Taxes imposed with respect to an assignment (other than an assignment made pursuant to **Section 14.4(c)**).

Participant: as defined in **Section 14.2.1**.

PATRIOT Act: the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

Payment Item: each check, draft or other item of payment payable to the Borrower, including those constituting proceeds of any Collateral.

PBGC: the Pension Benefit Guaranty Corporation.

Pension Funding Rules: Code and ERISA rules regarding minimum required contributions (including installment payments) to Pension Plans set forth in, for plan years ending prior to the Pension Protection Act of 2006 effective date, Section 412 of the Code and Section 302 of ERISA, both as in effect prior to such act, and thereafter, Sections 412, 430 and 436 of the Code and Sections 302, and 303 of ERISA.

Pension Plan: any employee pension benefit plan (as defined in Section 3(2) of ERISA), other than a Multiemployer Plan, that is subject to Title IV of ERISA and is sponsored or maintained by an Obligor or ERISA Affiliate or to which the Obligor or ERISA Affiliate contributes or has an obligation to contribute, or in the case of a multiple employer or other plan described in Section 4064(a) of ERISA, has made contributions at any time during the preceding five plan years.

Permitted Acquisition: an Acquisition by the Borrower or any of its Restricted Subsidiaries, provided that (a) the Person to be (or the property of which is to be) so purchased or otherwise acquired shall be engaged in substantially the same lines of business as one or more of the businesses of the Borrower and its Restricted Subsidiaries or in a business or businesses reasonably related thereto; (b) immediately before giving effect to such Acquisition, no Event of Default shall have occurred and be continuing; (c) at the time of such Acquisition and immediately thereafter, (i) no Default shall have occurred and be continuing, and (ii) the Borrower could incur \$1.00 of additional Debt under the Fixed Charge Coverage Ratio test set forth in **Section 10.2.1**; (d) if such acquired Person has outstanding Debt at the time of such Acquisition, such Debt is permitted pursuant to **Section 10.2.1**; (e) any such newly-created or acquired Subsidiary shall comply with the requirements of **Section 10.1.13** and (f) with respect to any Acquisition for which the consideration with respect to such Acquisition equals or exceeds \$25,000,000, the Borrower shall have delivered to Agent and each Lender, at least five Business Days prior to the date on which such Acquisition is to be consummated, a certificate of a Senior Officer, in form and substance reasonably satisfactory to Agent, certifying that all of the requirements set forth in this definition have been satisfied or will be satisfied on or prior to the consummation of such Acquisition.

Permitted Contingent Obligations: Contingent Obligations (a) arising from endorsements of Payment Items for collection or deposit in the Ordinary Course of Business; (b) arising from Hedging Agreements permitted hereunder; (c) existing on the Closing Date, and any extension or renewal thereof that does not increase the amount of such Contingent Obligation when extended or renewed; (d) incurred in the Ordinary Course of Business with respect to surety, appeal or performance bonds, or other similar obligations; (e) arising from customary indemnification obligations in favor of purchasers in connection with dispositions of Equipment and other assets permitted hereunder; (f) arising under the Loan Documents; (g) arising with respect to customary provisions of any contract, customer agreement, purchase order, document or other agreement incurred in the Ordinary Course of Business; (h) arising by operation of law; or (i) in an aggregate amount of \$10,000,000 or less at any time.

Permitted Holders: (a) Platinum and any affiliate (other than a portfolio company) controlled directly or indirectly by Platinum and (b) any Person that forms a Group with any of the Persons listed in clause (a) or Group consisting of any of the Persons listed in clause (a); provided that the Persons listed in clause (a) beneficially own in the aggregate, directly or indirectly, a majority of the Voting Stock in the Borrower held by all Persons in such Group (without giving effect to the application of any attribution rules).

Permitted Junior Debt Conditions: of an applicable Debt are that such Debt (i) is not scheduled to mature prior to the date that is 91 days after the latest maturity of the Loans and the ABL Loans, (ii) does not mature or have scheduled amortization payments of principal or payments of principal and is not subject to mandatory redemption, repurchase, prepayment or sinking fund obligation (except customary asset sale or change of control provisions that provide for the prior repayment in full of the Loans and all other Obligations), in each case prior to the latest maturity of the Loans and the ABL Loans at the time such Debt is incurred, (iii) is not at any time guaranteed by any Subsidiaries other than Subsidiaries that are Guarantors and the terms of such guarantee shall be no more favorable to the secured parties in respect of such Debt than the terms of the Guaranty, and (iv) has covenants, default and remedy provisions and other terms and conditions (other than interest, fees, premiums and funding discounts) that are, taken as a whole, substantially identical to, or less favorable to the investors providing such Debt than, those set forth in this Agreement.

Permitted Junior Priority Secured Debt: secured (or, at the election of Borrower, unsecured) Debt incurred by Obligors in the form of one or more series of junior lien secured (or unsecured) notes or junior lien secured (or unsecured) loans; provided that (i) such Debt is secured by the Collateral (if at all) on a junior priority basis to the Liens in favor of Agent and the Liens in favor of the ABL Agent under security documents substantially similar to the Security Documents and is not secured by any property or assets of the Borrower or any Subsidiary other than the Collateral, (ii) the holders of such Debt (or their representative) and Agent and the ABL Agent shall be party to an intercreditor agreement in form and substance reasonably satisfactory to the Required Lenders, (iii) such Debt has financial covenants that are, taken as a whole, substantially identical to, or less favorable to the investors of such Debt than, those set forth in this Agreement and the ABL Credit Agreement, (iv) interest payable thereon may only be made "in-kind" by increasing the outstanding principal amount thereof, (v) such Debt is subordinated in right of payment to the payment in full of the Obligations on customary terms reasonably satisfactory to Agent and (vi) such Debt meets the Permitted Junior Debt Conditions.

Permitted Liens: as defined in **Section 10.2.2**.

Permitted Purchase Money Debt: Purchase Money Debt of the Borrower and Restricted Subsidiaries that is unsecured or secured only by a Purchase Money Lien, as long as the aggregate amount does not exceed \$25,000,000 at any time.

Permitted Unsecured Debt: unsecured Debt incurred by Obligors in the form of one or more series of senior unsecured notes or loans; provided that such Debt (i) meets the Permitted Junior Debt Conditions, (ii) has no financial maintenance covenants, and (iii) does not contain

any provisions that cross-default to any Default hereunder (but, for the avoidance of doubt, may cross-accelerate).

Person: any individual, corporation, limited liability company, partnership, joint venture, association, trust, unincorporated organization, Governmental Authority or other entity.

Plan: an employee benefit plan (as defined in Section 3(3) of ERISA) maintained for employees of an Obligor or ERISA Affiliate, or to which an Obligor or ERISA Affiliate is required to contribute on behalf of its employees.

Plan Support Agreement: the Plan Support Agreement (including the term sheets and any other attachments thereto), entered into on August 24, 2016 among the Borrower and the supporting holders party thereto, as may be amended, modified or supplemented from time to time in accordance with the terms thereof.

Platform: as defined in **Section 15.3.3**.

Platinum: Platinum Equity Advisors, LLC, a Delaware limited liability company, and its managed funds and/or accounts.

Post-Closing Collateral: as defined in **Section 7.3.3**.

Post-Closing Collateral Period: as defined in **Section 7.3.3**.

PP&E Value: the sum of (a) the total net recovery value (determined on the basis of an orderly liquidation value) after expenses of the Term Priority Collateral as set forth in the most recent PP&E Value Report delivered pursuant to **Section 10.1.2(m)** and (b) cash and Cash Equivalents deposited in the TL Proceeds and Priority Collateral Account; provided that, if the Borrower or any Consolidated Subsidiary shall have acquired or disposed of any Term Priority Collateral after the date of such PP&E Value Report but before the time such PP&E Value is being calculated, then PP&E Value shall be calculated, with calculation in form and substance reasonably satisfactory to Agent, after giving pro forma effect to such acquisition or disposition by (i) with respect to any such acquisition, increasing the PP&E Value reflected in the applicable PP&E Value Report by the purchase price paid by the Borrower or such Consolidated Subsidiary for such Term Priority Collateral and (ii) with respect to any such disposition, deducting from the PP&E Value reflected in the applicable PP&E Value Report the value attributable to any Term Priority Collateral subject to such disposition.

PP&E Value Report: any report delivered pursuant to **Section 10.1.2(m)**.

Prepackaged Plan: as defined in the recitals hereto.

~~Pro Forma Cost Savings~~: without duplication of any amounts referenced in ~~Section 1.5~~ the definition of "Pro Forma Basis," an amount equal to the amount of cost savings, operating expense reductions, operating improvements (including the entry into any material contract or arrangement) and acquisition synergies, in each case, projected in good faith to be realized (calculated on a pro forma basis as though such items had been realized on the first day of such period) as a result of actions taken on or prior to, or to be taken by the Borrower (or

any successor thereto) or any ~~Restricted~~Consolidated Subsidiary within ~~18~~12 months of, the date of such pro forma calculation, net of the amount of actual benefits realized or expected to be realized during such period that are otherwise included in the calculation of EBITDA from such action; provided that (a) such cost savings, operating expense reductions, operating improvements and synergies are factually supportable and reasonably identifiable (as determined in good faith by a responsible financial or accounting officer, in his or her capacity as such and not in his or her personal capacity, of the Borrower (or any successor thereto) and set forth in a certificate of such financial or accounting officer) and are reasonably anticipated to be realized within ~~18~~12 months after the date of such pro forma calculation and (b) no cost savings, operating expense reductions, operating improvements and synergies shall be added pursuant to this definition to the extent duplicative of any expenses or charges otherwise added to Consolidated Net Income or EBITDA, whether through a pro forma adjustment or otherwise, for such period; provided, further, that (i) the aggregate amount added in respect of the foregoing proviso (or otherwise added to Consolidated Net Income ~~or EBITDA~~pursuant to clause (xiii) of the definition thereof or added to EBITDA pursuant to clause (vi) of the definition thereof) shall not exceed with respect to any four quarter period ~~20~~10% of EBITDA for such period (calculated prior to giving effect to any such adjustments) (such limitation, the “Cost Savings Cap”) and (ii) the aggregate amount added in respect of the foregoing proviso (or otherwise added to Consolidated Net Income ~~or EBITDA~~pursuant to clause (xiii) of the definition thereof or added to EBITDA pursuant to clause (vi) of the definition thereof) shall no longer be permitted to be added back to the extent the cost savings, operating expense reductions, operating improvements and synergies have not been achieved within ~~18~~12 months of the action or event giving rise to such cost savings, operating expense reductions, operating improvements and synergies.†

Prime Rate: the rate of interest which is identified as the “Prime Rate” and normally published in the Money Rates section of The Wall Street Journal (or, if such rate ceases to be so published, as quoted from such other generally available and recognizable source as Agent may select); each change in the Prime Rate shall be effective from and including the date such change is announced as being effective.

Pro Rata: with respect to any Lender, a percentage (rounded to the ninth decimal place) determined by dividing the amount of such Lender’s Loans by the aggregate outstanding Loans or, if all Loans have been paid in full, by dividing such Lender’s and its Affiliates’ remaining Obligations by the aggregate remaining Obligations.

Properly Contested: with respect to any obligation of an Obligor, (a) the obligation is subject to a bona fide dispute regarding amount or the Obligor’s liability to pay; (b) the obligation is being properly contested in good faith by appropriate proceedings promptly instituted and diligently pursued; (c) appropriate reserves have been established in accordance with GAAP (to the extent required); (d) non-payment could not have a Material Adverse Effect; (e) no Lien is imposed on assets of the Obligor, unless bonded and stayed to the satisfaction of Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

Property: any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

Purchase Money Debt: (a) Debt (other than the Obligations), including Capital Leases, for payment of any of the purchase price of fixed assets; (b) Debt (other than the Obligations), including Capital Leases, incurred within 20 days before or after acquisition of any fixed assets, for the purpose of financing any of the purchase price thereof; and (c) any renewals, extensions or refinancings (but not increases) thereof.

Purchase Money Lien: a Lien that secures Purchase Money Debt, encumbering only the fixed assets acquired with such Debt and constituting a Capital Lease or a purchase money security interest under the UCC.

RCRA: the Resource Conservation and Recovery Act (42 U.S.C. §§ 6991-6991i).

Real Estate: all right, title and interest (whether as owner, lessor or lessee) in any real Property or any buildings, structures, parking areas or other improvements thereon.

Recipient: Agent, any Lender or any other recipient of a payment to be made by an Obligor under a Loan Document or on account of an Obligation.

Reference Period: as defined in **Section 1.5**.

Refinancing Conditions: the following conditions for Refinancing Debt: (a) it is in an aggregate principal amount that does not exceed the principal amount of the Debt being extended, renewed or refinanced (other than an increase in an aggregate principal amount resulting solely from any capitalized or payment in-kind interest or an increase in the principal amount not in excess of the ABL Cap Amount (as defined in the Intercreditor Agreement)); (b) it has a final maturity no sooner than, a weighted average life no less than, and, unless otherwise approved by Agent, an interest rate no greater than, the Debt being extended, renewed or refinanced; (c) if subordinated, it is subordinated to the Obligations at least to the same extent as the Debt being extended, renewed or refinanced or otherwise on terms and conditions acceptable to Agent; (d) with respect to Refinancing Debt with a principal amount in excess of \$20,000,000, the representations, covenants and defaults applicable to it are no less favorable (taken as a whole in any material respect) to the Borrower, than those applicable to the Debt being extended, renewed or refinanced, unless otherwise approved by Agent; (e) no additional Lien is granted to secure it (other than additional Permitted Liens on Property not constituting Collateral); (f) no additional Person is obligated on such Debt; and (g) upon giving effect to it, no Default exists.

Refinancing Debt: Borrowed Money that is the result of an extension, renewal or refinancing of Debt permitted under **Section 10.2.1(h), (i), (j), (k) or (m)**.

Related Real Estate Documents: with respect to any Real Estate subject to a Mortgage, the following: (a) a mortgagee title policy (or binder therefor) covering Agent's interest under the Mortgage; (b) assignments of leases, estoppel letters, attornment agreements, consents, waivers and releases with respect to other Persons having an interest in the Real Estate; (c) surveys of the Real Estate; (d) appraisals of the Real Estate; and (e) environmental site assessments, and other reports, certificates, studies or data with respect to any environmental risks regarding the Real Estate.

Release: any depositing, spilling, leaking, pumping, pouring, placing, emitting, discarding, abandoning, emptying, discharging, migrating, injecting, escaping, leaching, dumping, or disposing in quantities or concentrations prohibited under Environmental Laws. “Released” has a correlative meaning.

Remedial Work: as defined in **Section 10.1.12(a)**.

Report: as defined in **Section 13.2.3**.

Reportable Event: any event set forth in Section 4043(c) of ERISA, other than an event for which the 30 day notice period has been waived.

Reporting Trigger Period: the period commencing on the day that a Default occurs and continuing until the day that no Default shall exist and be continuing.

Required Lenders: Lenders holding more than 50% of the aggregate outstanding Loans or, if all Loans have been paid in full, the aggregate remaining Obligations; provided, however, that Loans and other Obligations held by a Defaulting Lender and its Affiliates shall be disregarded in making such calculation.

Resolution End Date: as defined in **Section 10.1.2(m)(i)**.

Restricted Subsidiary: any Subsidiary that is not an Unrestricted Subsidiary or a direct or indirect Subsidiary of an Unrestricted Subsidiary.

Restrictive Agreement: an agreement (other than a Loan Document) that conditions or restricts the right of the Borrower, any Restricted Subsidiary or other Obligor to incur or repay Borrowed Money, to grant, convey, create or impose Liens on any assets, to declare or make Distributions, to modify, extend or renew any agreement evidencing Borrowed Money, or to repay any intercompany Debt or requires the consent of other Persons in connection with any of the foregoing.

Royalties: all royalties, fees, expense reimbursement and other amounts payable by the Borrower under a License.

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

Sanctions: all sanctions adopted, administered or enforced by the United Nations Security Council, the European Union, the United Kingdom, OFAC (including any persons subject to country-specific or activity-specific sanctions administered by OFAC and any persons named on any OFAC List), the U.S. Department of Commerce Bureau of Industry and Security, or the U.S. Department of State.

SEC: the Securities and Exchange Commission or any successor thereto.

Secured Parties: Agent and Lenders.

Security Documents: the Guaranties, Mortgages, IP Assignments, Deposit Account Control Agreements, and all other documents, instruments and agreements now or hereafter securing (or given with the intent to secure) any Obligations.

Senior Officer: the chairman of the board, president, chief executive officer, chief financial officer, any senior vice president, vice president, controller or treasurer of Borrower or, if the context requires, an Obligor.

Solvent: as to any Person, such Person (a) owns Property whose fair salable value is greater than the amount required to pay all of its debts (including contingent, subordinated, unmatured and unliquidated liabilities); (b) owns Property whose present fair salable value (as defined below) is greater than the probable total liabilities (including contingent, subordinated, unmatured and unliquidated liabilities) of such Person as they become absolute and matured; (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 the purposes of this definition, the amount of any contingent liability at any time shall be computed as the amount that, in light of all of the facts and circumstances existing at such time, represents the amount that can reasonably be expected to become an actual or matured liability (irrespective of whether such contingent liabilities meet the criteria for accrual under Statement of Financial Accounting Standard No. 5).

Specified Vehicle: any well service rig, contract drilling rig, heavy duty vehicle or coiled tubing unit.

SPV: Key Property Holding Company LLC, a Delaware limited liability company, which is wholly-owned directly by the Borrower or any Guarantor.

Subsidiary: any entity more than 50% of whose voting securities or Equity Interests is owned by the Borrower (including indirect ownership through other entities in which the Borrower directly or indirectly owns more than 50% of the voting securities or Equity Interests).

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

Term Priority Collateral: as defined in the Intercreditor Agreement.

TL Proceeds and Priority Collateral Account: [account #~~5S501Axxxx xx~~74—426807 at Merrill Lynch, Pierce, Fenner & Smith Incorporated and account #426807xxxx07 at Bank of America, N.A.] and, subject to compliance with the requirements set forth in **Section 8.1**, any

other account designated by the Borrower to Agent from time to time as the TL Proceeds and Priority Collateral Account.

Total Debt: as of any date of determination, the aggregate principal amount of Debt of the Borrower and the Consolidated Subsidiaries outstanding on such date, in an amount that would be reflected on a balance sheet prepared in accordance with GAAP consisting of Debt for Borrowed Money and obligations evidenced by bonds, notes, debentures and other debt securities of such Person, capital leases and purchase money indebtedness (other than intercompany Debt between the Borrower and any Restricted Subsidiary or between Restricted Subsidiaries).

Transactions: means, with respect to the Obligors, the execution, delivery and performance by the Obligors of this Agreement and each other Loan Document and the deemed borrowing of Loans by the Borrower, the guarantee of the Obligations and the grant of Liens by the Obligors on Collateral pursuant to the Loan Documents.

Transferee: any actual or potential Eligible Assignee, Participant or other Person acquiring an interest in any Obligations.

Treasury Rate: means, with respect to a repayment, prepayment or assignment date, the weekly average yield on actively traded United States Treasury securities adjusted to a constant maturity of one year (as compiled and published in the most recent Federal Reserve Statistical Release H.15 (519) that has become publicly available at least two business days prior to such repayment, prepayment or assignment date (or, if such Statistical Release is no longer published, any publicly available source of similar market data)).

UCC: the Uniform Commercial Code as in effect in the State of New York or, when the laws of any other jurisdiction govern the perfection or enforcement of any Lien, the Uniform Commercial Code of such jurisdiction.

Unrestricted Subsidiary: (a) any Subsidiary of the Borrower (including any newly acquired or newly formed Subsidiary of the Borrower) that is designated by the board of directors of the Borrower as an Unrestricted Subsidiary pursuant to a resolution of the board of directors of the Borrower as certified in a certificate delivered to Agent by a Senior Officer of the Borrower; (b) each Subsidiary of an Unrestricted Subsidiary, whenever it shall become such a Subsidiary; and (c) those Subsidiaries listed on **Schedule 1.1(A)** so long as each such Subsidiary satisfies the conditions set forth in clause (A) below.

The board of directors of the Borrower may designate any Subsidiary of the Borrower to become an Unrestricted Subsidiary if:

- (A) such Subsidiary:
 - (1) has no Debt other than Non-Recourse Debt;
 - (2) is not party to any agreement, contract, arrangement or understanding with the Borrower or any Restricted Subsidiary of the Borrower unless the

terms of any such agreement, contract, arrangement or understanding are no less favorable to the Borrower or such Restricted Subsidiary than those that might be obtained, in light of all the circumstances, at the time from Persons who are not Affiliates of the Borrower;

(3) is a Person with respect to which neither the Borrower nor any of its Restricted Subsidiaries has any direct or indirect obligation (x) to subscribe for additional Equity Interests or (y) to maintain or preserve such Person's financial condition or to cause such Persons to achieve any specified levels of operating results;

(4) has not guaranteed or otherwise directly or indirectly provided credit support for any Debt of the Borrower or any of its Restricted Subsidiaries;

(5) does not own any Equity Interest of, or own or hold any Lien on any property of, the Borrower or any Restricted Subsidiary of the Borrower; and

(6) would constitute an Investment which the Borrower could make in compliance with **Section 10.2.4**.

Notwithstanding the preceding, (a) if, at any time, any Unrestricted Subsidiary would fail to meet the preceding requirements in clause (A) as an Unrestricted Subsidiary, it shall thereafter cease to be an Unrestricted Subsidiary for purposes of this Agreement and any Debt of such Subsidiary shall be deemed to be incurred as of such date and (b) no Subsidiary may be designated as an Unrestricted Subsidiary hereunder unless such Subsidiary is or contemporaneously herewith becomes designated as an "Unrestricted Subsidiary" under and within the meaning of the ABL Credit Agreement (to the extent then in effect).

Updated Interim PP&E Value Report: as defined in **Section 10.1.2(m)(ii)**.

Upstream Payment: Distribution by a Restricted Subsidiary made ratably with respect to its Equity Interests or made with respect to Debt held by a holder of Equity Interests (other than Equity Interests of the Borrower).

U.S. Person: "United States Person" as defined in Section 7701(a)(30) of the Code.

U.S. Tax Compliance Certificate: as defined in **Section 5.11.2(b)(iii)**.

Vehicles: all cars, trucks, trailers, construction and earth moving equipment and other vehicles covered by a certificate of title law of any state and all tires and other appurtenances to any of the foregoing.

Voting Stock: of any Person as of any date means the Equity Interests of such Person that is at the time entitled to vote in the election of the board of directors of such Person.

1.2 Accounting Terms. Under the Loan Documents and the Borrower Materials (except as otherwise specified therein), all accounting terms not otherwise defined herein shall have the meanings assigned to them in conformity with GAAP. Financial statements required to be delivered by the Borrower to Lenders pursuant to **Section 10.1.2** shall be prepared in accordance

with GAAP as in effect at the time of such preparation. 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 Borrower [or the Required Lenders](#) shall so request, Agent and Borrower shall negotiate in good faith to amend such ratio or requirement to preserve the original intent thereof in light of such change in GAAP (subject to the reasonable approval of Required Lenders), provided that, until so amended, such ratio or requirement shall continue to be computed in conformity with those accounting principles and policies as in effect immediately prior to such change. Notwithstanding anything in this **Section 1.2** or in the definition of “Capital Lease” to the contrary, in the event of an accounting change requiring all leases to be capitalized, only those leases (assuming for purposes hereof that such leases were in existence on the Closing Date) that would constitute Capital Leases in conformity with GAAP 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 or delivered, as applicable, in accordance therewith (provided that together with all financial statements delivered to Agent in accordance with the terms of this Agreement after the date of any such accounting change, the Borrower shall deliver a schedule showing the adjustments necessary to reconcile such financial statements with GAAP as in effect immediately prior to such accounting change).

1.3 Uniform Commercial Code. As used herein, the following terms are defined in accordance with the UCC in effect in the State of New York from time to time: “Chattel Paper,” “Commercial Tort Claim,” “Deposit Account,” “Document,” “Equipment,” “General Intangibles,” “Goods,” “Instrument,” “Investment Property,” “Letter-of-Credit Right,” “Securities Account” and “Supporting Obligation.”

1.4 Certain Matters of Construction. The terms “herein,” “hereof,” “hereunder” and other words of similar import refer to this Agreement as a whole and not to any particular section, paragraph or subdivision. Any pronoun used shall be deemed to cover all genders. In the computation of periods of time from a specified date to a later specified date, “from” means “from and including,” and “to” and “until” each mean “to but excluding.” The terms “including” and “include” shall mean “including, without limitation” and, for purposes of each Loan Document and the Borrower Materials, the parties agree that the rule of *ejusdem generis* shall not be applicable to limit any provision. Section titles appear as a matter of convenience only and shall not affect the interpretation of any Loan Document and the Borrower Materials. All references to (a) laws include all related regulations, interpretations, supplements, amendments and successor provisions; (b) any document, instrument or agreement include any amendments, waivers and other modifications, extensions or renewals (to the extent permitted by the Loan Documents); (c) any section mean, unless the context otherwise requires, a section of this Agreement; (d) any exhibits or schedules mean, unless the context otherwise requires, exhibits and schedules attached hereto, which are hereby incorporated by reference; (e) any Person include such Person’s successors and assigns; (f) time of day mean time of day in New York, New York, unless otherwise specified; (g) a number of days, such number shall refer to calendar days unless Business Days are specified; (h) any action being taken or given on or by a particular calendar day and such calendar day is not a Business Day, unless otherwise specified herein, shall be deemed to refer instead to the next Business Day or (i) except as expressly provided, discretion of Agent or any Lender mean the sole and absolute discretion of such Person acting reasonably. All calculations of value, Loans, Obligations and other amounts herein shall be

denominated in Dollars, unless expressly provided otherwise, and all determinations (including calculations of financial covenants) made from time to time under the Loan Documents and the Borrower Materials shall be made in light of the circumstances existing at such time. No provision of any Loan Documents shall be construed against any party by reason of such party having, or being deemed to have, drafted the provision. Reference to the Borrower's "knowledge" or similar concept means actual knowledge of a Senior Officer, or knowledge that a Senior Officer would have obtained if he or she had engaged in good faith and diligent performance of his or her duties, including reasonably specific inquiries of employees or agents and a good faith attempt to ascertain the matter.

1.5 Pro Forma Calculations. With respect to the calculation of any test, financial ratio, basket or covenant under this Agreement, including the Asset Coverage Ratio and the Fixed Charge Coverage Ratio, of the Borrower and the Restricted Subsidiaries, as of any date, pro forma effect shall be given to the Transactions, any acquisition, merger, consolidation, Investment, any issuance, incurrence, assumption or permanent repayment or redemption of Debt (including Debt issued, incurred or assumed or repaid or redeemed as a result of, or to finance, any relevant transaction and for which any such test, financial ratio, basket or covenant is being calculated) (but excluding (i) normal fluctuations in revolving Debt incurred for working capital purposes and (ii) the identifiable proceeds of any Debt being incurred substantially simultaneously therewith or as part of the same transaction or series of related transactions for purposes of netting cash to calculate the applicable ratio), any issuance or redemption of preferred stock, all sales, transfers and other dispositions or discontinuance of any Subsidiary, line of business, division, segment or operating unit or any designation of a Restricted Subsidiary to an Unrestricted Subsidiary or of an Unrestricted Subsidiary to a Restricted Subsidiary, in each case that have occurred during the four consecutive fiscal quarter period of the Borrower and the Restricted Subsidiaries being used to calculate such test, financial ratio, basket or covenant (the "Reference Period"), or subsequent to the end of the Reference Period but prior to such date or prior to or simultaneously with the event for which a determination under this definition is made (including any such event occurring at a Person who became a Restricted Subsidiary or was merged or consolidated with or into a Restricted Subsidiary after the commencement of the Reference Period), as if each such event occurred on the first day of the Reference Period; provided that for purposes of determining actual compliance with the financial covenants in **Section 10.2**, the events that occurred subsequent to the Reference Period shall not be given *pro forma* effect.

For purposes of making any computation referred to above:

- (1) if any Debt bears a floating rate of interest and is being given pro forma effect, the interest on such Debt shall be calculated as if the rate in effect on the date for which a determination under this definition is made had been the applicable rate for the entire period (taking into account any Hedging Agreements applicable to such Debt if such Hedging Agreements ~~has~~have a remaining term in excess of 12 months);
- (2) interest on a Capital Lease shall be deemed to accrue at an interest rate reasonably determined by a responsible financial or accounting officer, in his or her capacity

as such and not in his or her personal capacity, of the Borrower to be the rate of interest implicit in such Capital Lease in accordance with GAAP;

- (3) interest on Debt that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, an eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such optional rate chosen as the Borrower may designate; and
- (4) interest on any Debt under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Debt during the applicable period.

{Any pro forma calculation may include, without limitation, adjustments calculated in accordance with Regulation S-X under the Securities Act; provided that any such adjustments that consist of reductions in costs and other operating improvements or synergies (whether added pursuant to this definition, the definition “Pro Forma Cost Savings” or otherwise added to Consolidated Net Income or EBITDA) shall be calculated in accordance with, and satisfy the requirements specified in, the definition of “Pro Forma Cost Savings.”}

SECTION 2. CREDIT FACILITY

2.1 Loans. Subject to the terms and conditions hereof, on the Closing Date, each Lender shall be deemed to have made a term loan to the Borrower in an aggregate principal amount equal to the amount set forth opposite such Lender's name on Schedule 2.1. Amounts borrowed under this **Section 2.1** and repaid or prepaid may not be reborrowed. Loans may be Base Rate Loans or LIBOR Loans as further provided herein. Such Loans are being issued on account of and in full satisfaction of any claims arising out of the loans outstanding under the Original Credit Agreement and the Lenders' other prepetition claims and pursuant to the Prepackaged Plan. {As of the Closing Date, the Initial Loans will be LIBOR Loans with an interest period of ~~{●} months.~~one month. **Notes.** Loans and interest accruing thereon shall be evidenced by the records of Agent and the applicable Lender. At the request of a Lender, Borrower shall deliver a Note to such Lender, evidencing its Loan(s).

2.3 [Reserved].

2.4 [Reserved].

2.5 Extension of Maturity Date.

2.5.1 The Borrower may from time to time, pursuant to the provisions of this **Section 2.5**, without the consent of Agent or the Required Lenders, agree with one or more Lenders to extend the Maturity Date then applicable to such Lender's Loan or any portion thereof, and, provided written notice thereof is given to Agent, otherwise modify the economic terms of any such Loans or any portion thereof (including, without limitation, by modifying the interest rate or fees payable and/or the amortization schedule in respect of such Loans or any portion thereof) (each such modification an “Extension”) pursuant to one or more written offers (each an “Extension Offer”) made from time to time by the Borrower to all Lenders whose Loans have the same Maturity Date that is proposed to be extended under this **Section 2.5**, in each case

on a pro rata basis (based on the relative principal amounts of the outstanding Loans of each such Lender holding such Loans) and on the same terms to each such Lender, which Extension Offer may be conditioned as determined by the Borrower and set forth in such offer. In connection with each Extension, the Borrower will provide notification to Agent (for distribution to the applicable Lenders), no later than 30 days (or such shorter period as Agent may agree) prior to the maturity of the applicable Loans to be extended of the requested new maturity date for the proposed Extension Loans (each an “Extended Maturity Date”) and the due date for Lender responses. The Borrower and Agent shall agree to such procedures, if any, as may be reasonably established by, or acceptable to, Agent to accomplish the purposes of this **Section 2.5**. In connection with any Extension, each applicable Lender wishing to participate in such Extension shall, prior to such due date, provide Agent with a written notice thereof. Any Lender that does not respond to an Extension Offer by the applicable due date shall be deemed to have rejected such Extension.

2.5.2 Each Extension shall be subject to the following:

(a) no Event of Default shall have occurred and be continuing at the time of such Extension or would result from the consummation of the applicable Extension;

(b) except as to interest rates, fees, scheduled amortization, optional prepayment terms, premium, required prepayment dates, final maturity date (which shall, subject to clause (c) below, be determined by the Borrower and set forth in the relevant Extension Offer) and covenants and other provisions applicable to periods after the Maturity Date of any non-Extension Loans, the Extension Loans of any Lender extended pursuant to any Extension shall have terms that are no more favorable to the Lenders thereof in any material respect, taken as a whole, than the applicable Loans prior to the related Extension Offer;

(c) the final maturity date of the Extension Loans shall be later than the final Maturity Date of the Loans that are not being so extended, and the weighted average life to maturity of the Extension Loans shall be no shorter than the weighted average life to maturity of the applicable Loans subject to an Extension Offer that are not so extended;

(d) if the aggregate principal amount of Loans in respect of which Lenders shall have accepted an Extension Offer exceeds the maximum aggregate principal amount of Loans offered to be extended by the Borrower pursuant to the relevant Extension Offer, then such Loans shall be extended ratably up to such maximum amount based on the relative principal amounts thereof (not to exceed any Lender’s actual holdings of record) with respect to which such Lenders accepted such Extension Offer;

(e) all documentation in respect of such Extension shall be consistent with the foregoing, and all written communications by the Borrower generally directed to the applicable Lenders under the applicable class of Extension Loans in connection therewith shall be in form and substance consistent with the foregoing;

(f) any applicable Minimum Extension Condition shall be satisfied;

(g) no more than four Maturity Dates and four tranches of pricing with respect to the Loans may be effectuated hereunder; and

(h) no Extension shall become effective unless, on the proposed effective date of such Extension, the representations and warranties contained herein are true and correct in all material respects on and as of the applicable date of such Extension to the same extent as though made on and as of that date, except to the extent such representations and warranties specifically relate to an earlier date, in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date.

2.5.3 The consummation and effectiveness of any Extension will be subject to a condition set forth in the relevant Extension Offer (a "Minimum Extension Condition") that a minimum amount (to be determined in the Borrower's discretion and specified in the relevant Extension Offer, but in no event less than \$25,000,000, unless another lesser amount is agreed to by Agent) of Loans be tendered.

2.5.4 The Lenders hereby irrevocably authorize Agent to enter into amendments (collectively, "Extension Amendments") to this Agreement and the other Loan Documents as may be necessary in order to establish new tranches of Loans created pursuant to an Extension (including without limitation amending the definition of "Applicable Margin" to effectuate the payment of different rates and fees to be made to those Lenders who have agreed to extend the maturity date of their Loans), in each case on terms consistent with this **Section 2.5**, and any such Extension Amendments entered into with the Borrower by Agent hereunder shall be binding on the Lenders. The term of any Extension Amendment shall be binding upon only the Lenders agreeing to participate in the Extension Offer and then, only with respect to the Extension Loans of such Lenders. For the avoidance of doubt, no Extension Amendment shall modify in any respect any Loans of a Lender without the written consent of such Lender. All Extension Loans and all obligations in respect thereof shall be Obligations under this Agreement and the other Loan Documents that are secured by the Collateral on a pari passu basis with all other applicable Obligations under this Agreement and the other Loan Documents.

SECTION 3. INTEREST, FEES AND CHARGES

3.1 Interest

3.1.1 Rates and Payment of Interest

(a) The Obligations shall bear interest (i) if a Base Rate Loan, at the Base Rate in effect from time to time, plus the Applicable Margin; (ii) if a LIBOR Loan, at LIBOR for the applicable Interest Period, plus the Applicable Margin; and (iii) if any other Obligation not paid when due (including, to the extent permitted by law, interest not paid when due), at the Base Rate in effect from time to time, plus the Applicable Margin for Base Rate Loans.

(b) Upon notice from Agent, acting at the direction of the Required Lenders, during an Insolvency Proceeding with respect to the Borrower, or during any other Event of Default if Required Lenders in their discretion so elect, Obligations shall bear interest at the Default Rate (whether before or after any judgment). The Borrower acknowledges that the cost

and expense to Agent and Lenders due to an Event of Default are difficult to ascertain and that the Default Rate is fair and reasonable compensation for this.

(c) Interest shall accrue from the date a Loan is advanced or Obligation is not paid when due, until paid in full by the Borrower. Interest accrued on the Loans shall be due and payable in arrears, (i) on the last day of each quarter (or, if such day is not a Business Day, the immediately preceding Business Day) with respect to a Base Rate Loan, and on the last day of the applicable Interest Period (or, if such day is not a Business Day, the immediately preceding Business Day) with respect to a LIBOR Loan (except in the case of a LIBOR Loan with an Interest Period of more than three months' duration, each day prior to the last day of such Interest Period that occurs at intervals of three months' duration after the first day of such Interest Period (or, if such day is not a Business Day, the immediately preceding Business Day)); (ii) on any date of prepayment, with respect to the principal amount of Loans being prepaid; and (iii) on the Maturity Date. Interest accrued on any other Obligations shall be due and payable as provided in the Loan Documents and, if no payment date is specified, shall be due and payable on demand. Notwithstanding the foregoing, interest accrued at the Default Rate shall be due and payable on demand.

(d) Up to 100 basis points of the per annum interest due on the Loans may, at the option of the Borrower, be paid-in-kind with interest paid-in-kind being added to the unpaid principal amount of the Loans on the applicable interest payment date for such Loan; provided that, in the event the Borrower elects to pay a portion of interest in-kind, the Borrower shall have delivered a written notice to Agent at least five Business Days prior to the applicable interest payment date stating the amount of interest on such interest payment date that will be paid-in-kind; provided, however, that in the case of any prepayment or repayment of the principal amount of any Loans, including on the Maturity Date (or that has become payable pursuant to Section 12.2), all accrued and unpaid interest on the principal amount prepaid or repaid shall be payable in cash. On each applicable interest payment date Agent shall update the Loan register to reflect the payment of interest in-kind.

3.1.2 Application of LIBOR to Outstanding Loans.

(a) The Borrower may on any Business Day, subject to delivery of a Notice of Conversion/Continuation, elect to convert any portion of the Base Rate Loans to, or to continue any LIBOR Loan at the end of its Interest Period as, a LIBOR Loan. During any Default or Event of Default, Agent may (and shall at the direction of Required Lenders) declare that no Loan may be made, converted or continued as a LIBOR Loan.

(b) Whenever the Borrower desires to convert or continue Loans as LIBOR Loans, the Borrower shall give Agent a written Notice of Conversion/Continuation (which may be submitted by e-mail), no later than 11:00 a.m. at least three Business Days before the requested conversion or continuation date. Promptly after receiving any such notice, Agent shall notify each Lender thereof. Each Notice of Conversion/Continuation shall be irrevocable, and shall specify the amount of Loans to be converted or continued, the conversion or continuation date (which shall be a Business Day), and the duration of the Interest Period (which shall be deemed to be 1 month if not specified). If, upon the expiration of any Interest Period for any LIBOR Loan, the Borrower shall have failed to deliver a Notice of Conversion/Continuation, it

shall be deemed to have elected to convert such Loan into a Base Rate Loan. Agent does not warrant or accept responsibility for, nor shall it have any liability with respect to, administration, submission or any other matter related to any rate described in the definition of LIBOR.

3.1.3 Interest Periods. In connection with the making, conversion or continuation of any LIBOR Loans, the Borrower shall select an interest period ("Interest Period") to apply, which interest period shall be one month, two months, three months, or six months (or, with the consent of all Lenders, such longer period not to exceed 12 months); provided, however, that:

(a) the Interest Period shall begin on the date the Loan is made or continued as, or converted into, a LIBOR Loan, and shall expire on the numerically corresponding day in the calendar month at its end;

(b) if any Interest Period begins on a day for which there is no corresponding day in the calendar month at its end or if such corresponding day falls after the last Business Day of such month, then the Interest Period shall expire on the last Business Day of such month; and if any Interest Period would otherwise expire on a day that is not a Business Day, the period shall expire on the next Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the immediately preceding Business Day; and

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

3.2 Fees. The Borrower shall pay all fees set forth in the Agency Letter.

3.3 Computation of Interest, Fees, Yield Protection. All computations of interest for Base Rate Loans (including Base Rate Loans determined by reference to LIBOR) 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 interest, as well as fees and other charges calculated on a per annum basis, shall be computed for the actual days elapsed, based on a year of 360 days (which results in more fees or interest, as applicable, being paid than if computed on the basis of a 365-day year). Each determination by Agent of any interest, fees or interest rate hereunder shall be final, conclusive and binding for all purposes, absent manifest error. All fees shall be fully earned when due and shall not be subject to rebate, refund or proration. All fees payable under **Section 3.2** are compensation for services and are not, and shall not be deemed to be, interest or any other charge for the use, forbearance or detention of money. A certificate as to amounts payable by the Borrower under **Section 3.4, 3.6, 3.7, 3.9 or 5.10**, submitted to the Borrower by Agent or the affected Lender shall be final, conclusive and binding for all purposes, absent manifest error, and the Borrower shall pay such amounts to the appropriate party within 10 days following receipt of the certificate.

3.4 Reimbursement Obligations. The Borrower shall pay all Extraordinary Expenses promptly upon request. The Borrower shall also reimburse Agent for all reasonable and documented out-of-pocket legal, accounting, appraisal, consulting, and other fees, costs and expenses incurred by it in connection with (a) negotiation and preparation of any Loan Documents, including any amendment or other modification thereof; (b) administration of and actions relating to any Collateral, Loan Documents and transactions contemplated thereby,

including any actions taken to perfect or maintain priority of Agent's Liens on any Collateral, to maintain any insurance required hereunder or to verify Collateral; and (c) subject to the limits of **Section 10.1.1(b)**, each inspection, audit or appraisal with respect to any Obligor or Collateral, whether prepared by Agent's personnel or a third party; provided that legal fees shall be limited to one firm of counsel and an additional local law firm in each applicable jurisdiction and, in the case of an actual or potential conflict of interest as determined by the affected party, one additional firm of counsel to such affected party and one additional firm of local counsel to such affected party in each applicable jurisdiction. All reasonable and documented legal, accounting and consulting fees shall be charged to the Borrower by Agent's professionals at their full hourly rates, regardless of any alternative fee arrangements that Agent, any Lender or any of their Affiliates may have with such professionals that otherwise might apply to this or any other transaction. The Borrower acknowledges that counsel may provide Agent with a benefit (such as a discount, credit or accommodation for other matters) based on counsel's overall relationship with Agent, including fees paid hereunder. All amounts payable by the Borrower under this **Section 3.4** shall be due on demand.

3.5 Illegality. If any Lender determines that any Applicable Law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender to make, maintain or fund LIBOR Loans, or to determine or charge interest rates based upon LIBOR, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to Agent, any obligation of such Lender to make or continue LIBOR Loans or to convert Base Rate Loans to LIBOR Loans shall be suspended until such Lender notifies Agent that the circumstances giving rise to such determination no longer exist. Upon delivery of such notice, the Borrower shall prepay or, if applicable, convert all LIBOR Loans of such Lender to Base Rate Loans, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such LIBOR Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such LIBOR Loans. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

3.6 Inability to Determine Rates. Agent will promptly notify the Borrower and Lenders if, in connection with any Loan or request for a Loan, (a) Agent determines that (i) Dollar deposits are not being offered to banks in the London interbank Eurodollar market for the applicable Loan amount or Interest Period, or (ii) adequate and reasonable means do not exist for determining LIBOR for the Interest Period; or (b) Agent or Required Lenders determine for any reason that LIBOR for the Interest Period does not adequately and fairly reflect the cost to Lenders of funding the Loan (each of clause (a) and (b), a "Market Disruption Event"). Thereafter, Lenders' obligations to make or maintain affected LIBOR Loans and utilization of the LIBOR component (if affected) in determining Base Rate shall be suspended and no further Loans may be converted into or continued as such LIBOR Loans until Agent (upon instruction by Required Lenders) withdraws the notice. Upon receipt of such notice, the Borrower may revoke any pending request for a LIBOR Loan or, failing that, will be deemed to have requested a Base Rate Loan. During any period in which a Market Disruption Event is in effect, the Borrower may request that the Agent or the Required Lenders, as applicable, confirm that the circumstances giving rise to the Market Disruption Event continue to be in effect; provided that

(A) the Borrower shall not be permitted to submit any such request more than once in any 30-day period and (B) nothing contained in this **Section 3.6** or the failure to provide confirmation of the continued effectiveness of such Market Disruption Event shall in any way affect the Agent's or Required Lenders' right to provide any additional notices of a Market Disruption Event as provided in this **Section 3.6**. If the Agent or Required Lenders, as applicable, have not confirmed within 10 Business Days after request of such confirmation from the Borrower that a Market Disruption Event continues to be in effect, then such Market Disruption Event shall be deemed to be no longer existing.

3.7 Increased Costs; Capital Adequacy.

3.7.1 Increased Costs Generally. If any Change in Law shall:

(a) impose, modify or deem applicable any reserve, liquidity, special deposit, compulsory loan, insurance charge or similar requirement against assets of, deposits with or for the account of, or credit extended or participated in by, any Lender (except any reserve requirement reflected in calculating LIBOR);

(b) subject any Recipient to Taxes (other than (i) Indemnified Taxes, (ii) Taxes described in clauses (b) through (d) of the definition of Excluded Taxes, and (iii) Connection Income Taxes) with respect to any Loan or other obligations, or its deposits, reserves, other liabilities or capital attributable thereto; or

(c) impose on any Lender or interbank market any other condition, cost or expense (other than Taxes) affecting any Loan or Loan Document;

and the result thereof shall be to increase the cost to a Lender of making or maintaining any Loan or converting to or continuing any interest option for a Loan, or to increase the cost to a Lender, or to reduce the amount of any sum received or receivable by a Lender hereunder (whether of principal, interest or any other amount) then, upon request of such Lender, the Borrower will pay to it such additional amount(s) as will compensate it for the additional costs incurred or reduction suffered.

3.7.2 Capital Requirements. If a Lender determines that a Change in Law affecting such Lender or its 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 holding company's capital as a consequence of this Agreement, or such Lender's Loans or participations in Loans, to a level below that which such Lender or holding company could have achieved but for such Change in Law (taking into consideration its policies with respect to capital adequacy), then from time to time the Borrower will pay to such Lender such additional amounts as will compensate it or its holding company for the reduction suffered; provided, that such Lender is generally seeking, or intends generally to seek, compensation from similarly situated borrowers under similar credit facilities (to the extent such Lender has the right under such similar credit facilities to do so) with respect to such Change in Law regarding capital or liquidity requirements.

3.7.3 LIBOR Loan Reserves. If any Lender is required to maintain reserves with respect to liabilities or assets consisting of or including Eurocurrency funds or deposits, the Borrower shall pay additional interest to such Lender on each LIBOR Loan equal to the costs of such reserves allocated to the Loan by the Lender (as determined by it in good faith, which determination shall be conclusive). The additional interest shall be due and payable on each interest payment date for the Loan; provided, however, that if the Lender notifies the Borrower (with a copy to Agent) of the additional interest less than 10 days prior to the interest payment date, then such interest shall be payable 10 days after the Borrower's receipt of the notice.

3.7.4 Compensation. Failure or delay on the part of any Lender to demand compensation pursuant to this **Section 3.7.4** shall not constitute a waiver of its right to demand such compensation, but the Borrower shall not be required to compensate a Lender for any increased costs incurred or reductions suffered more than six months (plus any period of retroactivity of the Change in Law giving rise to the demand) prior to the date that such Lender notifies the Borrower of the applicable Change in Law and of such Lender's intention to claim compensation therefor.

3.8 Mitigation. If any Lender gives a notice under **Section 3.5** or requests compensation under **Section 3.7**, or if the Borrower is required to pay any Indemnified Taxes or additional amounts with respect to a Lender under **Section 5.10**, then at the request of the Borrower, such Lender shall use reasonable efforts to designate a different Lending Office or to assign its rights and obligations hereunder to another of its offices, branches or Affiliates, if, in the judgment of such Lender, such designation or assignment (a) would eliminate the need for such notice or reduce amounts payable or to be withheld in the future, as applicable; and (b) would not subject the Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to it or unlawful. The Borrower shall pay all reasonable and documented costs and expenses incurred by any Lender in connection with any such designation or assignment.

3.9 Funding Losses. If for any reason (a) any conversion or continuation of a LIBOR Loan does not occur on the date specified therefor in a Notice of Conversion/Continuation (whether or not withdrawn), (b) any repayment or conversion of a LIBOR Loan occurs on a day other than the end of its Interest Period, (c) the Borrower fails to repay a LIBOR Loan when required hereunder, or (d) a Lender (other than a Defaulting Lender) is required to assign a LIBOR Loan prior to the end of its Interest Period pursuant to **Section 14.4**, then the Borrower shall pay to Agent its customary administrative charge and to each Lender all losses, expenses and fees arising from redeployment of funds or termination of match funding. For purposes of calculating amounts payable under this **Section 3.9**, a Lender shall be deemed to have funded a LIBOR Loan by a matching deposit or other borrowing in the London interbank market for a comparable amount and period, whether or not the Loan was in fact so funded.

3.10 Maximum Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law ("Maximum Rate"). If Agent or any Lender shall receive interest in an amount that exceeds the Maximum Rate, the excess interest shall be applied to the principal of the Obligations or, if it exceeds such unpaid principal, refunded to the Borrower. In determining whether the interest contracted for, charged or received by Agent or a Lender exceeds the Maximum Rate, such Person may, to the

extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

SECTION 4. LOAN ADMINISTRATION

4.1 [Reserved].

4.2 Defaulting Lender. Notwithstanding anything herein to the contrary:

4.2.1 Reallocation of Pro Rata Share; Amendments. For purposes of determining Lenders' obligations or rights to fund, participate in or receive collections with respect to Loans, Agent may in its discretion reallocate Pro Rata shares by excluding a Defaulting Lender's Loans from the calculation of shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in **Section 15.1.1(b)**.

4.2.2 Fees. A Lender shall not be entitled to receive any fees accruing hereunder while it is a Defaulting Lender.

4.2.3 Status; Cure. Agent may determine in its discretion that a Lender constitutes a Defaulting Lender and the effective date of such status shall be conclusive and binding on all parties, absent manifest error. The Borrower and Agent may agree in writing that a Lender has ceased to be a Defaulting Lender, whereupon Pro Rata shares shall be reallocated without exclusion of the reinstated Lender's Loans. Unless expressly agreed by the Borrower and Agent, no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan or otherwise to perform obligations hereunder shall not relieve any other Lender of its obligations under any Loan Document. No Lender shall be responsible for default by another Lender.

4.3 Number and Amount of LIBOR Loans; Determination of Rate. Each Borrowing of LIBOR Loans when made shall be in a minimum amount of \$1,000,000, plus an increment of \$500,000 in excess thereof. No more than six (6) Borrowings of LIBOR Loans may be outstanding at any time, and all LIBOR Loans having the same length and beginning date of their Interest Periods shall be aggregated together and considered one Borrowing for this purpose.

Upon determining LIBOR for any Interest Period requested by the Borrower, Agent shall promptly notify the Borrower in writing (which may be by e-mail).

4.4 One Obligation. The Loans and other Obligations constitute one general obligation of the Borrower and are secured by Agent's Lien on all Collateral.

4.5 Effect of Termination. On the Maturity Date, the Obligations shall be immediately due and payable. Until Full Payment of the Obligations, all undertakings of the Borrower contained in the Loan Documents shall continue, and Agent shall retain its Liens in the Collateral

and all of its rights and remedies under the Loan Documents. **Sections 3.4, 3.6, 3.7, 3.9, 5.6, 5.10, 13, 15.2**, this **Section 4.5**, and each indemnity or waiver given by an Obligor or Lender in any Loan Document, shall survive Full Payment of the Obligations.

SECTION 5. PAYMENTS

5.1 General Payment Provisions. All payments of Obligations shall be made in Dollars, without offset, counterclaim or defense of any kind, free and clear of (and without deduction for) any Taxes, and in immediately available funds, not later than 3:00 p.m. on the due date. Any payment after such time may in Agent's discretion be deemed made on the next Business Day. Any payment of a LIBOR Loan prior to the end of its Interest Period shall be accompanied by all amounts due under **Section 3.9**. The Borrower agrees that after an Event of Default has occurred and is continuing, Agent shall have the continuing, exclusive right to apply and reapply payments and proceeds of Collateral against the Obligations, in such manner as Agent deems advisable, but whenever possible, any prepayment of Loans shall be applied first to Base Rate Loans and then to LIBOR Loans.

5.2 Repayment of Loans.

5.2.1 **Initial Loans.** The Borrower shall repay to Agent, for the account of the Lenders, a principal amount of the Initial Loans outstanding on the following dates (or, if such day is not a Business Day, the immediately preceding Business Day) equal to the respective amounts set forth opposite such dates (which amounts shall be reduced as a result of the application of prepayments in accordance with the order of application set forth in **Section 5.3**), together in each case with accrued and unpaid interest on the principal amount to be paid to but excluding the date of such payment:

<u>Repayment Date</u>	<u>Amount</u>
[March 31, 2017.....	\$ 625,000 ³
June 30, 2017	\$ 625,000
September 30, 2017	\$ 625,000
December 31, 2017	\$ 625,000
March 31, 2018	\$ 625,000
June 30, 2018	\$ 625,000
September 30, 2018	\$ 625,000
December 31, 2018	\$ 625,000
March 31, 2019	\$ 625,000
June 30, 2019	\$ 625,000
September 30, 2019	\$ 625,000
December 31, 2019	\$ 625,000
March 31, 2020	\$ 625,000
June 30, 2020	\$ 625,000
September 30, 2020	\$ 625,000
December 31, 2020	\$ 625,000

³ NTD: To be included only if the Closing Date occurs on or before December 31, 2016.

March 31, 2021	\$ 625,000
June 30, 2021	\$ 625,000
September 30, 2021	\$ 625,000
December 31, 2021	\$ 625,000

provided, however, that the final principal repayment installment of the Loans shall be repaid on the Maturity Date and in any event shall be in an amount equal to the aggregate principal amount of all Loans outstanding on such date.

5.2.2 No Premium. All repayments pursuant to this **Section 5.2** shall be subject to **Section 3.9**, but shall otherwise be without premium or penalty.

5.3 Prepayments.

5.3.1 Optional. The Borrower may, upon written notice to Agent, at any time or from time to time voluntarily prepay Loans in whole or in part; provided that (A) such notice must be in a form reasonably acceptable to Agent and be received by Agent not later than 11:00 a.m. (1) three Business Days prior to any date of prepayment of LIBOR Loans and (2) one Business Day prior to any date of prepayment of Base Rate Loans; (B) any prepayment of LIBOR Loans shall be in a principal amount of \$5,000,000 or a whole multiple of \$1,000,000 in excess thereof; and (C) any prepayment of Base Rate Loans shall be in a principal amount of \$500,000 or a whole multiple of \$100,000 in excess thereof or, in each case, the entire principal amount thereof then outstanding. Each such notice shall specify the date and amount of such prepayment, whether the Loans to be prepaid are Base Rate Loans or LIBOR Loans and if LIBOR Loans are to be prepaid, the Interest Period(s) of such Loans. 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 Pro Rata share). If such notice is given by the Borrower, the Borrower shall make such prepayment and the payment amount specified in such notice shall be due and payable on the date specified therein. Any prepayment of Loans under this **Section 5.3.1** shall be accompanied by any Applicable Premium and all accrued interest on the amount prepaid, together with any additional amounts required pursuant to **Section 3.9**. Each prepayment of Loans pursuant to this **Section 5.3.1** shall be applied to the principal repayment installments thereof as directed by the Borrower, and subject to **Section 4.2**, each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata shares.

5.3.2 Mandatory.

(a) Upon the incurrence or issuance by the Borrower or any of its Restricted Subsidiaries of any Debt (other than Debt expressly permitted to be incurred or issued pursuant to **Section 10.2.1**), the Borrower shall prepay an aggregate principal amount of Loans equal to 100% of all Net Cash Proceeds received from such incurrence of Debt immediately upon receipt thereof by the Borrower or such Restricted Subsidiary.

(b) The Borrower shall deliver to Agent, no later than 12:00 p.m. on the date of each prepayment required under this **Section 5.3.2**, a certificate signed by a Senior Officer of the Borrower setting forth in reasonable detail the calculation of the amount of such prepayment. Each such certificate shall specify the Loans being prepaid and the principal amount of each

Loan (or portion thereof) to be prepaid. Prepayments shall be accompanied by accrued interest. All prepayments of Loans under this **Section 5.3.2** shall be accompanied by any Applicable Premium and all accrued interest on the amount prepaid, together with any additional amounts required pursuant to **Section 3.9**. Each prepayment of Loans pursuant to this **Section 5.3.2** shall be applied to the principal repayment installments thereof as directed by the Borrower, and subject to **Section 4.2**, each such prepayment shall be paid to the Lenders in accordance with their respective Pro Rata shares.

5.4 Offers to Repurchase Loans.

5.4.1 Asset Dispositions.

(a) Not later than the third Business Day following the receipt (or deemed receipt as specified in the definition of Net Cash Proceeds) of Net Cash Proceeds in respect of any Asset Disposition (including any proceeds from any casualty or condemnation) in excess of \$30,000,000 in the aggregate for all such Asset Dispositions, the Borrower shall deliver to Agent who, in turn, shall furnish such offer to all of the Lenders at least ten Business Days prior to the date of prepayment specified in such offer (the “Asset Disposition Prepayment Date”), an offer to prepay the maximum aggregate principal amount of the Loans that may be prepaid out of the Net Cash Proceeds received with respect thereto, at an offer price in cash in an amount equal to 100% of the principal amount of such Loans, *plus* accrued and unpaid interest (if any) as of the date of such purchase (each such offer, an “Asset Disposition Offer”).

(b) Each Lender may accept all or a portion of its Pro Rata share of any Asset Disposition Offer (any amounts not accepted, together with any other amounts not accepted from prepayments offered under **Sections 5.4.2** and **5.4.3**, the “Declined Amounts”) by providing written notice (an “Acceptance Notice”) to Agent and the Borrower no later than 5:00 p.m. five Business Days prior to the Asset Disposition Prepayment Date. Each Acceptance Notice delivered by a Lender shall specify the principal amount of the Loans to be purchased from such Lender; provided that (i) such amount shall not exceed such Lender’s Pro Rata share of the Asset Disposition Offer and (ii) if such Lender fails to specify any such amount, it shall be deemed to have requested its full Pro Rata share of such Asset Disposition Offer. If a Lender fails to deliver an Acceptance Notice to Agent within the time frame specified above, such failure will be deemed a full rejection of such Asset Disposition Offer. Any Declined Amounts shall no longer be subject to this **Section 5.4** and may be used by the Borrower in any way not prohibited by this Agreement. If the aggregate principal amount of Loans requested to be repaid exceeds the aggregate amount to be repaid by the Borrower pursuant to this **Section 5.4.1(b)**, Agent shall apply the amounts to be repaid by the Borrower to the Loans requested to be repaid on a pro rata basis based on the principal amount of such Loans.

5.4.2 Excess Cash Flow.

(a) Commencing with the fiscal year ending December 31, 2017, no later than ten Business Days after the date on which the financial statements with respect to such period are delivered or are required to be delivered pursuant to **Section 10.1.2(a)**, each fiscal year for which there is Excess Cash Flow, the Borrower shall deliver to Agent who, in turn, shall furnish such offer to all of the Lenders at least ten Business Days prior to the date of prepayment specified in

such offer (the “ECF Prepayment Date”), an offer to prepay Loans in the aggregate principal amount equal to 50% of such Excess Cash Flow (such amount, the “ECF Amount”), at an offer price in cash in an amount equal to 100% of the aggregate principal amount of such Loans, *plus* accrued and unpaid interest (if any) as of the date of such purchase (each such offer, an “ECF Offer”).

(b) Each Lender may accept all or a portion of its Pro Rata share of any ECF Offer by providing an Acceptance Notice to Agent and the Borrower no later than 5:00 p.m. five Business Days prior to the ECF Prepayment Date. Each Acceptance Notice delivered by a Lender shall specify the principal amount of the Loans to be purchased from such Lender; provided that (i) such amount shall not exceed such Lender’s Pro Rata share of the ECF Amount and (ii) if such Lender fails to specify any such amount, it shall be deemed to have requested its full Pro Rata share of such ECF Amount. If a Lender fails to deliver an Acceptance Notice to Agent within the time frame specified above, such failure will be deemed a full rejection of such ECF Offer. Any Declined Amounts shall no longer be subject to this **Section 5.4** and may be used by the Borrower in any way not prohibited by this Agreement. If the aggregate principal amount of Loans requested to be repaid exceeds the aggregate amount to be repaid by the Borrower pursuant to this **Section 5.4.2(b)**, Agent shall apply the amounts to be repaid by the Borrower to the Loans requested to be repaid on a pro rata basis based on the principal amount of such Loans.

5.4.3 Change of Control.

(a) Within 30 days following any Change of Control, the Borrower shall deliver to Agent who, in turn, shall furnish such offer to all of the Lenders, an offer (each such offer, a “Change of Control Offer”) at least ten Business Days prior to the date of prepayment specified in such offer (the “Change of Control Prepayment Date”) to prepay all Loans then outstanding at an offer price in cash in an amount equal to:

(i) if after giving pro forma effect to such Change of Control and all related repayments of Debt the Asset Coverage Ratio would be at least 1.35 to 1.0, 101% of the aggregate principal amount of the Loans, plus accrued and unpaid interest (if any) as of the date of such repurchase; and

(ii) if after giving pro forma effect to such Change of Control and all related repayments of Debt the Asset Coverage Ratio would be less than 1.35 to 1.0, the greater of (A) 101% of the aggregate principal amount of the Loans repurchased and (B) 100% of the aggregate principal amount of the Loans repurchased plus the Applicable Premium in effect on the date of such repurchase,

in each case, together with all accrued and unpaid interest (if any) as of the date of such purchase.

(b) Each Lender may accept all or a portion of its Pro Rata share of any Change of Control Offer by providing an Acceptance Notice to Agent and the Borrower no later than 5:00 p.m. five Business Days prior to the Change of Control Prepayment Date. Each Acceptance Notice delivered by a Lender shall specify the principal amount of the Loans to be

purchased from such Lender; provided that if such Lender fails to specify any such amount, it shall be deemed to have requested that the Borrower purchase the full amount of its Loans. If a Lender fails to deliver an Acceptance Notice to Agent within the time frame specified above, such failure will be deemed a full rejection of such Change of Control Offer. Any Declined Amounts shall no longer be subject to this **Section 5.4** and may be used by the Borrower in any way not prohibited by this Agreement.

(c) If the aggregate principal amount of Loans requested to be repaid exceeds the aggregate amount to be repaid by the Borrower pursuant to **Section 5.4.3(b)**, Agent shall apply the amounts to be repaid by the Borrower to the Loans requested to be repaid on a pro rata basis based on the principal amount of such Loans.

(d) Provided that the Borrower complies in all respects with subsections (a) and (b) of this **Section 5.4.3**, all Loans subject to the Change of Control Offer shall cease to accrue interest on the Change of Control Payment Date.

5.4.4 No Premium. For the avoidance of doubt and notwithstanding anything herein to the contrary, the Applicable Premium shall not be payable in connection with any repayment of Loans pursuant to this **Section 5.4** (other than as required pursuant to **Section 5.4.3(a)(ii)**).

5.5 Payment of Applicable Premium. With respect to each repayment or prepayment of Loans under **Sections 5.3.1, 5.3.2 and 5.4.3**, if applicable, any acceleration of the Loans and other Obligations pursuant to **Section 12.2** or assignment of the Loans of any Lender under **Section 14.4(a)**, whether voluntary or mandatory, the Borrower shall be required to pay with respect to the amount of the Loans repaid, prepaid or assigned, in each case, concurrently with such repayment, prepayment or assignment the following amount (the "Applicable Premium"):

(a) if made prior to the first anniversary of the Closing Date, the Make-Whole Amount;

(b) if made on or after the first anniversary of the Closing Date and before the second anniversary of the Closing Date, a cash amount equal to the product of the principal amount of the Loans prepaid times 6.00%;

(c) if made on or after the second anniversary of the Closing Date and before the third anniversary of the Closing Date, a cash amount equal to the product of the principal amount of the Loans prepaid times 3.00%; and

(d) if made on or after the third anniversary of the Closing Date, \$0.

IT IS UNDERSTOOD AND AGREED THAT IF THE LOANS ARE ACCELERATED OR OTHERWISE BECOME DUE PRIOR TO THEIR MATURITY DATE, INCLUDING WITHOUT LIMITATION AS A RESULT OF ANY EVENT OF DEFAULT DESCRIBED UNDER **SECTION 12.1(h)**, THE APPLICABLE PREMIUM WILL ALSO AUTOMATICALLY BE DUE AND PAYABLE AS THOUGH THE LOANS WERE BEING PREPAID OR ASSIGNED (OR AMENDED OR OTHERWISE MODIFIED PURSUANT TO

SUCH AMENDMENT) AND SHALL CONSTITUTE PART OF THE OBLIGATIONS WITH RESPECT TO THE LOANS.

5.6 Payment of Other Obligations. Obligations other than Loans, including Extraordinary Expenses, shall be paid by the Borrower as provided in the Loan Documents or, if no payment date is specified, on demand.

5.7 Marshaling; Payments Set Aside. None of Agent or Lenders shall be under any obligation to marshal any assets in favor of any Obligor or against any Obligations. If any payment by or on behalf of the Borrower is made to Agent or any Lender, or if Agent or any Lender exercises a right of setoff, and any of such payment or setoff is subsequently invalidated, declared to be fraudulent or preferential, set aside or required (including pursuant to any settlement entered into by Agent or a Lender in its discretion) to be repaid to a trustee, receiver or any other Person, then the Obligation originally intended to be satisfied, and all Liens, rights and remedies relating thereto, shall be revived and continued in full force and effect as if such payment or setoff had not occurred.

5.8 Application and Allocation of Payments.

5.8.1 Application. Payments made by the Borrower hereunder shall be applied:

- (a) first, as specifically required hereby;
- (b) second, to Obligations then due and owing;
- (c) third, to other Obligations specified by the Borrower; and
- (d) fourth, as determined by Agent in its discretion.

5.8.2 Post-Default Allocation. Notwithstanding anything in any Loan Document to the contrary, during an Event of Default, monies to be applied to the Obligations, whether arising from payments by Obligors, realization on Collateral, setoff or otherwise, shall be allocated as follows (subject to the terms of the Intercreditor Agreement):

- (a) first, to all fees, indemnification, costs and expenses, including Extraordinary Expenses, owing to Agent;
- (b) second, to all amounts owing to Agent on Loans and participations that a Defaulting Lender has failed to settle or fund;
- (c) third, to all Obligations constituting fees, indemnification, costs or expenses owing to the Lenders;
- (d) fourth, to all Obligations constituting interest;
- (e) fifth, to all Loans; and

(f) last, to all remaining Obligations.

Amounts shall be applied to payment of each category of Obligations only after Full Payment of amounts payable from time to time under all preceding categories. If amounts are insufficient to satisfy a category, they shall be paid ratably among outstanding Obligations in the category. The allocations set forth in this **Section 5.8** are solely to determine the rights and priorities among Secured Parties, and may be changed by agreement of the affected Secured Parties, without the consent of any Obligor. This **Section 5.8** is not for the benefit of or enforceable by any Obligor, and the Borrower irrevocably waives the right to direct the application of any payments or Collateral proceeds subject to this **Section 5.8**.

5.8.3 Erroneous Application. Agent shall not be liable for any application of amounts made by it in good faith and, if any such application is subsequently determined to have been made in error, the sole recourse of any Lender or other Person to which such amount should have been made shall be to recover the amount from the Person that actually received it (and, if such amount was received by a Secured Party, the Secured Party agrees to return it).

5.9 Account Stated. Agent shall maintain, in accordance with its customary practices, loan account(s) evidencing the Debt of the Borrower hereunder. Any failure of Agent to record anything in a loan account, or any error in doing so, shall not limit or otherwise affect the obligation of the Borrower to pay any amount owing hereunder. Entries made in a loan account shall constitute presumptive evidence of the information contained therein. If any information contained in a loan account is provided to or inspected by any Person, the information shall be conclusive and binding on such Person for all purposes absent manifest error, except to the extent such Person notifies Agent in writing within 30 days after receipt or inspection that specific information is subject to dispute.

5.10 Taxes.

5.10.1 Payments Free of Taxes; Obligation to Withhold; Tax Payment.

(a) All payments of Obligations by or on behalf of Obligors shall be made without deduction or withholding for any Taxes, except as required by Applicable Law. If Applicable Law (as determined by Agent in its discretion) requires the deduction or withholding of any Tax from any such payment by Agent or an Obligor, then Agent or such Obligor shall be entitled to make such deduction or withholding.

(b) If Agent or any Obligor is required by any Applicable Law to withhold or deduct Taxes from any payment, then (i) Agent or such Obligor, to the extent required by Applicable Law, shall apply such withholding or deduction and timely pay the full amount to be withheld or deducted to the relevant Governmental Authority, and (ii) to the extent the withholding or deduction is made on account of Indemnified Taxes, the sum payable by the applicable Obligor shall be increased as necessary so that the Recipient receives an amount equal to the sum it would have received had no such withholding or deduction been made.

5.10.2 Payment of Other Taxes. Without limiting the foregoing, the Borrower shall timely pay to the relevant Governmental Authority in accordance with Applicable Law, or at Agent's option, timely reimburse Agent for payment of, any Other Taxes.

5.10.3 Tax Indemnification.

(a) The Borrower shall indemnify and hold harmless, on a joint and several basis, each Recipient against any Indemnified Taxes (including those Indemnified Taxes imposed or asserted on or attributable to amounts payable under this **Section 5.10**) payable or paid by a Recipient or required to be withheld or deducted from a payment to a Recipient, and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. The Borrower shall make payment within 10 days after demand for any amount or liability payable under this **Section 5.10**. A certificate as to the amount of such payment or liability delivered to the Borrower by a Lender (with a copy to Agent), or by Agent on its own behalf or on behalf of any Recipient, shall be conclusive absent manifest error.

(b) Each Lender shall indemnify and hold harmless, on a several basis, (i) Agent against any Indemnified Taxes attributable to such Lender (but only to the extent Borrower has not already paid or reimbursed Agent therefor and without limiting Borrower's obligation to do so), (ii) Agent and Obligors, as applicable, against any Taxes attributable to such Lender's failure to maintain a Participant register as required hereunder, and (iii) Agent and Obligors, as applicable, against any Excluded Taxes attributable to such Lender that are payable or paid by Agent or an Obligor in connection with any Obligations, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. Each Lender shall make payment within 10 days after demand for any amount or liability payable under this **Section 5.10**. A certificate as to the amount of such payment or liability delivered to any Lender by Agent shall be conclusive absent manifest error.

5.10.4 Evidence of Payments. If Agent or an Obligor pays any Taxes pursuant to this **Section 5.10**, then upon request, Agent shall deliver to the Borrower or the Borrower shall deliver to Agent, respectively, a copy of a receipt issued by the appropriate Governmental Authority evidencing the payment, a copy of any return required by Applicable Law to report the payment, or other evidence of payment reasonably satisfactory to Agent or the Borrower, as applicable.

5.10.5 Treatment of Certain Refunds. Unless required by Applicable Law, at no time shall Agent have any obligation to file for or otherwise pursue on behalf of a Lender, nor have any obligation to pay to any Lender, any refund of Taxes withheld or deducted from funds paid for the account of a Lender. If a Recipient determines in its discretion, exercised in good faith, that it has received a refund of any Taxes as to which it has been indemnified by the Borrower or with respect to which the Borrower has paid additional amounts pursuant to this **Section 5.10**, it shall pay the Borrower an amount equal to such refund (but only to the extent of indemnity payments made, or additional amounts paid, by the Borrower with respect to the Taxes giving rise to such refund), net of all out-of-pocket expenses (including Taxes) incurred by such Recipient, and without interest (other than any interest paid by the relevant Governmental

Authority with respect to such refund), provided that the Borrower agrees, upon request by the Recipient, to repay the amount paid over to the Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Recipient if the Recipient is required to repay such refund to the Governmental Authority. Notwithstanding anything herein to the contrary, no Recipient shall be required to pay any amount to the Borrower if such payment would place the Recipient in a less favorable net after-Tax position than it would have been in if the Tax subject to indemnification and giving rise to such refund had not been deducted, withheld or otherwise imposed and the indemnification payments or additional amounts with respect to such Tax had never been paid. In no event shall Agent or any Recipient be required to make its tax returns (or any other information relating to its Taxes that it deems confidential) available to any Obligor or other Person.

5.10.6 Survival. Each party's obligations under **Sections 5.10** and **5.11** shall survive the resignation or replacement of Agent or any assignment of rights by or replacement of a Lender and the repayment, satisfaction, discharge or Full Payment of any Obligations.

5.11 Lender Tax Information.

5.11.1 Status of Lenders. Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments of Obligations shall deliver to the Borrower and Agent properly completed and executed documentation reasonably requested by the Borrower or Agent as will permit such payments to be made without or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrower or Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrower or Agent to enable them to determine whether such Lender is subject to backup withholding or information reporting requirements. Notwithstanding the foregoing, such documentation (other than documentation described in **Sections 5.11.2(a), (b)** and **(d)**) shall not be required if a Lender reasonably believes delivery of the documentation would subject it to any material unreimbursed cost or expense or would materially prejudice its legal or commercial position.

5.11.2 Documentation. Without limiting the foregoing, if the Borrower is a U.S. Person,

(a) Any Lender that is a U.S. Person shall deliver to the Borrower and Agent on or prior to the date on which such Lender becomes a Lender hereunder (and from time to time thereafter upon reasonable request of the Borrower or Agent), executed originals of IRS Form W-9, certifying that such Lender is exempt from U.S. federal backup withholding Tax;

(b) Any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and 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 hereunder (and from time to time thereafter upon reasonable request of the Borrower or Agent), whichever of the following is applicable:

(i) in the case of a Foreign Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest

under any Loan Document, executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the “interest” article of such tax treaty, and (y) with respect to other payments under the Loan Documents, IRS Form W-8BEN or W-8BEN-E, as applicable, establishing an exemption from or reduction of U.S. federal withholding Tax pursuant to the “business profits” or “other income” article of such tax treaty;

(ii) executed originals of IRS Form W-8ECI;

(iii) in the case of a Foreign Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate in form satisfactory to Agent to the effect that such Foreign Lender is not a “bank” within the meaning of Section 881(c)(3)(A) of the Code, a “10 percent shareholder” of the Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a “controlled foreign corporation” described in Section 881(c)(3)(C) of the Code (“U.S. Tax Compliance Certificate”), and (y) executed originals of IRS Form W-8BEN or W-8BEN-E, as applicable; or

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

(c) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrower and 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 hereunder (and from time to time thereafter upon the reasonable request of the Borrower or Agent), executed originals of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrower or Agent to determine the withholding or deduction required to be made; and

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

5.11.3 Agent Documentation. On or before the date Cortland Corp. and Cortland LLC becomes Agent hereunder, it shall (and any successor or replacement Agent shall, on or before the date on which it becomes Agent hereunder), deliver to the Borrower two duly executed originals of either (i) IRS Form W-9, or (ii) IRS Form W-8ECI (with respect to any payments to be received on its own behalf) and IRS Form W-8IMY (for all other payments), establishing that the Borrower can make payments to Agent without deduction or withholding of any Taxes imposed by the United States, including Taxes imposed under FATCA.

5.11.4 Redelivery of Documentation. If any form or certification previously delivered by a Lender or Agent pursuant to this **Section 5.11** expires or becomes obsolete or inaccurate in any respect, such Lender or Agent, as applicable, shall promptly update the form or certification or notify the Borrower and Agent in writing of its inability to do so.

SECTION 6. CONDITIONS PRECEDENT

6.1 Conditions Precedent to Effectiveness. This Agreement will not become effective until the date ("Closing Date") that each of the following conditions has been satisfied (or waived in accordance with this Agreement):

(a) each Loan Document shall have been duly executed and delivered to Agent by each of the signatories thereto, and each Obligor shall be in compliance with all terms thereof, in each case subject to the post-closing collateral requirements set forth in **Section 7.3.3**;

(b) Agent shall have received acknowledgments of all filings or recordations necessary to perfect its Liens in the Collateral or arrangements reasonably satisfactory to Agent for such filings and recordations shall have been made (and all filing and recording fees and taxes in connection therewith shall have been duly paid or arrangements reasonably satisfactory to Agent for the payment of such fees and taxes shall have been made), as well as UCC and Lien searches and other evidence reasonably satisfactory to Agent that such Liens are the only Liens upon such Collateral, except Permitted Liens, in each case subject to the post-closing collateral requirements set forth in **Section 7.3.3**;

(c) Agent shall have received a true, correct and complete copy of the ABL Credit Agreement and the aggregate amount of the commitments in respect of ABL Loans as of the Closing Date shall not be less than \$50,000,000;

(d) Agent shall have received certificates, in form and substance reasonably satisfactory to it, from a knowledgeable Senior Officer of the Borrower certifying that, after giving effect to the initial Loans and transactions hereunder, (i) the Borrower and the Obligors, taken as a whole, are Solvent; (ii) no Default exists; (iii) the representations and warranties set forth in **Section 9** are true and correct in all material respects, except to the extent that such representations and warranties expressly relate solely to an earlier date (in which case such representations and warranties shall have been true and correct in all material respects on and as of such earlier date); and (iv) the Borrower has complied with all agreements and conditions to be satisfied by it under the Loan Documents;

(e) Agent shall have received a certificate of a duly authorized officer of each Obligor, certifying (i) that attached copies of such Obligor's Organic Documents are true and complete, and in full force and effect, without amendment except as shown; (ii) that an attached copy of resolutions authorizing execution and delivery of the Loan Documents is true and complete, and that such resolutions are in full force and effect, were duly adopted, have not been amended, modified or revoked, and constitute all resolutions adopted with respect to this credit facility; (iii) that an attached copy of the Confirmation Order authorizing execution and delivery of this Agreement and the Definitive Restructuring Documents (as defined in the Plan Support Agreement), is in full force and effect, and not subject to a stay; and (iv) to the title, name and signature of each Person authorized to sign the Loan Documents. Agent may conclusively rely on this certificate until it is otherwise notified by the applicable Obligor in writing;

(f) Agent shall have received a customary written opinion of Sullivan & Cromwell LLP and ~~local counsel~~ Vinson & Elkins LLP, counsel to the Borrower, in form and substance reasonably satisfactory to Agent;

(g) Agent shall have received good standing certificates (to the extent available in such Obligor's jurisdiction of organization) for each Obligor, issued by the Secretary of State or other appropriate official of such Obligor's jurisdiction of organization;

(h) Agent shall have received copies of policies or certificates of insurance for the insurance policies carried by the Borrower;

(i) a Material Adverse Effect (as defined in the Backstop Agreement in effect as of September 21, 2016) shall not have occurred after the date the Plan Support Agreement is executed;

(j) the Borrower shall have paid all reasonable and documented fees and expenses to be paid to Agent and Lenders on the Closing Date including the fees payable pursuant to the Agency Letter (provided that invoices for expenses shall have been delivered to the Borrower at least two (2) Business Days prior to the Closing Date);

(k) (i) all conditions precedent to the confirmation and effectiveness of the Prepackaged Plan, as set forth in the Prepackaged Plan, shall have been satisfied or waived in accordance with the terms thereof, (ii) the Bankruptcy Court shall have entered the Confirmation Order, and such Confirmation Order shall be a Final Order (it being understood and agreed that the Agent and Lenders have waived the requirement that such Confirmation Order be a Final Order), (iii) the effective date under the Prepackaged Plan shall have occurred (and all conditions precedent thereto as set forth therein shall have been satisfied or waived in accordance with the terms thereof), (iv) substantial consummation under the Prepackaged Plan shall have occurred, and (v) no motion, action or proceeding by any creditor or other party-in-interest to the Chapter 11 Cases which could materially adversely affect the Prepackaged Plan, the consummation of the Prepackaged Plan, the business or operations of the Borrower or the transactions contemplated by this Agreement or the Prepackaged Plan shall be pending;

(l) Agent shall have received a certificate of a duly authorized Senior Officer of the Borrower, demonstrating that, after giving effect to all payments required to be made or

funded by the Debtors under the Prepackaged Plan on or before the effective date of the Prepackaged Plan (including on account of accrued and unpaid professional fees and expenses but excluding any fees or expenses paid or to be paid under the Corporate Advisory Services Agreement (as defined in the Prepackaged Plan)), the Reorganized Debtors (as defined in the Prepackaged Plan) will have on the effective date of the Prepackaged Plan, on a pro forma basis after giving effect to the funding of the Primary Rights Offering (including by the Backstop Participants pursuant to the Backstop Commitment) and any funding of the Incremental Liquidity Rights Offering (as such terms are defined in the Prepackaged Plan), the Minimum Liquidity;

(m) Agent shall have received evidence that the Original Credit Agreement has been, or concurrently with the Initial Loans on the Closing Date is being, terminated and all Liens securing obligations under the Original Credit Agreement have been, or concurrently with the Initial Loans on the Closing Date are being, released; and

(n) Agent shall have received, at least three Business Days prior to the Closing Date, all documentation and other information required by Governmental Authorities under applicable “know your customer” and anti-money laundering rules and regulations, including the PATRIOT Act (including, but not limited to, the Borrower’s W-9), that has been reasonably requested in writing at least 10 Business Days prior to the Closing Date by the Lenders.

For purposes of determining whether the conditions specified in this **Section 6.1** have been satisfied, by releasing its signature page hereto, Agent and each Lender shall be deemed to have consented to, approved or accepted or waived, or to be satisfied with, each document or other matter required hereunder to be consented to or approved by or acceptable or satisfactory to Agent or such Lender, as the case may be.

SECTION 7. COLLATERAL

7.1 Grant of Security Interest. To secure the prompt payment and performance of its Obligations, each Obligor hereby grants to Agent, for the benefit of Secured Parties, a continuing security interest in and Lien upon all Property of such Obligor, including all of the following Property, whether now owned or hereafter acquired, and wherever located:

- (a) all Accounts;
- (b) all Chattel Paper, including electronic chattel paper;
- (c) all Commercial Tort Claims, including those shown on Schedule 7.4.1;
- (d) all Deposit Accounts;
- (e) all Documents;
- (f) all General Intangibles, including Intellectual Property;
- (g) all Goods, including Inventory, Equipment and fixtures;

- (h) all Instruments;
- (i) all Investment Property;
- (j) all Letter-of-Credit Rights;
- (k) all Supporting Obligations;
- (l) all Vehicles;
- (m) all monies, whether or not in the possession or under the control of Agent, a Lender, or a bailee or Affiliate of Agent or a Lender, including any Cash Collateral;
- (n) all accessions to, substitutions for, and all replacements, products, and cash and non-cash proceeds of the foregoing, including proceeds of and unearned premiums with respect to insurance policies, and claims against any Person for loss, damage or destruction of any Collateral;
- (o) all books and records (including customer lists, files, correspondence, tapes, computer programs, print-outs and computer records) pertaining to the foregoing; and
- (p) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

Notwithstanding anything herein to the contrary, in no event shall the security interest attach to, or the term “Collateral” be deemed to include, any of the Property set forth in **Section 7.7**.

7.2 Lien on Deposit Accounts; Cash Collateral.

7.2.1 Deposit Accounts and Securities Accounts. To further secure the prompt payment and performance of its Obligations, each Obligor hereby grants to Agent a continuing security interest in and Lien upon all amounts credited to any Deposit Account or Securities Account of such Obligor, including sums in any blocked, lockbox, sweep or collection account; provided that, subject to the Intercreditor Agreement, any security interest in any Deposit Account or Securities Account other than the TL Proceeds and Priority Collateral Account shall have second priority to the security interests of the ABL Agent (and subject to Permitted Liens (x) in favor of the account bank and (y) that have priority by operation of law). Each Obligor hereby authorizes and directs each bank, other depository or securities intermediary to deliver to Agent, upon request of Agent, all balances in any Deposit Account or Securities Account maintained for such Obligor, without inquiry into the authority or right of Agent to make such request. Agent hereby agrees that it will not issue any such request unless an Event of Default has occurred and is continuing.

7.2.2 Cash Collateral. Cash Collateral may be invested, at Agent’s discretion (and with the consent of the Borrower, as long as no Event of Default exists), but Agent shall have no duty to do so, regardless of any agreement or course of dealing with any Obligor, and

shall have no responsibility for any investment or loss. As security for its Obligations, each Obligor hereby grants to Agent a security interest in and Lien upon all Cash Collateral held from time to time and all proceeds thereof, whether held in a Cash Collateral Account or otherwise. After an Event of Default has occurred and is continuing, Agent may apply Cash Collateral to the payment of such Obligations as they become due, in such order as Agent may elect. Subject to the terms of the Intercreditor Agreement, each Cash Collateral Account and all Cash Collateral shall be under the sole dominion and control of Agent, and no Obligor or other Person shall have any right to any Cash Collateral, until Full Payment of the Obligations.

7.3 Real Estate Collateral and Vehicles.

7.3.1 Lien on Real Estate. (a) If, after the Closing Date, any Obligor acquires (x) any Restricted Subsidiary that owns Material Real Property or (y) any Material Real Property, other than, in each case, Real Estate constituting Excluded Property, or if any Real Estate ceases to be Excluded Property, the Obligors shall, within 90 days (as may be extended by Agent in its sole discretion), with respect to such Material Real Property, (i) execute, deliver and record a Mortgage sufficient to create a perfected Lien in favor of Agent, (ii) deliver a customary opinion of local counsel in the state in which such Material Real Property is located as to such Mortgage, (iii) to the extent required by applicable law, acknowledge receipt of any life-of-loan flood hazard determination procured by Agent or any Lender; (iv) deliver to Agent such existing documents, instruments or agreements as Agent may reasonably request with respect to any environmental risks regarding such Real Estate; (v) upon request, deliver to Agent any existing survey of such Material Real Property; and (vi) (A) upon the reasonable request of Agent, deliver to Agent a title report for all Real Estate referred to in clause (i) of this **Section 7.3.1(a)** with a net book value between \$250,000 and \$500,000, and (B) deliver a mortgagee title policy (or “marked” title commitment therefor) for all Real Estate referred to in this **Section 7.3.1(a)** with a net book value in excess of \$500,000, in form and substance reasonably acceptable to Agent, having a value not in excess of the fair market value of such Real Estate covering Agent’s interest under the Mortgage, by an insurer reasonably acceptable to Agent (which must be fully paid on such effective date); provided, that the Borrower shall not be obligated to deliver any mortgage title policies to the extent doing so would require the Borrower to obtain new surveys, zoning letters, appraisals, or environmental assessments of such Real Estate, and (b) within 90 days or such longer period as Agent may agree (such extensions not to be unreasonably withheld, delayed or conditioned), the Obligors shall use commercially reasonable efforts to (i) transfer all leased Real Estate and all owned Real Estate, in each case acquired after the Closing Date and not constituting Excluded Property, if not required to be secured by a Mortgage pursuant to clause (a) above, to the SPV and, upon request of Agent, provide evidence of same; provided that such commercially reasonable efforts shall not require the Obligors to (A) pay consent or similar fees to counterparties to leases or other contracts in order to effect such transfers or (B) transfer any lease to the extent that a grant of a perfected security interest in the equity interests in the SPV would violate or invalidate such lease or create a right of termination in favor of any other party thereto, and (ii) grant to Agent a perfected security interest in the equity interests in the SPV (to the extent not then in place).

7.3.2 Vehicles. If any Obligor acquires a Vehicle that does not constitute Excluded Property or a Vehicle that is a Specified Vehicle (or if any Vehicle ceases to be Excluded Property), Obligors shall, within 90 days (as may be extended by Agent in its sole

discretion), execute and deliver such documents and take such actions (including notation on the certificate of title) as Agent may reasonably request to create a perfected Lien in favor of Agent on such Vehicle.

7.3.3 Post-Closing Collateral. The Borrower shall, and shall cause each other Obligor to, as promptly as reasonably practicable, but in no event later than the number of days after the Closing Date applicable to each clause set forth below as any such period may be extended by Agent (such extensions not to be unreasonably withheld, delayed or conditioned), provide the items or perform the actions listed below (the assets subject to the below requirements, collectively, the “Post-Closing Collateral” and the time periods relating thereto, the “Post-Closing Collateral Period”):

(a) within 90 days following the Closing Date, the Obligors shall, with respect to the owned Real Estate set forth on Schedule 1.1(C)(the “Closing Date Mortgaged Real Property”), (i) execute, deliver and record to Agent a Mortgage sufficient to create a perfected Lien in favor of Agent, (ii) deliver to Agent a customary opinion of local counsel in the state in which such Closing Date Mortgaged Real Property is located as to such Mortgage, (iii) to the extent required by applicable law, acknowledge receipt of any life-of-loan flood hazard determination procured by Agent or any Lender; (iv) deliver to Agent any existing documents, instruments or agreements as Agent may reasonably request with respect to any environmental risks regarding such Real Estate; (v) upon request, deliver to Agent any existing survey of such Closing Date Mortgaged Real Property; and (vi) (A) upon the reasonable request of Agent, deliver to Agent a title report for all Closing Date Mortgaged Real Property with an estimated emergence net book value between \$175,000 and \$400,000 as set forth on Schedule 1.1(C), and (B) deliver to Agent a mortgagee title policy (or “marked” title commitment therefor) for all Closing Date Mortgaged Real Property with an estimated emergence net book value in excess of \$400,000 as set forth on Schedule 1.1(C), in form and substance reasonably acceptable to Agent, having a value not in excess of the fair market value of such Real Estate covering Agent’s interest under the Mortgage, by an insurer reasonably acceptable to Agent (which must be fully paid on such effective date); provided, that the Borrower shall not be obligated to deliver any mortgage title policies to the extent doing so would require the Borrower to obtain new surveys, zoning letters, appraisals, or environmental assessments of such Real Estate.

(b) within 90 days following the Closing Date the Obligors shall use commercially reasonable efforts to (i) transfer all leased Real Estate (other than the Borrower’s principal office) and all owned Real Estate not secured by a Mortgage (and in any event shall transfer owned Real Estate accounting for at least 90% of the aggregate net book value of all applicable Real Estate) to the SPV; provided that such commercially reasonable efforts shall not require the Obligors to pay consent or similar fees to counterparties to leases or other contracts in order to effect such transfers, and (ii) grant to Agent a perfected security interest in the equity interests in the SPV;

(c) the Obligors shall use commercially reasonable efforts to create a perfected Lien in favor of Agent on each Vehicle that does not constitute Excluded Property that is not currently subject to a perfected security interest in favor of Agent within ~~270~~360 days following the Closing Date;

(d) other than as provided in **Sections 7.3.3(a)** through (c), the Obligors shall not be required to provide any leasehold mortgages or any Related Real Estate Documents with respect to any Mortgaged Property; ~~and~~

(e) ~~within~~Within 30 days ~~following of~~ the Closing Date, the ~~Obligors shall have delivered copies of policies or certificates of insurance for the~~Borrower shall deliver a liability insurance certificate along with endorsements to the liability insurance policies ~~carried by the Borrower as well as all necessary endorsements naming Agent as an additional insured or loss payee with respect to the Collateral, as the case may be,~~of the Obligors or other evidence in form and substance reasonably ~~satisfactory to Agent.~~acceptable to the Agent to the effect that the Agent and the Lenders are additional insureds under the liability insurance policies of the Obligors; and

(f) within 30 days of the Closing Date (or such longer period as Agent may agree in its reasonable discretion), the Obligors shall deliver a Securities Account Control Agreement with respect to Account no. xxxxxx01 maintained at Wells Fargo Securities, LLC signed by Wells Fargo Securities, LLC, in the form previously agreed to or such other form reasonably satisfactory to Agent.

7.4 Other Collateral.

7.4.1 Commercial Tort Claims. Except as shown on **Schedule 7.4.1**, as of the Closing Date, no Obligor has a Commercial Tort Claim (other than a Commercial Tort Claim for less than \$5,000,000). Obligors shall promptly notify Agent in writing if any Obligor has a Commercial Tort Claim (other than a Commercial Tort Claim for less than \$5,000,000), shall promptly amend **Schedule 7.4.1** to include such claim, and shall take such actions as Agent deems appropriate to subject such claim to a duly perfected, first priority (or subject to the Intercreditor Agreement, second priority) Lien in favor of Agent.

7.4.2 Certain After-Acquired Collateral. Obligors shall promptly notify Agent in writing if, after the Closing Date, the Borrower obtains any interest in any Collateral consisting of (a) Deposit Accounts (other than an Excluded Account), (b) Intellectual Property that is material to such Obligor's business or (c) Chattel Paper, Documents, Instruments or Investment Property, in each case with an individual value of or face amount in excess of \$1,000,000 and, upon Agent's request, shall promptly take such actions as Agent deems appropriate to effect Agent's duly perfected, first priority (or subject to the Intercreditor Agreement, second priority) Lien upon such Collateral, including obtaining any appropriate possession, control agreement or Lien Waiver. If any Collateral is in the possession of a third party, at Agent's request, Obligors shall use commercially reasonable efforts to obtain an acknowledgment that such third party holds the Collateral for the benefit of Agent.

7.5 Limitations. The Lien on Collateral granted hereunder is given as security only and shall not subject Agent or any Lender to, or in any way modify, any obligation or liability of Obligors relating to any Collateral.

7.6 Further Assurances. All Liens granted to Agent under the Loan Documents are for the benefit of Secured Parties. Promptly upon request, Obligors shall deliver such instruments

and agreements, and shall take such actions, as Agent deems appropriate under Applicable Law to evidence or perfect its Lien on any Collateral. Each Obligor authorizes Agent to file any financing statement that describes the Collateral as “all assets” or “all personal property” of such Obligor, or words to similar effect, and ratifies any action taken by Agent before the Closing Date to effect or perfect its Lien on any Collateral.

7.7 Certain Limited Exclusions.

(a) Notwithstanding **Section 7.1**, the Collateral shall not include, and no Obligor shall be deemed to have granted a security interest in, any of such Obligor’s right, title or interest in:

- (i) any Excluded Property;
- (ii) Letter-of-Credit Rights (other than to the extent such rights can be perfected by filing a UCC financing statement);
- (iii) any governmental licenses or state or local franchises, charters and authorizations to the extent the granting of security interests therein are prohibited or restricted thereby;
- (iv) pledges and security interests prohibited or restricted by Applicable Law (including any requirement to obtain the consent of any Governmental Authority, unless such consent has been obtained (it being understood that there shall be no obligation to obtain such consent)) (after giving effect to the applicable anti-assignment provisions of the UCC, the assignment of which is expressly deemed effective under the UCC or other applicable law notwithstanding such prohibition);
- (v) (1) Property subject to a purchase money security agreement or capital lease agreement evidencing or governing purchase money and capital lease obligations that are permitted to be incurred pursuant to the Loan Documents to the extent the granting of a security interest therein is validly prohibited thereby or otherwise requires consent (but only so long as such prohibition or consent requirement was not created in contemplation or anticipation of the Collateral requirements under the Loan Documents) and/or (2) any lease, license, permit or agreement or any property subject to such agreement, in each case in existence on the Closing Date or upon acquisition of the relevant Obligor party thereto, to the extent that a grant of a security interest therein would violate or invalidate such lease, license, permit or agreement or create a right of termination in favor of any other party thereto or otherwise require consent thereunder (after giving effect to the applicable anti-assignment provisions of the UCC or other Applicable Law, the assignment of which is expressly deemed effective under the UCC or other applicable law notwithstanding such prohibition), but only so long as such restriction or consent requirement was not created in contemplation or anticipation of the Collateral requirements under the Loan Documents;
- (vi) any intent-to-use trademark application prior to the filing of a “Statement of Use” or “Amendment to Allege Use” with respect thereto, to the extent, if

any, that, and solely during the period, if any, in which, the grant of a security interest therein would impair the validity or enforceability of such intent-to-use trademark application under applicable federal law;

(vii) Equity Interests in captive insurance Subsidiaries;

(viii) interests in joint ventures and non-wholly owned Subsidiaries which cannot be pledged without the consent of third parties (but only so long as such consent requirement was not created in contemplation or anticipation of the Collateral requirements under the Loan Documents);

(ix) payroll, employee benefits, withholding tax and other fiduciary deposit accounts;

(x) voting Equity Interests in excess of 66% in any CFC that is directly owned by one or more Domestic Subsidiaries;

(xi) any assets (including any Equity Interests) owned by a Foreign Subsidiary; and

(xii) other Property to the extent Agent determines that the cost of obtaining or perfecting a lien or security interest therein is excessive in relation to the benefit afforded to the Lenders thereby.

(b) Obligors shall not be required to (i) take any action under the law of any non-U.S. jurisdiction to create or perfect a security interest in such assets, including any intellectual property registered in any non-U.S. jurisdiction (and no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction shall be required) or (ii) deliver any leasehold mortgages and shall only be required to use commercially reasonable efforts to deliver landlord waivers, estoppels or collateral access letters to the extent reasonably requested by Agent.

7.8 Intercreditor Agreement. Notwithstanding anything herein to the contrary, the liens and security interests granted to Agent pursuant to this Agreement and the exercise of any right or remedy by Agent hereunder are subject to the provisions of the Intercreditor Agreement. In the event of any conflict between the terms of the Intercreditor Agreement and this Agreement, the terms of the Intercreditor Agreement shall govern and control.

SECTION 8. COLLATERAL ADMINISTRATION

8.1 TL Proceeds and Priority Collateral Account. The TL Proceeds and Priority Collateral Account and funds on deposit therein shall at all times be subject to a Deposit Account Control Agreement and a perfected, first-priority Lien (subject to Permitted Liens (x) in favor of the account bank and (y) that have priority by operation of law) in favor of Agent. Funds on deposit in the TL Proceeds and Priority Collateral Account on the Closing Date, together with identifiable proceeds of Asset Dispositions of Term Priority Collateral, and identifiable proceeds of insurance resulting from casualty of the Term Priority Collateral and of awards arising from

condemnation of the Term Priority Collateral to the extent deposited in the TL Proceeds and Priority Collateral Account, (i) may not be commingled with any other funds and (ii) shall at all times remain segregated funds, separate and apart from any other funds of the Borrower and its Subsidiaries. Funds kept in the TL Proceeds and Priority Collateral Account may only be transferred to other deposit accounts of the parties to this Agreement if and to the extent such funds are to be disbursed to third parties in transactions not prohibited by the terms hereof and such transfer occurs substantially concurrently with or reasonably in advance of such disbursement.

8.2 Equipment

8.2.1 **Records and Schedules of Equipment**. Each Obligor shall keep accurate and complete records in all material respects of its Equipment, including kind, quality, quantity, cost, acquisitions and dispositions thereof, and shall submit to Agent, on such periodic basis as Agent may reasonably request, a current schedule thereof, in form reasonably satisfactory to Agent. Promptly upon request, Obligors shall deliver to Agent evidence of their ownership or interests in any Equipment.

8.2.2 **Condition of Equipment**. With respect to the Obligors' obligations in connection with the operation of their business, the Equipment is in good operating condition and repair, and all necessary replacements and repairs have been made so that the value and operating efficiency of such Equipment is preserved at all times, reasonable wear and tear excepted. Each Obligor shall ensure that such Equipment is mechanically and structurally sound, and capable of performing the functions for which it was designed, in accordance with manufacturer specifications. No Borrower shall permit any Equipment having a value in excess of \$2,500,000 to become affixed to real Property unless any landlord or mortgagee delivers a Lien Waiver.

8.3 Deposit Accounts and Securities Accounts. **Schedule 8.3** sets forth all Deposit Accounts and Securities Accounts maintained by the Borrower and other Obligors as of the Closing Date. Subject to the terms of the Intercreditor Agreement, each of the Borrower and other Obligors shall take all commercially reasonable actions necessary to establish Agent's control of each such Deposit Account or Securities Account (other than (a) an account exclusively used for payroll, employee benefits, withholding tax and other fiduciary deposit accounts and, to the extent an account is established to hold cash pledged in connection with a Lien permitted pursuant to **Section 10.2.2(I)**, such account, ~~and~~ (b) escrow, defeasance and discharge accounts which are required to be established pursuant to the terms of related documents in connection with consummation of transactions otherwise permitted by the terms of this Agreement, and (c) accounts containing not more than \$2,500,000 for all such accounts at any time (each an "Excluded Account" and collectively for all such accounts in clauses (a) and (b) above, the "Excluded Accounts"). The Borrower and each other Obligor shall be the sole account holders of each Deposit Account and Securities Account and shall not allow any other Person (other than Agent and, subject to the Intercreditor Agreement, the ABL Agent) to have control over a Deposit Account, Securities Account or any Property deposited therein. The Borrower and each other Obligor shall promptly notify Agent of any opening or closing of a Deposit Account or Securities Account (other than an Excluded Account) and, with the consent of Agent, will amend Schedule 8.3 to reflect same.

8.4 General Provisions.

8.4.1 Location of Collateral. All tangible items of Collateral, other than Inventory in transit, shall at all times be kept by the Borrower at locations owned or leased by an Obligor, at customer locations or at manufacturer locations or other locations for the purposes of repair or servicing of such Collateral, except that the Borrower may make sales or other dispositions of Collateral in accordance with **Section 10.2.9**.

8.4.2 Insurance of Collateral; Condemnation Proceeds. Each Obligor shall maintain insurance with respect to the Collateral in accordance with **Section 10.1.8**. From time to time upon request, the Borrower shall provide Agent with reasonably detailed information as to the insurance so carried. Unless Agent shall agree otherwise, each policy shall include satisfactory endorsements (i) showing Agent as loss payee in respect of the property insurance policies relating to the Collateral and additional insured in respect of the liability insurance policies, as applicable; (ii) requiring (x) 10 days' prior written notice to Agent in the event of cancellation of the policy due to non-payment of premiums and (y) 30 days' prior written notice to Agent in the event of cancellation of the policy for any other reason; and (iii) specifying that the interest of Agent shall not be impaired or invalidated by any act or neglect of any Obligor or the owner of the Property, nor by the occupation of the premises for purposes more hazardous than are permitted by the policy; provided that, so long as no Event of Default has occurred and is then continuing, Agent will provide any proceeds of such property insurance to the Borrower for application in accordance with **Section 5.4**. If the Borrower fails to provide and pay for any insurance, Agent may, at its option, but shall not be required to, procure the insurance and charge the Borrower therefor. While no Event of Default exists, the Borrower may settle, adjust or compromise any insurance claim, as long as the proceeds are, subject to the terms of the Intercreditor Agreement, delivered to Agent. If an Event of Default exists, subject to the terms of the Intercreditor Agreement, only Agent shall be authorized to settle, adjust and compromise such claims.

8.4.3 Protection of Collateral. All expenses of protecting, storing, warehousing, insuring, handling, maintaining and shipping any Collateral, all Taxes payable with respect to any Collateral (including any sale thereof), and all other payments required to be made by Agent to any Person to realize upon any Collateral, shall be borne and paid by Obligors. Agent shall not be liable or responsible in any way for the safekeeping of any Collateral, for any loss or damage thereto (except for reasonable care in its custody while Collateral is in Agent's actual possession), for any diminution in the value thereof, or for any act or default of any warehouseman, carrier, forwarding agency or other Person whatsoever, but the same shall be at Borrower's sole risk.

8.4.4 Defense of Title. Each Obligor shall defend its title to Collateral and Agent's Liens therein against all Persons, claims and demands, except Permitted Liens.

8.5 Power of Attorney. Each Obligor hereby irrevocably constitutes and appoints Agent (and all Persons designated by Agent) as such Obligor's true and lawful attorney (and agent-in-fact) for the purposes provided in this **Section 8.5**. Agent, or Agent's designee, may, without notice and in either its or an Obligor's name, but at the cost and expense of Obligors and subject to the terms of the Intercreditor Agreement:

(a) endorse an Obligor's name on any Payment Item or other proceeds of Collateral (including proceeds of insurance) that come into Agent's possession or control; and

(b) during an Event of Default to the extent any of the following relates to the Term Priority Collateral, (i) notify any Account Debtors of the assignment of their Accounts, demand and enforce payment of Accounts by legal proceedings or otherwise, and generally exercise any rights and remedies with respect to Accounts; (ii) settle, adjust, modify, compromise, discharge or release any Accounts or other Collateral, or any legal proceedings brought to collect Accounts or Collateral; (iii) sell or assign any Accounts and other Collateral upon such terms, for such amounts and at such times as Agent deems advisable; (iv) collect, liquidate and receive balances in Deposit Accounts or investment accounts, and take control, in any manner, of proceeds of Collateral; (v) prepare, file and sign an Obligor's name to a proof of claim or other document in a bankruptcy of an Account Debtor, or to any notice, assignment or satisfaction of Lien or similar document; (vi) receive, open and dispose of mail addressed to an Obligor, and notify postal authorities to deliver any such mail to an address designated by Agent; (vii) endorse any Chattel Paper, Document, Instrument, bill of lading, or other document or agreement relating to any Accounts, Inventory or other Collateral; (viii) use an Obligor's stationery and sign its name to verifications of Accounts and notices to Account Debtors; (ix) use information contained in any data processing, electronic or information systems relating to Collateral; (x) make and adjust claims under insurance policies; (xi) take any action as may be necessary or appropriate to obtain payment under any letter of credit, banker's acceptance or other instrument for which an Obligor is a beneficiary; and (xii) take all other actions as Agent deems appropriate to fulfill any Obligor's obligations under the Loan Documents.

SECTION 9. REPRESENTATIONS AND WARRANTIES

9.1 General Representations and Warranties. To induce Agent and Lenders to enter into this Agreement and to make available the Loans, the Borrower represents and warrants that:

9.1.1 Organization; Powers. Each of the Borrower and its Restricted Subsidiaries is a legal entity duly organized, validly existing and in good standing (to the extent applicable) under the laws of the jurisdiction of its organization, has all requisite power and authority, and has all material governmental licenses, authorizations, consents and approvals necessary, to own its assets and to carry on its business as now conducted, and is qualified to do business in, and is in good standing in, every jurisdiction where such qualification is required, except where failure to have such power, authority, licenses, authorizations, consents, approvals and qualifications could not reasonably be expected to have a Material Adverse Effect.

9.1.2 Authority; Enforceability. After giving effect to the Confirmation Order and the Prepackaged Plan, the Transactions are within each Obligor's corporate, limited liability company or partnership powers, as applicable, and have been duly authorized by all necessary corporate, limited liability company or partnership, as applicable, and, if required, equity holder action (including, without limitation, any action required to be taken by any class of directors or other governing body of the Borrower or any other Person, whether interested or disinterested, in order to ensure the due authorization of the Transactions). Each Loan Document to which an Obligor is a party has been duly executed and delivered by such Obligor and constitutes a legal, valid and binding obligation of such Obligor, as applicable, enforceable in

accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

9.1.3 Approvals; No Conflicts. After giving effect to the Confirmation Order and the Prepackaged Plan, the Transactions (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority or any other third Person (including shareholders or other equity holders or any class of directors or other governing body, whether interested or disinterested, of the Borrower or any other Person), nor is any such consent, approval, registration, filing or other action necessary for the validity or enforceability of any Loan Document or the consummation of the transactions contemplated thereby, except such as have been obtained or made and are in full force and effect other than (i) the recording and filing of the Security Documents as required by this Agreement, and (ii) those third party approvals or consents which, if not made or obtained, would not cause a Default hereunder, or could not reasonably be expected to have a Material Adverse Effect, (b) will not violate any Applicable Law or any Organic Documents of the Borrower or any Restricted Subsidiary, or any order of any Governmental Authority, (c) will not violate or result in a default under any Material Contract, or give rise to a right thereunder to require any payment to be made by the Borrower or any Restricted Subsidiary and (d) will not result in the creation or imposition of any Lien on any Property of the Borrower or any Restricted Subsidiary (other than the Liens created by the Loan Documents).

9.1.4 Financial Condition; No Material Adverse Effect.

(a) The Borrower has heretofore furnished to Agent and the Lenders the consolidated balance sheet and statements of operations, stockholders' equity and cash flows of the Borrower and its Consolidated Subsidiaries as of and for the Fiscal Year ended December 31, 2015, reported on by Grant Thornton LLP, independent public accountants. Such financial statements are prepared in accordance with GAAP and present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of such date and for such period in accordance with GAAP.

(b) Since the Closing Date, there has been no event, development or circumstance that has had or would reasonably be expected to have a Material Adverse Effect.

(c) Neither the Borrower nor any Restricted Subsidiary has, on the date hereof after giving effect to the Transactions, any Material Debt (including Disqualified Capital Stock), off-balance sheet liabilities or partnerships, liabilities for taxes, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments, except for the outstanding ABL Loans or as referred to or reflected or provided for in the financial statements delivered to Agent and Lenders as set forth in **Schedule 9.1.4**.

9.1.5 Litigation. After giving effect to the Confirmation Order and the Prepackaged Plan, there are no actions, suits, investigations or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrower, threatened in writing against or affecting the Borrower or any Restricted Subsidiary or any of their respective Properties (i) that could reasonably be expected, individually or in the aggregate,

to result in a Material Adverse Effect or (ii) that involve any Loan Document or the Transactions.

9.1.6 Environmental Matters. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) the Borrower and the Subsidiaries and each of their respective Properties and operations thereon are, and have been for the preceding five years, in compliance with applicable Environmental Laws;

(b) the Borrower and the Subsidiaries have obtained Environmental Permits required for their respective operations and each of their Properties, with such Environmental Permits being currently in full force and effect, and neither the Borrower nor any Subsidiary has received any written notice or otherwise has actual knowledge that any such existing Environmental Permit will be revoked or that any application for any new Environmental Permit or renewal of any existing Environmental Permit will be protested or denied;

(c) there are no claims, demands, suits, orders, inquiries, investigations, written requests for information or proceedings concerning any violation of, or any liability (including as a potentially responsible party) under, any applicable Environmental Law that is pending or, to the Borrower's knowledge, threatened against the Borrower or any of its Subsidiaries or any of their respective Properties or as a result of any operations at such Properties;

(d) none of the Properties of the Borrower or any Subsidiary of Borrower contain or, during the period of ownership or operation of the respective Borrower or Subsidiary of Borrower, have contained, or to the Borrower's knowledge, have at any time contained any: (i) underground storage tanks; (ii) asbestos-containing materials; (iii) landfills or dumps; (iv) hazardous waste management units as defined pursuant to RCRA or any comparable state law; or (v) sites on or nominated for the National Priority List promulgated pursuant to CERCLA or any state remedial priority list promulgated or published pursuant to any comparable state law;

(e) there has been no Release or, to the Borrower's knowledge, threatened Release, of Hazardous Materials at, on, under or from the Borrower's or any Subsidiary's Properties requiring any investigations, remediations, abatements, removals, or monitorings of Hazardous Materials or other remedial actions required under applicable Environmental Laws at such Properties and none of such Properties are adversely affected by any Release or threatened Release of a Hazardous Material originating or emanating from any other real property in quantities or concentrations that would require remediation;

(f) none of the Borrower or any Subsidiary has received any written notice asserting an alleged liability or obligation under any applicable Environmental Laws with respect to the investigation, remediation, abatement, removal, or monitoring of any Hazardous Materials at, under, or Released or threatened to be Released from any real properties offsite the Borrower's or any Subsidiary's Properties and there are no conditions or circumstances that could reasonably be expected to result in the receipt of such written notice; and

(g) there has been no exposure of any Person or Property to any Hazardous Materials as a result of or in connection with the operations and businesses of any of the Borrower's or the Subsidiaries' Properties that could reasonably be expected to form the basis for a claim for damages or compensation and there are no conditions or circumstances that could reasonably be expected to result in the receipt of notice regarding such exposure.

9.1.7 Surety Obligations. Neither the Borrower nor any Restricted Subsidiary is obligated as surety or indemnitor under any bond or other contract that assures payment or performance of any obligation of any Person, except as permitted hereunder.

9.1.8 Compliance with the Laws and Agreements; No Defaults.

(a) After giving effect to the Confirmation Order, the Borrower and each Restricted Subsidiary is in compliance, and its Properties and business operations are in compliance, with all Applicable Law (including ERISA, Environmental Laws, FLSA, OSHA, Anti-Terrorism Laws, and laws regarding collection and payment of Taxes), and all agreements and other instruments binding upon it or its Property, and possesses all licenses, permits, franchises, exemptions, approvals and other governmental authorizations necessary for the ownership of its Property and the conduct of its business, except where the failure to do so (other than failure to comply with Anti-Terrorism Laws), individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Except for the FCPA Settlement, there have been no citations, notices or orders of material noncompliance issued to the Borrower or Subsidiary under any Applicable Law. No Inventory has been produced in violation of the FLSA.

(b) None of the Borrower or any Restricted Subsidiary is in default, nor has any event or circumstance occurred which, but for the expiration of any applicable grace period or the giving of notice, or both, would constitute a default or would require the Borrower or a Restricted Subsidiary to redeem or make any offer to redeem under any material indenture, note, credit agreement or instrument pursuant to which any Material Debt is outstanding or by which the Borrower or any Restricted Subsidiary or any of their Properties is bound.

(c) No Default has occurred and is continuing.

9.1.9 Investment Company Act, etc. No Obligor is (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of, or subject to regulation under, the Investment Company Act of 1940, as amended or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other Applicable Law regarding its authority to incur Debt.

9.1.10 Taxes. The Borrower and each Restricted Subsidiary has timely filed or caused to be filed all tax returns and reports required to have been filed and has paid or caused to be paid all Taxes required to have been paid by it, except (a) to the extent being Properly Contested or (b) to the extent that failure to do so could not reasonable be expected to result in a Material Adverse Effect. The charges, accruals and reserves on the books of the Borrower and its Restricted Subsidiaries in respect of Taxes and other governmental charges are, in the reasonable opinion of the Borrower, adequate. No Lien relating to Taxes described in the first sentence of

this **Section 9.1.10** has been filed and, to the knowledge of the Borrower, no claim is being asserted with respect to any such Tax or other such governmental charge.

9.1.11 ERISA. Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect:

(a) the Borrower, the Subsidiaries and each ERISA Affiliate have complied with ERISA and, where applicable, the Code regarding each Plan;

(b) each Plan is, and has been, established and maintained in compliance with its terms, ERISA and, where applicable, the Code;

(c) no act, omission or transaction has occurred which could result in imposition on the Borrower, any Subsidiary or any ERISA Affiliate (whether directly or indirectly) of (i) either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed pursuant to Chapter 43 of Subtitle D of the Code or (ii) breach of fiduciary duty liability damages under section 409 of ERISA;

(d) full payment when due has been made of all amounts which the Borrower, the Subsidiaries or any ERISA Affiliate is required under the terms of each Plan or applicable law to have paid as contributions to such Plan as of the date hereof;

(e) neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains, or contributes to an employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that may not be terminated by the Borrower, a Subsidiary or any ERISA Affiliate in its sole discretion at any time without any material liability; and

(f) neither the Borrower, the Subsidiaries nor any ERISA Affiliate sponsors, maintains or contributes to, or has at any time in the six-year period preceding the date hereof sponsored, maintained or contributed to, any employee pension benefit plan, as defined in section 3(2) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

9.1.12 Governmental Approvals. The Borrower and each Restricted Subsidiary has, is in compliance with, and is in good standing with respect to, all Governmental Approvals necessary to conduct its business and to own, lease and operate its Properties, except as could not reasonably be expected to result in a Material Adverse Effect. All necessary import, export or other licenses, permits or certificates for the import or handling of any goods or other Collateral have been procured and are in effect, and the Borrower and Restricted Subsidiaries have complied with all foreign and domestic laws with respect to the shipment and importation of any goods or Collateral, except where noncompliance could not reasonably be expected to have a Material Adverse Effect.

9.1.13 Insurance. The Borrower has, and has caused all of its Subsidiaries (after giving effect to any self-insurance) to maintain, with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily

maintained by companies engaged in the same or similar businesses operating in the same or similar locations (including hazard insurance). Agent has been named as additional insured in respect of such liability insurance policies, and Agent has been named as loss payee with respect to property loss insurance for all items of Collateral.

9.1.14 Burdensome Contracts. As of the Closing Date, neither the Borrower nor any Restricted Subsidiary is party or subject to any Restrictive Agreement, except as shown on **Schedule 9.1.14**. No such Restrictive Agreement prohibits the execution, delivery or performance of any Loan Document by an Obligor.

9.1.15 Restriction on Liens. Neither the Borrower nor any of the Restricted Subsidiaries is a party to any material agreement or arrangement (other than (a) Purchase Money Debt permitted by **Section 10.2.1(c)**, but then only on the Property subject of such Purchase Money Debt, and (b) restrictions under instruments creating Permitted Liens, but then only on the Property subject of such Lien), or subject to any order, judgment, writ or decree, which either restricts or purports to restrict its ability to grant Liens to Agent on or in respect of their Properties to secure the Obligations and the Loan Documents.

9.1.16 Capital Structure. **Schedule 9.1.16** shows, for the Borrower and each of its Subsidiaries, its jurisdiction of organization, authorized and issued Equity Interests, holders of its Equity Interests (other than the holders of the Equity Interests in the Borrower) and agreements binding on such holders with respect to such Equity Interests, in each case, as of the Closing Date. Except as disclosed on **Schedule 9.1.16**, in the five years preceding the Closing Date, neither the Borrower nor any Restricted Subsidiary has acquired any substantial assets from any other Person nor been the surviving entity in a merger or combination. The Borrower has good title to its Equity Interests in its Restricted Subsidiaries, subject only to Agent's and the ABL Agent's Lien and any Liens securing holders of Permitted Junior Priority Secured Debt (or their representative), and all such Equity Interests are duly issued, fully paid and non-assessable (to the extent applicable). As of the Closing Date, except as disclosed on **Schedule 9.1.17**, **9.1.16** or as expressly contemplated in the Prepackaged Plan, there are no outstanding purchase options, warrants, subscription rights, agreements to issue or sell, convertible interests, phantom rights or powers of attorney relating to Equity Interests of any Restricted Subsidiary.

9.1.17 Location of Business and Offices. **Schedule 9.1.17** shows, as of the Closing Date, the name of each Obligor as listed in the public records of its jurisdiction of organization, such Obligor's organizational identification number in its jurisdiction of organization, and the address for such Obligor's principal place of business and chief executive office.

9.1.18 Properties; Titles, Intellectual Property; Licenses; Etc.

(a) The Borrower and each Restricted Subsidiary has good and valid title to, valid leasehold interests in, or valid easements, rights of way or other property interests in all of its material real and personal Property free and clear of all Liens except Permitted Liens. All Liens of Agent in the Collateral are or will be duly perfected, first priority Liens (or, subject to the Intercreditor Agreement, second priority), subject only to Permitted Liens that are expressly allowed to have priority over Agent's Liens. From and after the transfers to the SPV described

in **Section 7.3.1** and **7.3.3**, the SPV will have good and valid title to, valid leasehold interests in, or valid easements, rights of way or other property interests in all of its material real and personal Property free and clear of all Liens except Permitted Liens.

(b) All material leases, easements, rights of way and other agreements necessary for the conduct of the business of the Borrower and the Restricted Subsidiaries are valid and subsisting, in full force and effect, and to the Borrower's knowledge there exists no default or event or circumstance which with the giving of notice or the passage of time or both would give rise to a default under any such lease or leases, which could reasonably be expected to result in a Material Adverse Effect.

(c) The Borrower and each Restricted Subsidiary owns, or is licensed to use, all Intellectual Property material to its business, and to the Borrower's knowledge, the use thereof by the Borrower and such Restricted Subsidiary, as applicable, does not infringe upon the rights of any other Person, except for any such infringements that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. There is no pending or, to the Borrower's knowledge, threatened Intellectual Property Claim with respect to the Borrower, any Restricted Subsidiary or any of their Property (including any Intellectual Property) that could reasonably be expected to result in a Material Adverse Effect. All Intellectual Property owned, used or licensed by, or otherwise subject to any interests of, the Borrower or Restricted Subsidiary as of the Closing Date is shown on **Schedule 9.1.18**.

9.1.19 Maintenance of Properties. Except for such acts or failures to act as could not be reasonably expected to have a Material Adverse Effect, the Properties owned, leased or used by the Borrower and its Restricted Subsidiaries that are necessary to the conduct of their businesses, in the aggregate, are in good operating condition and repair, subject to ordinary wear and tear.

9.1.20 Hedging Agreements. **Schedule 9.1.20**, as of the date hereof, and after the date hereof, each report required to be delivered by the Borrower pursuant to **Section 10.1.2(f)**, sets forth, a true and complete list of all Hedging Agreements of the Borrower and each Restricted Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark to market value thereof, all credit support agreements relating thereto (including any margin required or supplied) and the counterparty to each such agreement.

9.1.21 Security Documents.

(a) The provisions of this Agreement are effective to create, in favor of Agent for the benefit of the Secured Parties, a legal, valid and enforceable Lien on, and security interest in, all of the Collateral described herein, and (i) when financing statements and other filings in appropriate form are filed in the offices set forth on **Schedule 9.1.21(a)** and (ii) upon the taking of possession or control by Agent (or by the ABL Agent subject to the terms of the Intercreditor Agreement) of the Collateral with respect to which a security interest may be perfected only by possession or control (which possession or control shall be given to Agent (or the ABL Agent subject to the terms of the Intercreditor Agreement) to the extent possession or control by Agent is required by this Agreement), the Liens created by this Agreement shall constitute fully

perfected first priority (or, subject to the Intercreditor Agreement, second priority) Liens on, and security interests in, all right, title and interest of the Obligors in the Collateral covered thereby (other than such Collateral in which a security interest cannot be perfected under the Uniform Commercial Code as in effect at the relevant time in the relevant jurisdiction), in each case free of all Liens other than Permitted Liens, and prior and superior to all other Liens other than such Liens and, subject to the terms of the Intercreditor Agreement, the Liens in favor of the ABL Agent.

(b) If and when executed and delivered, each Mortgage will be effective to create, in favor of Agent (or such other trustee as may be required or desired under local law) for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Mortgaged Property and the proceeds thereof, subject only to Permitted Liens, and when any Mortgage is executed and delivered after the date hereof in accordance with the provisions of **Section 7.3.1** and filed in the appropriate offices, the Mortgages shall constitute fully perfected Liens on, and security interests in, all right, title and interest of the Obligors in the Real Estate subject to such Mortgage and the proceeds thereof, in each case prior and superior in right to any other person, other than Liens permitted by such Mortgage and, subject to the terms of the Intercreditor Agreement, the Liens in favor of the ABL Agent.

(c) Each Security Document delivered pursuant to **Section 7.4**, **Section 7.6** or **Section 10.1.13**, upon execution and delivery thereof, is effective to create in favor of Agent, for the benefit of the Secured Parties, legal, valid and enforceable Liens on, and security interests in, all of the Collateral thereunder, and when all appropriate filings or recordings are made in the appropriate offices as may be required under Applicable Law or possession or control is conferred to Agent, such Security Document will constitute fully perfected first priority (or, subject to the Intercreditor Agreement, second priority) Liens on, and security interests in, all right, title and interest of the Obligors in such Collateral, in each case with no other Liens except for Permitted Liens.

9.1.22 Solvency. (i) As of the Closing Date, after giving effect to the consummation of the Transactions and (ii) after giving effect to any extension of credit hereunder, the Borrower and its Consolidated Subsidiaries, on a consolidated basis, are Solvent. No Obligor is planning to take any action described in **Section 12.1(h)**.

9.1.23 Common Enterprise. The Borrower and its Restricted Subsidiaries and their business operations are closely integrated with one another into a single, interdependent and collective, common enterprise so that any benefit received by any one of them from the financial accommodations provided under this Agreement will be to the direct benefit of the others. The Borrower and its Restricted Subsidiaries intend to render services to or for the benefit of each other, to purchase or sell and supply goods to or from or for the benefit of each other, to make loans, advances and provide other financial accommodations to or for the benefit of each other and to provide administrative, marketing, payroll and management services to or for the benefit of each other (in each case, except as may be prohibited by this Agreement).

9.1.24 Broker's Fees. Except as disclosed in the Prepackaged Plan, no broker's or finder's fee, commission or similar compensation will be payable by the Borrower or any Restricted Subsidiary with respect to the Transactions.

9.1.25 Employee Matters. As of the Closing Date, (a) neither the Borrower nor any Restricted Subsidiary, nor any of their respective employees, is subject to any collective bargaining agreement, (b) no petition for certification or union election is pending or, to the knowledge of the Borrower or any Restricted Subsidiary, contemplated with respect to the employees thereof and no union or collective bargaining unit has sought such certification or recognition with respect to the employees of the Borrower or any Restricted Subsidiary, and (c) there are no strikes, slowdowns, work stoppages or controversies pending or, to the knowledge of the Borrower, threatened between the Borrower or any Restricted Subsidiary and its respective employees.

9.1.26 Anti-Corruption Laws and Sanctions. The Borrower has implemented and maintained in effect policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions, and the Borrower, its Subsidiaries and their respective officers and to the knowledge of the Borrower, their employees, directors and agents are in compliance with Anti-Corruption Laws and applicable Sanctions in all material respects.

9.1.27 Status under Sanctions. None of the Borrower or any of its Subsidiaries or, to the knowledge of the Borrower or any such Subsidiary, any director, officer, employee or agent thereof is, or is owned or controlled by one or more Persons that are, currently the subject or target of any Sanction or is located, organized or resident in a Designated Jurisdiction.

9.1.28 Complete Disclosure. The consolidated balance sheet and statements of operations, stockholders' equity and cash flows of the Borrower and its Consolidated Subsidiaries hereafter delivered to Agent and Lenders will be prepared in accordance with GAAP and present fairly, in all material respects, the financial position and results of operations and cash flows of the Borrower and its Consolidated Subsidiaries as of the date and for the period set forth therein in accordance with GAAP. All projections delivered from time to time to Agent and Lenders will have been prepared in good faith, based on assumptions believed by management of the Borrower to be reasonable at the time made, it being recognized by Agent and the Lenders that such projections as they relate to future events are not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

SECTION 10. COVENANTS AND CONTINUING AGREEMENTS

10.1 Affirmative Covenants. Until Full Payment of all Obligations, the Borrower (on behalf of itself and its Restricted Subsidiaries) and each Guarantor by its execution of this Agreement, covenants and agrees with Agent and the Lenders that:

10.1.1 Inspections; Appraisals.

(a) The Borrower shall, and shall cause each Restricted Subsidiary to, permit Agent from time to time, subject to reasonable notice and normal business hours, to visit and inspect the Properties of the Borrower or any Restricted Subsidiary, inspect, audit and make extracts from the Borrower's or Restricted Subsidiary's books and records, and discuss with its

officers, employees, agents, advisors and independent accountants the Borrower's or Restricted Subsidiary's business, financial condition, assets, prospects and results of operations. Lenders may participate in any such visit or inspection, at their own expense. Neither Agent nor any Lender shall have any duty to the Borrower to make any inspection, nor to share any results of any inspection, appraisal or report with the Borrower or any of its Subsidiaries. The Borrower acknowledges that all inspections, appraisals and reports are prepared by Agent and Lenders for their purposes, and the Borrower shall not be entitled to rely upon them.

(b) The Borrower shall, and shall cause each Restricted Subsidiary to, permit Agent to examine any Obligor's books and records or any other financial or Collateral matters as Agent deems appropriate, which examinations shall be limited to one time during each 12-month period; provided, however, that the foregoing limit shall not apply if an examination or appraisal is initiated during a Default. The Borrower shall, and shall cause each Restricted Subsidiary to, reimburse Agent for all reasonable and documented charges, costs and expenses of Agent in connection with foregoing examinations and appraisals, and the Borrower agrees to pay Agent's then standard charges for examination activities, including reasonable and documented charges for Agent's internal examination and appraisal groups, as well as the reasonable and documented charges of any third party used for such purposes.

10.1.2 Financial Statements; Other Information. The Borrower will furnish to Agent (the documents required to be delivered pursuant to clauses (a), (b) and (i) below shall be deemed to have been delivered on the date on which such documents are posted on the Securities and Exchange Commission's website at www.sec.gov):

(a) Annual Financial Statements. As soon as available, but in any event not later than the earlier of (i) the date by which the Borrower is required to file its annual report on Form 10-K with the Securities and Exchange Commission in accordance with then Applicable Law and (ii) 90 days after the end of each Fiscal Year of the Borrower, its audited consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such year, setting forth in each case in comparative form the figures for the previous Fiscal Year, all reported on by Grant Thornton LLP or other independent public accountants of recognized national standing ~~[(without a "going concern" or like qualification or exception and without any qualification or exception as to the scope of such audit)]~~⁴ to (other than as a result of an upcoming maturity date under this Agreement or the ABL Credit Agreement occurring within one year from the time such opinion is delivered or any potential inability to satisfy the financial covenants set forth in Section 10.3 on a future date or in a future period)) to the effect that such consolidated financial statements present fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied.

(b) Quarterly Financial Statements. As soon as available, but in any event in accordance with then Applicable Law and not later than 60 days after the end of each of the first three Fiscal Quarters of each Fiscal Year of the Borrower, its consolidated balance sheet and related statements of operations and cash flows as of the then elapsed portion of the Fiscal Year,

⁴ ~~NTD: To conform to ABL.~~

setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by a Senior Officer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied or as prepared in accordance with the requirements of the SEC, subject to normal year-end audit adjustments and the absence of footnotes.

(c) Monthly Financial Statements. During the Reporting Trigger Period, as soon as available, but in any event not later than 30 days after the end of each month of each Fiscal Year of the Borrower, its consolidated balance sheet and related statements of operations and cash flows as of the then elapsed portion of the Fiscal Year, setting forth in each case in comparative form the figures for the corresponding period or periods of (or, in the case of the balance sheet, as of the end of) the previous Fiscal Year, all certified by a Senior Officer of the Borrower as presenting fairly in all material respects the financial condition and results of operations of the Borrower and its Consolidated Subsidiaries on a consolidated basis in accordance with GAAP consistently applied or as prepared in accordance with the requirements of the SEC, subject to normal year-end audit adjustments and the absence of footnotes.

(d) Annual Financial Projections. Concurrently with any delivery of financial statements under **Section 10.1.2(a)**, projections of the Borrower's consolidated balance sheets, related statements of operations, cash flow and Availability under the ABL Credit Agreement for the next Fiscal Year, quarter by quarter.

(e) Certificate of Senior Officer – Compliance. Concurrently with any delivery of financial statements under **Section 10.1.2(a)**, **Section 10.1.2(b)** and, if applicable, **Section 10.1.2(c)**, a Compliance Certificate.

(f) Certificate of Senior Officer – Hedging Agreements. Concurrently with any delivery of financial statements under **Section 10.1.2(a)**, **Section 10.1.2(b)** and, if applicable, **Section 10.1.2(c)**, a certificate of a Senior Officer of the Borrower, in form and substance reasonably satisfactory to Agent, setting forth as of the last Business Day of such month, Fiscal Quarter or Fiscal Year, as applicable, a true and complete list of all Hedging Agreements of the Borrower and each Restricted Subsidiary, the material terms thereof (including the type, term, effective date, termination date and notional amounts or volumes), the net mark-to-market value therefor, any new credit support agreements relating thereto, any margin required or supplied under any credit support document, and the counterparty to each such agreement.

(g) Certificate of Insurer or Broker – Insurance Coverage. Use commercially reasonable efforts to provide, concurrently with any delivery of financial statements under **Section 10.1.2(a)**, a certificate of insurance coverage from each insurer or insurance broker with respect to the insurance required by **Section 10.1.8**.

(h) Other Accounting Reports. Promptly upon receipt thereof, a copy of each other material report or letter (except standard and customary correspondence) submitted to the Borrower or any Restricted Subsidiaries by independent accountants in connection with any

annual, interim or special audit made by them of the books of the Borrower or any such Restricted Subsidiary, and a copy of any response by the Borrower or any such Restricted Subsidiary, or the board of directors or other governing body, as applicable, of the Borrower or any such Restricted Subsidiary, to such material letter or report.

(i) SEC and Other Filings; Reports to Shareholders. Promptly after the same become publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Borrower or any Restricted Subsidiary with the SEC, or with any national or foreign securities exchange (except standard and customary correspondence), or distributed by the Borrower to its shareholders generally, as the case may be.

(j) Notices Under Material Contracts. Promptly after the furnishing thereof, copies of any material report or material notice furnished to or by any Person pursuant to the terms of any Material Contract.

(k) Information Regarding Obligors. Prompt written notice (and in any event not more than three Business Days after the occurrence thereof) of any change (i) in any Obligor's corporate name or in any trade name used to identify such Person in the conduct of its business or in the ownership of its Properties, (ii) in the location of any Obligor's chief executive office or principal place of business, (iii) in any Obligor's identity or corporate structure, (iv) in any Obligor's jurisdiction of organization or such Person's organizational identification number in such jurisdiction of organization, and (v) in any Obligor's federal taxpayer identification number.

(l) Notices of Certain Changes. Promptly, but in any event within 10 Business Days after the execution thereof, copies of any amendment, modification or supplement to the certificate or articles of incorporation, by-laws, any preferred stock designation or any other Organic Document of the Borrower or any Restricted Subsidiary.

(m) PP&E Value Reports.

(i) Concurrently with any delivery of financial statements under **Section 10.1.2(a)** or financial statements for any quarter ending June 30 under **Section 10.1.2(b)**, a PP&E Value Report evaluating the Term Priority Collateral and setting forth the PP&E Value (before any adjustments contemplated by the proviso set forth in the definition thereof) with respect thereto as of a date to be no earlier than 45 days prior to the last day of the period covered by such financial statements, together with a certification from the Borrower that such PP&E Value Report is true and accurate and has been prepared in accordance with the procedures used in the immediately preceding PP&E Value Report; provided that (A) the PP&E Value Report to be delivered in connection with annual financials shall reflect appropriate field examinations with respect to the Term Priority Collateral and (B) otherwise, the PP&E Value Report may consist of a desktop appraisal, in each case, prepared by an Accepted Appraiser. After receipt of each PP&E Value Report delivered pursuant to the immediately preceding sentence, Agent will have ten (10) Business Days to review such PP&E Value Report. Agent will deliver notice to the Borrower on or prior to the tenth (10th) Business Day after receipt of the PP&E Value Report specifying in reasonable detail any disputed items with respect to

such PP&E Value Report and the basis therefor. If Agent fails to deliver such notice during such ten (10) Business Day period, Agent will have waived its right to dispute such PP&E Value Report. If Agent notifies the Borrower of any dispute to such PP&E Value Report during such ten (10) Business Day period, the parties will, within ten (10) days following the date of such notice, attempt to resolve their differences and any written resolution by them as to any disputed item will be final and binding for all purposes under this Agreement. If at the conclusion of such ten (10) day period (the “Resolution End Date”) the parties have not reached an agreement on any dispute with respect to such PP&E Value Report, then Agent may request an additional PP&E Value Report prepared at the expense of the Borrower from another Accepted Appraiser selected and engaged by Agent based on new field examinations with respect to the Term Priority Collateral (an “Interim PP&E Value Report”). If an Interim PP&E Value Report is delivered to Agent on or prior to the 50th Business Day following the applicable Resolution End Date, the results thereof will be final and binding for all purposes of this Agreement. If such Interim PP&E Value Report is not delivered within such period, then the initial PP&E Value Report as modified by any written resolutions of the parties shall apply.

(ii) In addition to the foregoing, at any time upon the request of the Required Lenders (not to be exercised more than once in any Fiscal Year), Agent may request an Interim PP&E Value Report. After receipt of each Interim PP&E Value Report, the Borrower will have ten (10) Business Days to review such Interim PP&E Value Report. The Borrower will deliver notice to Agent on or prior to the tenth (10th) Business Day after receipt of the Interim PP&E Value Report specifying in reasonable detail any disputed items with respect to such Interim PP&E Value Report and the basis therefor. If the Borrower fails to deliver such notice during such ten (10) Business Day period, the Borrower will have waived its right to dispute such Interim PP&E Value Report. If the Borrower notifies Agent of any dispute to such Interim PP&E Value Report during such ten (10) Business Day period, the parties will, within ten (10) days following the date of such notice, attempt to resolve their differences and any written resolution by them as to any disputed item will be final and binding for all purposes under this Agreement. If by the Resolution End Date the parties have not reached an agreement on any dispute with respect to such Interim PP&E Value Report, then the Borrower may request an updated Interim PP&E Value Report prepared at the expense of the Borrower from another Accepted Appraiser selected and engaged by the Borrower (the “Updated Interim PP&E Value Report”). If any Updated Interim PP&E Value Report is delivered to Agent on or prior to the 50th Business Day following the applicable Resolution End Date, the results thereof will be final and binding for all purposes of this Agreement. If such Updated Interim PP&E Value Report is not delivered within such period, then the initial Interim PP&E Value Report as modified by any written resolutions of the parties shall apply.

(n) Other Requested Information. Promptly following any request therefor, such other information regarding the operations, business affairs, Collateral and financial condition of the Borrower or any Restricted Subsidiary or any other Obligor (including, without limitation, any Plan and any reports or other information required to be filed with respect thereto

under the Code or under ERISA), or compliance with the terms of this Agreement or any other Loan Document, as Agent may reasonably request.

10.1.3 Notices of Material Events. The Borrower will furnish to Agent prompt and, in any event, within 10 Business Days after acquiring knowledge thereof, written notice of the following:

- (a) the occurrence of any Default of which the Borrower has knowledge;
- (b) the filing or commencement of, or the threat in writing of, any action, suit, proceeding, investigation or arbitration by or before any arbitrator or Governmental Authority against or affecting the Borrower or any Affiliate thereof not previously disclosed in writing to Agent or any material adverse development in any action, suit, proceeding, investigation or arbitration (whether or not previously disclosed to Agent) that, in either case, could reasonably be expected to result in a Material Adverse Effect;
- (c) the occurrence of any ERISA Event that, alone or together with any other ERISA Events that have occurred, could reasonably be expected to result in liability of the Borrower and its Subsidiaries in an aggregate amount exceeding \$10,000,000; and
- (d) any other development that results in, or could reasonably be expected to result in, a Material Adverse Effect.

Each notice delivered under this **Section 10.1.3** shall be accompanied by a statement of a Senior Officer of the Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

10.1.4 Existence; Conduct of Business. The Borrower will, and will cause each Restricted Subsidiary to, do or cause to be done all things reasonably necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, consents, privileges and franchises material to the conduct of its business and maintain, including, if necessary, its qualification to do business in each other jurisdiction in which its Properties are located or the ownership of its Properties requires such qualification, except where the failure to do so could not reasonably be expected to have a Material Adverse Effect; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under **Section 10.2.8**.

10.1.5 Payment of Tax Obligations. The Borrower will, and will cause each Restricted Subsidiary to, pay its Tax liabilities before the same shall become delinquent or in default, except where such Tax liabilities are being Properly Contested.

10.1.6 Performance of Obligations under Loan Documents. The Borrower will repay the Loans according to the reading, tenor and effect thereof, and the Borrower will, and will cause each Restricted Subsidiary to, do and perform every act and discharge all of the obligations to be performed and discharged by them under the Loan Documents, including, without limitation, this Agreement, at the time or times and in the manner specified.

10.1.7 Operation and Maintenance of Properties. Except, in each case, where the failure to comply could not reasonably be expected to have a Material Adverse Effect, the Borrower, at its own expense, will, and will cause each Restricted Subsidiary to:

(a) operate its Properties or cause such Properties to be operated in a careful and efficient manner in accordance with the practices of the industry and in compliance with all applicable contracts and agreements and in compliance with all Applicable Law, including, without limitation, applicable Environmental Laws; and

(b) preserve, maintain and keep in good repair, condition and working order (ordinary wear and tear excepted) all Property material to the conduct of its business, including, without limitation, all equipment, machinery and facilities.

10.1.8 Insurance.

(a) The Borrower will, and will cause each Restricted Subsidiary to, maintain (after giving effect to any self-insurance), with financially sound and reputable insurance companies, insurance in such amounts and against such risks as are customarily maintained by companies engaged in the same or similar businesses operating in the same or similar locations (including hazard insurance). The loss payable clauses or provisions in any insurance policy or policies insuring any of the Collateral for the Loans shall be endorsed in favor of and made payable to Agent as its interests may appear and such policies shall name Agent as an “additional insured” and “loss payee”, as applicable, and provide that the insurer will give at least 30 days’ prior notice of any cancellation to Agent (or at least 10 days’ prior notice in the case of cancellation of such insurance due to non-payment of premiums).

(b) If any building that forms a part of Mortgaged Property is located in an area designated a “flood hazard area” in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), obtain flood insurance in such reasonable total amount as Agent may from time to time reasonably require, and otherwise to ensure compliance with Applicable Law (including any applicable Flood Laws).

(c) Notwithstanding anything to the contrary in this Agreement, Agent may, acting in its reasonable discretion, waive any requirements of clause (a) of **Section 10.1.8** without the consent of any Lenders.

10.1.9 Books and Records. The Borrower will, and will cause each Restricted Subsidiary to, keep proper books of record and account in which full, true and correct entries in all material respects are made of all dealings and transactions in relation to its business and activities.

10.1.10 Compliance with Laws. The Borrower will, and will cause each Subsidiary to, comply with all Applicable Laws, including FLSA, OSHA, Environmental Laws, Anti-Corruption Laws, and laws regarding collection and payment of Taxes, and maintain all Governmental Approvals necessary to the ownership of its Properties or conduct of its business, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. The Borrower will maintain in effect and enforce

policies and procedures designed to ensure compliance by the Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws and applicable Sanctions.

10.1.11 Compliance with Material Contracts. The Borrower will, and will cause each Restricted Subsidiary to, comply with all Material Contracts, except to the extent that such noncompliance could not reasonably be expected to have a Material Adverse Effect.

10.1.12 Environmental Matters.

(a) Except for matters that individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, the Borrower shall at its sole expense: (i) comply, and shall cause its Properties and operations and each Restricted Subsidiary and each Restricted Subsidiary's Properties and operations to comply, with applicable Environmental Laws; (ii) not cause a Release or threatened Release, and shall cause each Restricted Subsidiary not to cause a Release or threatened Release, of any Hazardous Material on, under, about or from any of the Borrower's or its Restricted Subsidiaries' Properties except in compliance with, and in a manner not reasonably likely to give rise to liability under, applicable Environmental Laws; (iii) timely obtain or file, and shall cause each Restricted Subsidiary to timely obtain or file, Environmental Permits, if any, required under applicable Environmental Laws to be obtained or filed in connection with the operation or use of the Borrower's or its Restricted Subsidiaries' Properties; (iv) promptly commence and diligently prosecute to completion, and shall cause each Restricted Subsidiary to promptly commence and diligently prosecute to completion, any assessment, evaluation, investigation, monitoring, containment, cleanup, removal, repair, restoration, remediation or other remedial obligations (collectively, the "Remedial Work") if such Remedial Work is required under applicable Environmental Laws because of or in connection with the actual or suspected past, present or future Release or threatened Release of any Hazardous Material on, under, about or from any of the Borrower's or its Restricted Subsidiaries' Properties; and (v) conduct, and cause each of its Restricted Subsidiaries to conduct, its operations and businesses in a manner that will not expose any Property or Person to Hazardous Materials that could reasonably be expected to form the basis for a claim for damages or compensation.

(b) The Borrower will promptly, but in no event later than 10 Business Days after the receipt of notice by any member of the executive management team of the occurrence of a triggering event, notify Agent and the Lenders in writing of any threatened action, investigation or inquiry by any Governmental Authority or any threatened demand or lawsuit by any Person against the Borrower or any Restricted Subsidiary or their Properties of which the Borrower has knowledge in connection with any Environmental Laws if the Borrower could reasonably anticipate that such action will result in liability (whether individually or in the aggregate) in excess of \$10,000,000, not fully covered by insurance, subject to normal deductibles.

10.1.13 Future Subsidiaries; Subsidiary No Longer Immaterial Domestic Subsidiaries. The Borrower will promptly notify Agent upon any Person becoming a Subsidiary (and upon any Subsidiary that is an Immaterial Domestic Subsidiary ceasing to be an Immaterial Domestic Subsidiary) and, if such Person is not an Excluded Subsidiary, cause it (and cause any Subsidiary that is an Immaterial Domestic Subsidiary that ceased to be an Immaterial Domestic

Subsidiary) to guaranty the Obligations in a manner reasonably satisfactory to Agent, and to execute and deliver such documents, instruments and agreements and to take such other actions as Agent shall reasonably require to evidence and perfect a Lien in favor of Agent on the Collateral of such Person, including delivery of such legal opinions, in form and substance reasonably satisfactory to Agent, as it shall deem appropriate.

10.1.14 ERISA Compliance.

(a) The Borrower will promptly furnish and will cause the Subsidiaries and any ERISA Affiliate to promptly furnish to Agent immediately upon becoming aware of the occurrence of any “prohibited transaction,” as described in section 406 of ERISA or in section 4975 of the Code, in connection with any Plan or any trust created thereunder, a written notice signed by Senior Officer of the Borrower, the Subsidiary or such ERISA Affiliate, as the case may be, specifying the nature thereof, what action the Borrower, such Subsidiary or such ERISA Affiliate is taking or proposes to take with respect thereto, and, when known, any action taken or proposed by the Internal Revenue Service or the Department of Labor with respect thereto.

(b) Except for such matters that, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect, the Borrower will ensure that neither it nor any of its Subsidiaries, at any time:

(i) engages in, or permits any ERISA Affiliate to engage in, any transaction in connection with which the Borrower, a Subsidiary or any ERISA Affiliate could be subjected to either a civil penalty assessed pursuant to subsections (c), (i), (l) or (m) of section 502 of ERISA or a tax imposed by Chapter 43 of Subtitle D of the Code.

(ii) fails to make, or permits any ERISA Affiliate to fail to make, full payment when due of all amounts which, under the provisions of any Plan, agreement relating thereto or applicable law, the Borrower, a Subsidiary or any ERISA Affiliate is required to pay as contributions thereto.

(iii) contributes to or assumes an obligation to contribute to, or permits any ERISA Affiliate to contribute to or assume an obligation to contribute to (i) any employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that may not be terminated by such entities in their sole discretion at any time without any material liability, or (ii) any employee pension benefit plan, as defined in section 3(2) of ERISA, that is subject to Title IV of ERISA, section 302 of ERISA or section 412 of the Code.

10.1.15 Compliance with Terms of Leaseholds. The Borrower will, and will cause all of its Restricted Subsidiaries to, make all payments and otherwise perform all obligations in respect of all material leases of real Property to which the Borrower or any of its Restricted Subsidiaries is or is to be a party, keep such leases in full force and effect and not allow such leases to lapse or be terminated or any rights to renew such leases to be forfeited or cancelled, notify Agent of any default by any party with respect to such leases of which the Borrower has knowledge and cooperate with Agent in all respects to cure any such default, and

cause each of its Restricted Subsidiaries to do so, except, in any case, where the failure to do so, either individually or in the aggregate, could not be reasonably likely to have a Material Adverse Effect.

10.1.16 Borrowing Base Report. The Borrower will deliver within five Business Days after delivering a Borrowing Base Report to the ABL Agent pursuant to the ABL Credit Agreement a copy of such Borrowing Base Report to Agent.

10.1.17 Post-closing Undertakings. Borrower will, and will cause each other Obligor to, comply with the requirements set forth on **Schedule 10.1.17** within the time periods set forth therein (as any such period may be extended by Agent in its sole discretion).

10.1.18 Borrower Calls. Unless the Borrower holds a quarterly public earnings call with a “Q&A” component, the Borrower shall following delivery of the financial statements required pursuant to **Section 10.1.2**, participate in one conference call per quarter with Agent and the Lenders, collectively, in each case at such times as may be agreed to by the Borrower and Agent or the Required Lenders.

10.2 Negative Covenants. Until Full Payment of all Obligations, the Borrower (on behalf of itself and its Restricted Subsidiaries) and each Guarantor by its execution of this Agreement, covenants and agrees with Agent and the Lenders that:

10.2.1 Debt. It will not, and will not permit any Restricted Subsidiary to, directly or indirectly, create, incur, guarantee or suffer to exist any Debt, except:

(a) the Obligations arising under the Loan Documents or any guaranty of or suretyship arrangement for the Obligations arising under the Loan Documents;

(b) accounts payable and accrued expenses, liabilities or other obligations to pay the deferred purchase price of Property or services, from time to time incurred in the Ordinary Course of Business to the extent, in each case, not past due for more than 90 days after the date on which such accounts payable, accrued expenses, liabilities or other obligations were created or incurred unless being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP;

(c) Permitted Purchase Money Debt;

(d) Debt arising from performance or appeal bonds or surety obligations required by Applicable Law in connection with the operation of the Properties of the Borrower or any Restricted Subsidiary and in the Ordinary Course of Business;

(e) to the extent permitted by **Section 10.2.4(d)** and with respect to Foreign Subsidiaries, **Section 10.2.4(i)**, (i) intercompany Debt between the Borrower and any Restricted Subsidiary or between Restricted Subsidiaries; provided, that all such Debt shall be (A) evidenced by a master intercompany note, in form and substance reasonably satisfactory to Agent (the “Intercompany Note”), and, if owed to an Obligor, shall be subject to a first priority (or, subject to the Intercreditor Agreement, second priority) perfected Lien in favor of Agent

pursuant to the Loan Documents, and (B) unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the Intercompany Note and (ii) intercompany Debt owing by the Borrower or any Restricted Subsidiary to any Excluded Subsidiary, provided that such Debt is evidenced by the Intercompany Note to which such Excluded Subsidiary is a party and is unsecured and subordinated in right of payment to the payment in full of the Obligations pursuant to the terms of the Intercompany Note;

(f) Debt issued to insurance companies, or their affiliates, to finance insurance premiums payable to such insurance companies in connection with insurance policies purchased by a Obligor in the Ordinary Course of Business;

(g) Debt (i) with respect to the ABL Obligations so long as (A) the ABL Credit Agreement is not amended to increase the advance rate on accounts receivable beyond 85%, (B) the holders of such Debt (or the ABL Agent on their behalf) shall be party to the Intercreditor Agreement and (C) the aggregate principal amount of the ABL Obligations does not exceed \$100,000,000 at any time outstanding *plus* an additional \$50,000,000 of incremental ABL Obligations provided, with respect to such additional \$50,000,000 of incremental ABL Obligations (I) the All-In-Yield for such additional ABL Obligations shall be no greater than 6.00% and (II) such additional ABL Obligations are subject to a borrowing base (x) based solely on "Eligible Accounts" (substantially as defined in the ABL Credit Agreement as of the date hereof or as otherwise agreed by the Borrower and the Required Lenders) and cash collateral and (y) with an advance rate on such Eligible Accounts (substantially as defined in the ABL Credit Agreement as of the date hereof or as otherwise agreed by the Borrower and the Required Lenders) no greater than 85% and (ii) incurred in connection with any financing from any lender in respect of the ABL Obligations under Section 364 of the Bankruptcy Code to the extent permitted pursuant to the Intercreditor Agreement;

(h) Debt with respect to Permitted Junior Priority Secured Debt (and any refinancings or replacements thereof) in aggregate principal amount not to exceed \$200,000,000 at any time outstanding for all such Debt;

(i) Debt with respect to Permitted Junior Priority Secured Debt to the extent the proceeds of such Debt are used to refinance, in whole or in part, any unsecured Debt as long as (i) each of the Refinancing Conditions (other than with respect to clause (e) of the definition of "Refinancing Conditions") are satisfied and (ii) after giving effect to the incurrence of such Debt, the ratio of (A) the PP&E Value to (B) the aggregate principal amount of all Debt outstanding under the Loan Documents as of such date and all Permitted Junior Priority Secured Debt incurred prior to the date of determination in reliance on **Section 10.2.1(h)** and this **Section 10.2.1(i)** is at least 1.35 to 1.00 and Agent receives a certificate of a Senior Officer, in form and substance reasonably satisfactory to Agent, certifying that all of the requirements set forth in this clause (ii) have been satisfied or will be satisfied on or prior to the incurrence of such Debt;

(j) Debt with respect to Borrowed Money owing by Foreign Subsidiaries in an aggregate principal amount not to exceed \$10,000,000 as long as (i) no Obligor (A) provides any guarantee or credit support of any kind (including any undertaking, guarantee, indemnity, agreement or instrument that would constitute Debt) or (B) is directly or indirectly liable (as a guarantor or otherwise) for such Debt; (ii) the incurrence of which will not result in any recourse

against any of the assets of any Obligor and (iii) no default with respect to which would permit (upon notice, lapse of time or both) any holder of any other Debt of any Obligor to declare pursuant to the express terms governing such Debt a default on such other Debt or cause the payment thereof to be accelerated or payable prior to its stated maturity;

(k) Borrowed Money (other than the Obligations, ABL Obligations and Permitted Purchase Money Debt) set forth on **Schedule 10.2.1(k)**, but only to the extent outstanding on the Closing Date;

(l) Debt with respect to ABL Bank Products incurred in the Ordinary Course of Business;

(m) Debt of a Person that merged or consolidated with the Borrower or a Restricted Subsidiary or that is in existence when a Person becomes a Restricted Subsidiary or that is secured by an asset (other than Accounts) when acquired by the Borrower or a Restricted Subsidiary, as long as such Debt was not incurred in contemplation of such merger or consolidation or such Person becoming a Subsidiary or such acquisition; provided that, after giving pro forma effect to such incurrence of Debt and such merger or consolidation or acquisition of such Restricted Subsidiary or asset pursuant to this clause (m), (i) the Fixed Charge Coverage Ratio for the four most recently completed Fiscal Quarters for which financial statements are available is at least 2.00 to 1.00 and (ii) the Asset Coverage Ratio (which shall be calculated excluding the value of the assets acquired that are subject to liens, other than liens in favor of Agent, to the extent of the amount of the obligation secured by such liens) exceeds the Asset Coverage Ratio calculated immediately prior to such incurrence of Debt and acquisition of such Restricted Subsidiary or asset pursuant to this clause (m);

(n) Permitted Contingent Obligations;

(o) Refinancing Debt as long as each of the Refinancing Conditions are satisfied;

(p) Permitted Unsecured Debt that is not included in any of the preceding clauses of this Section so long as, giving pro forma effect to any incurrence of Debt pursuant to this clause (p), the Fixed Charge Coverage Ratio for the four most recently completed Fiscal Quarters for which financial statements are available is at least 2.00 to 1.00;

(q) Debt with respect to Hedging Agreements entered into in compliance with **Section 10.2.14**; and

(r) Debt incurred pursuant to **Section 10.3.3(c)** which shall be subordinated in right of payment to the Obligations upon subordination terms as are reasonably satisfactory to the Required Lenders.

10.2.2 Liens. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or permit to exist any Lien on any of its Properties (now owned or hereafter acquired), except the following (collectively, "Permitted Liens"):

- Documents;
- (a) Liens securing the payment of any Obligations pursuant to the Loan
 - (b) Excepted Liens;
 - (c) Purchase Money Liens securing Permitted Purchase Money Debt;
 - (d) non-exclusive licenses of Intellectual Property in the Ordinary Course of Business;
 - (e) Liens on property existing at the time such property is acquired by the Borrower or a Restricted Subsidiary; provided that (i) such Liens were not created in contemplation of such acquisition, (ii) such Liens do not extend to any assets other than those being acquired by the Borrower or a Restricted Subsidiary and (iii) the applicable Debt secured by such Lien is permitted under **Section 10.2.1(m)**;
 - (f) any interest or title of a lessor under any lease entered into by the Borrower or any Restricted Subsidiary in the Ordinary Course of Business and covering only the assets so leased;
 - (g) Liens on the assets of any Foreign Subsidiary which secure Debt permitted pursuant to **Section 10.2.1(j)**;
 - (h) Liens on unearned premiums in respect of insurance policies securing insurance premium financing permitted under **Section 10.2.1(f)**;
 - (i) subject to the terms of the Intercreditor Agreement, Liens securing Debt permitted by **Section 10.2.1(g)**;
 - (j) subject to the terms of the applicable intercreditor agreement, Liens securing Permitted Junior Priority Secured Debt to the extent permitted by **Section 10.2.1(h)** or **Section 10.2.1(i)**;
 - (k) subject to the terms of the Intercreditor Agreement, Liens securing Debt permitted by **Section 10.2.1(l)**;
 - (l) Liens not otherwise permitted by this **Section 10.2.2** so long as securing obligations other than Borrowed Money and neither (i) the aggregate outstanding principal amount of the obligations secured thereby nor (ii) the aggregate book value (determined, in the case of each such Lien, as of the date such Lien is incurred) of the assets subject thereto exceeds (as to the Borrower and all Restricted Subsidiaries) \$15,000,000 at any one time, provided that no such Lien shall extend to or cover any Collateral (other than cash); and
 - (m) Liens with respect to Hedging Agreements entered into in compliance with **Section 10.2.14**.

10.2.3 Distributions; Upstream Payments. The Borrower will not, and will not permit any of its Restricted Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Distributions except (1) Upstream Payments and (2):

(a) the Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its Equity Interests (other than Disqualified Capital Stock);

(b) the Borrower and each Restricted Subsidiary may purchase, redeem or otherwise acquire its common Equity Interests with the proceeds received from the substantially concurrent issue of new common Equity Interests;

(c) if no Event of Default then exists or would result from the making of such Distribution, the Borrower may repurchase or redeem its Equity Interests owned by employees, officers or directors of the Borrower or its Subsidiaries or make payments to employees, officers or directors of the Borrower or its Subsidiaries upon termination of employment or service in connection with the exercise of stock options, stock appreciation rights or similar equity incentives or equity based incentives pursuant to management incentive plans or in connection with the death or disability of such employees, officers or directors in an aggregate amount not to exceed \$2,500,000 in any Fiscal Year (with unused amounts in any Fiscal Year being carried over to succeeding calendar years, but not to exceed \$5,000,000 of repurchases or redemptions in any Fiscal Year);

(d) the Borrower may repurchase its Equity Interests in connection with the administration of its equity-based compensation plans from time to time in effect, in connection with the repurchase of Equity Interests from employees, directors and other such recipients to satisfy federal, state or local tax withholding obligations of such employees, directors and other recipients with respect to income deemed earned as the result of options, stock grants or other awards made under such plans; and

(e) other Distributions (other than repurchases or redemptions of Equity Interests or cash distributions to holders of Equity Interests) in an aggregate amount not to exceed \$15,000,000.

10.2.4 Investments, Loans and Advances. The Borrower will not, and will not permit any Restricted Subsidiary to, make or permit to remain outstanding any Investments in or to any Person, except:

(a) Investments in Restricted Subsidiaries or disclosed on **Schedule 10.2.4**, in each case to the extent existing on the Closing Date;

(b) Accounts arising in the Ordinary Course of Business;

(c) Cash Equivalents;

(d) Investments (i) made by the Borrower in or to any Guarantors, (ii) made by any Restricted Subsidiary in or to the Borrower or any Guarantor, or (iii) made by any Excluded Subsidiary in or to another Subsidiary or the Borrower;

(e) Investments in stock, obligations or securities received in settlement of debts arising from Investments permitted under **Section 10.2.4(b)** owing to the Borrower or any Restricted Subsidiary as a result of a bankruptcy or other insolvency proceeding of the obligor in respect of such debts or upon the enforcement of any Lien in favor of the Borrower or any of its Restricted Subsidiaries; provided that the Borrower shall give Agent prompt written notice in the event that the aggregate amount of all Investments held at any one time under this **Section 10.2.4(e)** exceeds \$10,000,000;

(f) Investments received in consideration for any Asset Disposition permitted under **Section 10.2.9**; provided that the Obligors shall take appropriate steps to grant a first priority (or, subject to the Intercreditor Agreement, second priority) perfected Lien in such Investments in favor of Agent for the benefit of the Secured Parties;

(g) advances to officers, directors and employees of the Borrower and its Restricted Subsidiaries in an aggregate amount not to exceed \$10,000,000 at any time outstanding, for travel, entertainment, relocation and analogous ordinary business purposes;

(h) any purchases of Equity Interests permitted under **Section 10.2.3**;

(i) Investments by Foreign Subsidiaries in the Ordinary Course of Business;

(j) Permitted Acquisitions;

(k) Investments (including Debt and other obligations) received in connection with the bankruptcy or reorganization of suppliers or in settlement of delinquent obligations of, and other disputes with, suppliers in the Ordinary Course of Business; ~~and~~

(l) Investments in the SPV pursuant to Sections 7.3.1 and 7.3.3; and

(m) ~~(+)~~ other Investments (including controlling interests in Persons in the same or a similar line of business as the Borrower) not to exceed \$25,000,000 in the aggregate at any time, provided that (i) after giving effect to such Investment, no Default would exist and (ii) no more than \$5,000,000 in the aggregate under this **Section 10.2.4(m)** may be used for Investments in Foreign Subsidiaries.

10.2.5 Fundamental Changes. The Borrower will not, and will not permit any Restricted Subsidiary to, engage (directly or indirectly) in any business other than those businesses in which the Borrower and its Restricted Subsidiaries are engaged on the Closing Date (or which are reasonably related thereto or are reasonable extensions thereof but not any trading business or similar activities) or allow any material change to be made in the character of its business.

10.2.6 Proceeds of Loans. The Borrower shall not, directly or indirectly, use any Loan proceeds, nor use, lend, contribute or otherwise make available any Loan proceeds to

any Subsidiary, joint venture partner or other Person, (i) to fund any activities of or business with any Person, or in any Designated Jurisdiction, that, at the time of such funding, is the subject of any Sanction; (ii) in any manner that would result in a violation of any Sanctions by any Person (including any Secured Party or other Person participating in the Loans); or (iii) for any purpose that would breach any Anti-Corruption Law.

10.2.7 Sale or Discount of Receivables. Except for Accounts obtained by the Borrower or any Restricted Subsidiary out of the Ordinary Course of Business or the settlement of joint interest billing accounts in the Ordinary Course of Business or discounts granted to settle collection of Accounts or the sale of defaulted Accounts arising in the Ordinary Course of Business in connection with the compromise or collection thereof and not in connection with any financing transaction, the Borrower will not, and will not permit any Restricted Subsidiary to, discount or sell (with or without recourse) any of its notes receivable or Accounts.

10.2.8 Mergers, Etc. The Borrower may not consolidate, combine or merge with or into another Person, in one or more related transactions, unless:

(a) the Borrower is the resulting or surviving Person or the resulting or surviving Person (if other than the Borrower) is a corporation, limited liability company or limited partnership organized and existing under the laws of the United States or any state thereof or the District of Columbia and such resulting or surviving Person assumes, pursuant to documentation in form and substance reasonably satisfactory to Agent, all of the obligations and covenants of the Borrower under this Agreement and the other Loan Documents;

(b) immediately before and after such transaction no Default or Event of Default has occurred and is continuing;

(c) except in the case of a consolidation or merger of the Borrower with or into a Guarantor, either (i) immediately after giving pro forma effect to such transaction as if such transaction had occurred at the beginning of the applicable four-quarter period, the Borrower or the resulting or surviving Person (if other than the Borrower) would have a Fixed Charge Coverage Ratio that is not less than the Fixed Charge Coverage Ratio of the Borrower immediately prior to such transaction or (ii) immediately after giving pro forma effect to such transaction as if such transaction had occurred at the beginning of the applicable four-quarter period, the Borrower or the resulting or surviving Person (if other than the Borrower) would be able to incur at least \$1.00 of additional Debt under the Fixed Charge Coverage Ratio test set forth in **Section 10.2.1**; and

(d) the Borrower or such successor shall have delivered to Agent an officer's certificate and an opinion of counsel each stating that such consolidation, merger or combination, comply with the provisions of this Agreement and that all conditions precedent in this Agreement relating to such transaction have been satisfied;

(e) Upon any consolidation, combination or merger in accordance with this **Section 10.2.8**, the successor formed by such combination or consolidation or into which the Borrower is merged shall succeed to, and may exercise every right and power of, the Borrower under this Agreement and the other Loan Documents with the same effect as if such successor

had been named as the Borrower herein and shall be substituted for the Borrower (so that from and after the date of such consolidation, combination or merger, the provisions of this Agreement and the other Loan Documents referring to the “Borrower” shall refer instead to the successor and not to the predecessor); and thereafter, if the Borrower is dissolved following a disposition of all or substantially all of the properties or assets of the Borrower and its Restricted Subsidiaries taken as a whole in accordance with this Agreement, it shall be discharged and released from all obligations and covenants under this Agreement and the other Loan Documents.

10.2.9 Sales of Properties. The Borrower will not, and will not permit any Restricted Subsidiary to sell, transfer, lease or otherwise dispose of Property except for:

- (a) the sale of Inventory in the Ordinary Course of Business;
- (b) the sale or transfer of Equipment or other goods that is obsolete, worn out or no longer necessary for, or used or useful in, the business of the Borrower or such Restricted Subsidiary or is replaced by Equipment or other goods;
- (c) any sale, transfer, lease or other disposition of Property the consideration for which is at least fair market value thereof and with respect to which (i) at least 75% of the consideration received in such sale, transfer, lease or other disposition is in the form of cash, Cash Equivalents or Deemed Cash Equivalents and (ii) the fair market value of all forms of consideration other than cash or Cash Equivalents or Deemed Cash Equivalents received for such sales, transfers, leases and other dispositions does not exceed \$15,000,000 in the aggregate; provided that, with respect to any disposition pursuant to this **Section 10.2.9(c)** that constitutes an Asset Disposition, the Borrower shall comply with the requirements of **Section 5.4.1** with respect to any Net Cash Proceeds thereof;
- (d) the sale, transfer, lease or other disposition of Property by a Subsidiary or a Guarantor to the Borrower or another Guarantor or by a non-Guarantor to another non-Guarantor;
- (e) the sale of the Borrower’s treasury stock and the sale or issuance of any Subsidiary’s Equity Interests to the Borrower or any Guarantor;
- (f) an exchange or “swap” of assets of the Borrower or any Restricted Subsidiary for the assets of a Person other than the Borrower or any Restricted Subsidiary in the Ordinary Course of Business, provided that (i) the assets received will be used or useful in its business, (ii) the Borrower or such Restricted Subsidiary, as applicable, shall have received reasonably equivalent value for such assets, such value to be demonstrated to the reasonable satisfaction of Agent;
- (g) sales, transfers, leases or other dispositions constituting Investments permitted under **Section 10.2.4** or constituting Distributions permitted by **Section 10.2.3**;
- (h) non-exclusive licenses of Intellectual Property;

(i) abandonment, allowing to lapse or other disposal of any Intellectual Property determined in good faith by the management of the Borrower to be no longer useful, necessary or otherwise not material in the operation of the business of the Borrower or any of the Consolidated Subsidiaries;

(j) sales, transfers, leases or other dispositions of drill pipe or down hole equipment lost, abandoned or destroyed in the Ordinary Course of Business;

(k) the sale of past due Accounts permitted by **Section 10.2.6**;

(l) the sale, transfer, lease or other disposition of tangible Property to the extent located outside of the United States on the Closing Date and Equity Interests in Foreign Subsidiaries in existence on the Closing Date; and

(m) transactions contemplated by the Prepackaged Plan on the Closing Date.

10.2.10 Transactions with Affiliates. The Borrower will not, and will not permit any Restricted Subsidiary to, make any payment to, or sell, lease, transfer or otherwise dispose of any of its properties or assets to, or purchase any property or assets from, or enter into or make or amend any transaction, contract, agreement, understanding, loan, advance or guarantee with, or for the benefit of, any Affiliate of the Borrower (other than the Borrower or another Restricted Subsidiary) (each, an "Affiliate Transaction"), involving aggregate consideration in excess of \$1.0 million, unless:

(a) the Affiliate Transaction is on terms that taken as a whole are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that would have been obtained in a comparable transaction by the Borrower or such Restricted Subsidiary with an unrelated Person; and

(b) the Borrower delivers to Agent with respect to any Affiliate Transaction or series of related Affiliate Transactions involving aggregate consideration in excess of \$40 million, a resolution of the Board of Directors of the Borrower certifying that such Affiliate Transaction complies with this covenant and that such Affiliate Transaction has been approved by a majority of the disinterested members, if any, of the Board of Directors of the Borrower;

provided that the foregoing shall not apply to (i) reimbursements for out-of-pocket expenses paid to Platinum or any of its Affiliates by the Borrower or any Restricted Subsidiary in an aggregate amount not to exceed \$1,000,000 in any Fiscal Year and (ii) management, consulting, advisory and monitoring fees and related indemnities, charges and expenses paid or accrued to or on behalf of Platinum or any of its Affiliates not to exceed \$3,000,000 per Fiscal Year, which fees may be paid (x) commencing with the Fiscal Year ending December 31, 2017, on an annual basis solely from any amount of Excess Cash Flow with respect to such Fiscal Year not required to be applied by the Borrower to purchase Loans pursuant to an ECF Offer under **Section 5.4.2** and (y) commencing with the Fiscal Year ending December 31, 2018, without limit, so long as the Leverage Ratio as of the date of such payment is less than 2.00 to 1.00.

10.2.11 Subsidiaries. The Borrower will not, and will not permit any Subsidiary to, create or acquire any additional Subsidiary unless the Borrower gives prior written notice to Agent of such creation or acquisition and complies with **Section 10.1.13**. The Borrower shall not, and shall not permit any Restricted Subsidiary to, sell, assign or otherwise dispose of any Equity Interests in any Subsidiary except in compliance with **Section 10.2.9(c)** and except that Equity Interests in Foreign Subsidiaries owned on the Closing Date may be sold, assigned or otherwise disposed of in connection with Asset Dispositions permitted by **Section 10.2.9(i)**.

10.2.12 Limitation on Issuance of Equity Interests. The Borrower shall not permit any Restricted Subsidiary to issue any Equity Interest (including by way of sales of treasury stock) or any options or warrants to purchase, or securities convertible into, any Equity Interest, except for (i) issuances of Equity Interests to an Obligor or another Restricted Subsidiary or (ii) stock splits, stock dividends and other issuances which do not decrease the percentage ownership of Borrower and its Restricted Subsidiaries in any class of the Equity Interests of such Restricted Subsidiary. The Borrower and its Subsidiaries shall comply with **Section 10.1.13** with respect to any such issued Equity Interests.

10.2.13 Restrictive Agreements. The Borrower will not, and will not permit any Restricted Subsidiary to, create, incur, assume or suffer to exist any Restrictive Agreement (other than this Agreement, the Security Documents, documents governing Purchase Money Liens securing Permitted Purchase Money Debt, the ABL Credit Agreement or documents covering Permitted Junior Priority Secured Debt and other Debt permitted hereunder); provided that the foregoing shall not prohibit the Borrower or any Restricted Subsidiary from creating, incurring, assuming or suffering any agreement which contains restrictions existing by reason of (i) restrictions imposed by applicable law, (ii) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures entered into in the ordinary course of business (iii) customary provisions contained in licenses, sublicenses, covenants not to sue, releases and other agreements in connection with Intellectual Property and other similar agreements entered into in the ordinary course of business, (iv) customary provisions restricting subletting or assignment of any lease governing a leasehold interest, (v) customary provisions restricting assignment of any agreement entered into in the ordinary course of business, (vi) customary restrictions and conditions contained in any agreement relating to the sale, transfer, lease or other disposition of any asset permitted under **Section 10.2.9** pending the consummation of such sale, transfer, lease or other disposition, (vii) customary net worth provisions contained in real property leases entered into by the Borrower or its Restricted Subsidiaries, so long as the Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Borrower and its Restricted Subsidiaries to meet their ongoing obligations and (viii) restrictions on cash or other deposits imposed by customers under contracts entered into in the ordinary course of business.

10.2.14 Hedging Agreements. The Borrower will not, and will not permit any Restricted Subsidiary to, enter into any Hedging Agreements except to hedge risks arising in the Ordinary Course of Business and not for speculative purposes.

10.2.15 Sale and Leaseback. The Borrower shall not, and shall not permit any Restricted Subsidiary to, enter into any arrangement, directly or indirectly, with any Person whereby it shall sell or transfer any Property, whether now owned or hereafter acquired, and

thereafter rent or lease such Property which it intends to use for substantially the same purpose or purposes as the Property being sold or transferred.

10.2.16 Amendments to Organic Documents or Fiscal Year End.

(a) The Borrower shall not, and shall not permit any Restricted Subsidiary to, amend, supplement or otherwise modify (or permit to be amended, supplemented or modified) its Organic Documents in a manner that would be adverse to the Lenders in any material respect.

(b) The Borrower shall not, and shall not permit any Restricted Subsidiary to, (i) change the last day of its Fiscal Year from December 31 of each year, or the last days of the first three Fiscal Quarters in each of its Fiscal Years from March 31, June 30 and September 30 of each year, respectively or (ii) make any material change in accounting treatment or reporting practices, except as required by GAAP.

(c) The Borrower shall not, and shall not permit any Restricted Subsidiary to, except as permitted by the Intercreditor Agreement, amend, modify, waive or otherwise change, consent or agree to any amendment, supplement, modification, waiver or other change to, any of the terms of the ABL Credit Agreement.

10.2.17 Tax Consolidation. The Borrower shall not, and shall not permit any Restricted Subsidiary to, file or consent to the filing of any consolidated income tax return with any Person other than the Borrower and its Restricted Subsidiaries.

10.2.18 Plans. The Borrower shall not, and shall not permit any Restricted Subsidiary to, become a party to any Multiemployer Plan or Foreign Plan, other than any in existence on the Closing Date, except where becoming such a party could not reasonably be expected to have a Material Adverse Effect.

10.2.19 Additional Deposits in the TL Proceeds and Priority Collateral Account Prohibited. The Borrower shall not, and shall not permit any Restricted Subsidiary to, deposit any funds or other Property in, or credit any funds or other Property to, the TL Proceeds and Priority Collateral Account other than up to \$[~~45,000,000~~] deposited therein on the Closing Date, any funds that do not constitute ABL Priority Collateral (as defined in the Intercreditor Agreement) deposited therein from time to time, identifiable proceeds of Asset Dispositions of Term Priority Collateral, and identifiable proceeds of insurance resulting from casualty of the Term Priority Collateral and of awards arising from condemnation of the Term Priority Collateral.

10.2.20 SPV. The Borrower shall not permit the SPV to (a) engage in any activity, other than holding certain real property of the Obligors transferred to the SPV pursuant to **Section 7.3** and activities related to the maintenance of its corporate existence, (b) incur any Debt, other than (i) intercompany obligations subject to subordination agreements reasonably acceptable to Agent, (ii) pursuant to leases governing any leasehold interests held by the SPV and (iii) providing guarantees in favor of Agent or (c) grant any Liens, other than Liens that arise pursuant to leases governing any leasehold interests held by the SPV or by operation of law;

provided, that, for the avoidance of doubt, in no event shall the SPV be required to qualify as a “bankruptcy remote” entity.

10.2.21 Transactions Contemplated by the Prepackaged Plan. Notwithstanding any other provision of this Agreement, the implementation of the transactions specifically provided for in the Prepackaged Plan in accordance with the terms of the Prepackaged Plan, shall be deemed to be permitted by this Agreement so long as they are consummated in a manner not inconsistent with the terms of this Agreement.

10.3 Financial Covenants.

10.3.1 Asset Coverage Ratio. As long as any Obligations are outstanding, the Borrower shall not permit the Asset Coverage Ratio to be less than 1.35 to 1.00 as of the last day of any Fiscal Quarter; provided that such Asset Coverage Ratio shall only be tested upon the delivery of the Compliance Certificate for such period in accordance with **Section 10.1.2(e)**.

10.3.2 Liquidity. As long as any Obligations are outstanding, the Borrower shall not permit Liquidity to be less than \$37,500,000 (of which at least \$20,000,000 must be comprised of unrestricted cash and Cash Equivalents held in Deposit Accounts) as of the last day of any Fiscal Quarter; provided that the Borrower shall deliver evidence of Liquidity as of the last day of any Fiscal Quarter to Agent within ten (10) Business Days of the last day of such Fiscal Quarter.

10.3.3 Cure. Notwithstanding the foregoing, in the event the Asset Coverage Ratio as of the last day of any Fiscal Quarter is less than 1.35 to 1.00 or Liquidity as of the last day of any Fiscal Quarter is less than \$37,500,000 (or unrestricted cash and Cash Equivalents held in Deposit Accounts as of the last day of any Fiscal Quarter is less than \$20,000,000) and, with respect to a deficiency in the Asset Coverage Ratio, the Borrower has taken one or more of the following actions described in **Sections 10.3.3(a)** through **(c)** or, with respect to a deficiency in Liquidity, the Borrower has taken the action described in **Section 10.3.3(c)**, at any time during the period (the “Cure Period”) beginning on the last day of such Fiscal Quarter and ending on the tenth (10th) Business Day following the date the Borrower delivers the Compliance Certificate for such period in accordance with **Section 10.1.2(e)**, then for purposes of determining compliance with **Section 10.3.1** or **Section 10.3.2**, as applicable, the Borrower shall be permitted to calculate the Asset Coverage Ratio or Liquidity after giving pro forma effect to such action(s) (and, for the avoidance of doubt, in no event shall the Borrower be deemed to be in Default with respect to **Section 10.3.1** or **10.3.2** until the expiration of the Cure Period):

(a) taking all steps necessary to grant a first priority, perfected Lien in additional Term Priority Collateral in favor of Agent for the benefit of the Secured Parties such that after giving pro forma effect to such increase in Term Priority Collateral, the Borrower is in compliance with **Section 10.3.1** as of the last day of such Fiscal Quarter;

(b) prepaying Loans in accordance with **Section 5.3.1** in an amount such that after giving effect to the reduction in the Debt outstanding under the Loan Documents, the Borrower is in compliance with **Section 10.3.1** as of the last day of such Fiscal Quarter; provided that no cash or Cash Equivalents included in (x) the definition of the numerator of the Asset

Coverage Ratio for purposes of **Section 10.3.1** or (y) the definition of Liquidity for purposes of **Section 10.3.2**, in each case, with respect to any Fiscal Quarter, may be applied to prepay Loans in accordance with this clause (b) in such fiscal quarter; and/or

(c) issuing common or preferred Equity Interests of the Borrower or subordinated Debt of the Obligors for cash (such preferred Equity Interests to the extent constituting Disqualified Stock or subordinated Debt shall be on terms reasonably satisfactory to the Required Lenders), which, at the request of the Borrower, will be considered, as applicable, (a) an addition to Liquidity to the extent unrestricted and held in a Deposit Account or (b) a dollar-for-dollar reduction to the denominator of the Asset Coverage Ratio (but not an addition to the numerator thereof), such that the Borrower is in compliance with **Section 10.3.1** or **10.3.2**, as applicable, as of the last day of such Fiscal Quarter;

provided that the Borrower shall be entitled to calculate the Asset Coverage Ratio or Liquidity, as applicable, on a pro forma basis after giving effect to actions taken under the foregoing **Section 10.3.3(b)** or **Section 10.3.3(c)** (i) not more than twice in any four Fiscal Quarter period, and (ii) not more than five times during the term of this Agreement.

SECTION 11. GUARANTY

11.1 Guaranty. For value received, the sufficiency of which is hereby acknowledged, and in consideration of credit and/or financial accommodation heretofore or hereafter from time to time made or granted to the Borrower by the Secured Parties, each Guarantor hereby absolutely, unconditionally and irrevocably guarantees to Agent, for the ratable benefit of the Secured Parties, the full and prompt payment when due, whether at stated maturity, by required prepayment, upon acceleration, demand or otherwise, and at all times thereafter, of the Guaranteed Obligations (as hereafter defined) and the punctual performance of all of the terms contained in the documents executed by the Borrower in favor of one or more Secured Parties in connection with the Guaranteed Obligations. This Guaranty is a guaranty of payment and performance and is not merely a guaranty of collection. As used herein, the term “Guaranteed Obligations” means any and all existing and future Obligations of the Borrower to any Secured Party, whether associated with any credit or other financial accommodation made to or for the benefit of the Borrower by any Secured Party or otherwise and whenever created, arising, evidenced or acquired (including all renewals, extensions, amendments, refinancings and other modifications thereof and all costs, attorneys’ fees and expenses incurred by the Secured Parties in connection with the collection or enforcement thereof). Without limiting the generality of the foregoing, the Guaranteed Obligations shall include any such indebtedness, obligations, and liabilities which may be or hereafter become unenforceable or shall be an allowed or disallowed claim under any proceeding or case commenced by or against any Guarantor or the Borrower under the Bankruptcy Code, any successor statute or any 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 (collectively, “Debtor Relief Laws”), and shall include interest that accrues after the commencement by or against the Borrower of any proceeding under any Debtor Relief Laws. Anything contained herein to the contrary notwithstanding, the obligations of each Guarantor hereunder at any time shall be limited to an aggregate amount equal to the largest amount that

would not render its obligations hereunder subject to avoidance as a fraudulent transfer or conveyance under Section 548 of the Bankruptcy Code or any comparable provisions of any similar federal or state law.

11.2 No Setoff or Deductions; Taxes; Payments. Each Guarantor shall make all payments hereunder without setoff or counterclaim and free and clear of and without deduction for any levies, imposts, duties, charges, fees, deductions, withholdings, compulsory loans, restrictions or conditions of any nature (other than Taxes, which shall be governed by **Section 5.10**) now or hereafter imposed or levied by any jurisdiction or any political subdivision thereof or authority therein unless such Guarantor is compelled by law to make such deduction or withholding. If any such obligation (other than one arising with respect to Taxes) is imposed upon a Guarantor with respect to any amount payable by it hereunder, such Guarantor will pay to the applicable Secured Party, on the date on which such amount is due and payable hereunder, such additional amount in U.S. dollars as shall be necessary to enable such Secured Party to receive the same net amount which such Secured Party would have received on such due date had no such obligation been imposed upon such Guarantor. Each Guarantor will deliver promptly to such Secured Party certificates or other valid vouchers for all charges deducted from or paid with respect to payments made by such Guarantor hereunder. The obligations of each Guarantor under this **Section 11.2** shall survive the payment in full of the Guaranteed Obligations and termination of the Guaranty.

11.3 Rights of Secured Parties. 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 (including increase), modify, extend, renew, compromise, discharge, accelerate or otherwise change the time for payment or the terms of the Guaranteed 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 Guaranteed Obligations; (c) apply such security and direct the order or manner of sale thereof as the Secured Parties in their sole discretion may determine; and (d) release or substitute one or more of any endorsers or other guarantors of any of the Guaranteed 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 such Guarantor under this Guaranty or which, but for this provision, might operate as a discharge of such Guarantor.

11.4 Certain Waivers. Each Guarantor waives to the fullest extent permitted by law (a) any defense arising by reason of any disability or other defense of the Borrower or any other guarantor, or the cessation from any cause whatsoever (including any act or omission of any Secured Party) of the liability of the Borrower; (b) any defense based on any claim that such Guarantor's obligations exceed or are more burdensome than those of the Borrower; (c) the benefit of any statute of limitations affecting such Guarantor's liability hereunder; (d) any right to require any Secured Party to proceed against the Borrower, proceed against or exhaust any security for the Guaranteed Obligations, or pursue any other remedy in any Secured Party's power whatsoever and any defense based upon the doctrines of marshalling of assets or of election of remedies; (e) any benefit of and any right to participate in any security now or hereafter held by any Secured Party; (f) any defense relating to the failure of any Secured Party to comply with the applicable laws in connection with the sale or other disposition of Collateral

for all or any part of the Guaranteed Obligations; (g) any amendment or waiver of the term of any Guaranteed Obligation; (h) any law or regulation of any jurisdiction or any other event affecting any term of a Guaranteed Obligation; (i) any fact or circumstance related to the Guaranteed Obligations which might otherwise constitute a defense to the obligations of such Guarantor under this Guaranty and (j) 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, other than the defense that the Guaranteed Obligations have been fully performed and indefeasibly paid in full in cash.

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 Guaranteed Obligations, and all notices of acceptance of this Guaranty or of the existence, creation or incurrence of new or additional Guaranteed Obligations. This Guaranty shall not be affected by the genuineness, validity, regularity or enforceability of the Guaranteed Obligations or any instrument or agreement evidencing any Guaranteed 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 Guaranteed 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.

11.5 Obligations Independent. The obligations of each Guarantor hereunder are those of primary obligor, and not merely as surety, and are independent of the Guaranteed 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 the Borrower or any other person or entity is joined as a party.

11.6 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 Full Payment of all Guaranteed Obligations and any amounts payable under this Guaranty. 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 Agent (for the benefit of itself and the other Secured Parties) to reduce the amount of the Guaranteed Obligations, whether matured or unmatured.

11.7 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 Full Payment of all Guaranteed Obligations and any amounts payable under this Guaranty. 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 Secured Party 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 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 Laws or otherwise, all as if such payment had not been made or such setoff had not occurred and whether

or not such Secured Party is in possession of or has released this Guaranty and regardless of any prior revocation, rescission, termination or reduction. The obligations of each Guarantor under this **Section 11.7** shall survive termination of this Guaranty.

11.8 Subordination. Each Guarantor hereby subordinates the payment of all obligations and indebtedness of the Borrower owing to such Guarantor, whether now existing or hereafter arising, including but not limited to any obligation of the Borrower to such Guarantor as subrogee of any Secured Party or resulting from such Guarantor's performance under this Guaranty, to the Full Payment of all Guaranteed Obligations. If Agent so requests, any such obligation or indebtedness of the Borrower to any Guarantor shall be enforced and performance received by such Guarantor as trustee for Agent and the proceeds thereof, as well as any other amounts received by such Guarantor in violation of this **Section 11.8**, shall be paid over to Agent on account of the Guaranteed Obligations, but without reducing or affecting in any manner the liability of such Guarantor under this Guaranty.

11.9 Stay of Acceleration. In the event that 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 Borrower under any Debtor Relief Laws, or otherwise, all such amounts shall nonetheless be payable by any Guarantor immediately upon demand by Agent.

11.10 Expenses. Each Guarantor shall pay on demand all reasonable and documented out-of-pocket expenses (including reasonable attorneys' fees and expenses) in any way relating to the enforcement or protection of the any Secured Party's rights under this Guaranty or in respect of the Guaranteed Obligations, including any incurred during any "workout" or restructuring in respect of the Guaranteed Obligations and any incurred in the preservation, protection or enforcement of any rights of any Secured Party in any proceeding under any Debtor Relief Laws. The obligations of each Guarantor under this **Section 11.10** shall survive the Full Payment of the Guaranteed Obligations and termination of this Guaranty.

11.11 Miscellaneous. Agent's books and records showing the amount of the Guaranteed Obligations shall be admissible in evidence in any action or proceeding, and shall be binding upon each Guarantor and conclusive, absent manifest error, for the purpose of establishing the amount of the Guaranteed Obligations. No failure by any Secured Party to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy or power hereunder preclude any other or further exercise thereof or the exercise of any other right, power or remedy. The remedies herein provided are cumulative and not exclusive of any remedies provided by law or in equity. The unenforceability or invalidity of any provision of this Guaranty shall not affect the enforceability or validity of any other provision herein. Unless otherwise agreed by Agent and each Guarantor in writing, this Guaranty is not intended to supersede or otherwise affect any other guaranty now or hereafter given by any Guarantor or any other guarantor for the benefit of the Secured Parties or any term or provision thereof.

11.12 Condition of Borrower. Each Guarantor acknowledges and agrees that it has the sole responsibility for, and has adequate means of, obtaining from the Borrower and any other guarantor such information concerning the financial condition, business and operations of the Borrower and any such other guarantor as each Guarantor requires, and that the Secured Parties

have no duty, and each Guarantor is not relying on any Secured Party at any time, to disclose to such Guarantor any information relating to the business, operations or financial condition of the Borrower or any other guarantor (the guarantor waiving any duty on the part of any Secured Party to disclose such information and any defense relating to the failure to provide the same).

11.13 Additional Guarantors. Each Person that is required to become a party to this Guaranty pursuant to **Section 10.1.13** shall become a Guarantor for all purposes of this Guaranty upon execution and delivery by such Person of a supplement in form reasonably satisfactory to Agent.

SECTION 12. EVENTS OF DEFAULT; REMEDIES ON DEFAULT

12.1 Events of Default. Each of the following shall be an “Event of Default” if it occurs for any reason whatsoever, whether voluntary or involuntary, by operation of law or otherwise:

(a) the Borrower fails to pay principal on any Loan when due (whether at stated maturity, on demand, upon acceleration or otherwise), or Borrower fails to pay any interest, fee or any other Obligation, and such failure continues unremedied for a period of five Business Days;

(b) any representation, warranty or other written statement of an Obligor made in connection with any Loan Documents or transactions contemplated thereby is incorrect or misleading in any material respect when given;

(c) the Borrower breaches or fail to perform any covenant contained in **Sections 7.2, 7.3, 7.4, 7.6, 8.1, 8.3, 8.4.2, 10.1.1, 10.1.2(e), 10.1.4, 10.2 or 10.3;**

(d) an Obligor breaches or fails to perform any other covenant contained in any Loan Documents, and such breach or failure is not cured within (i) with respect to any failure to provide any report or notice required hereunder, 30 days and (b) with respect to any other covenant (other than those subject to clause (a) and (c) above), 60 days after a Senior Officer of such Obligor has knowledge thereof or receives notice thereof from Agent, whichever is sooner; provided, that such notice and opportunity to cure shall not apply if the breach or failure to perform is not capable of being cured within such period or is a willful breach by an Obligor;

(e) a Guarantor repudiates, revokes or attempts to revoke its Guaranty; an Obligor or third party denies or contests the validity or enforceability of any Loan Documents (or any material provision thereof) or Obligations, or the perfection or priority of any Lien granted to Agent; any Loan Document ceases to be in full force or effect for any reason (other than a waiver or release by Agent and Lenders); or any Security Document ceases to create a perfected security interest having the priority required by this Agreement in a material portion of the Collateral in favor of Agent for any reason (other than pursuant to the terms hereof or thereof or a waiver or release by Agent and Lenders);

(f) any (i) failure of any Obligor to make any payment or (ii) other breach or default of an Obligor occurs under any instrument or agreement to which it is a party or by which

it or any of its Properties is bound, in each case, relating to any Material Debt; provided, however, that any breach or default or any event of default under the ABL Credit Agreement as a result of breach of any financial covenant under ~~Section 10.3~~ of the ABL Credit Agreement will not constitute an Event of Default under this clause (f) until the acceleration of the Debt under the ABL Credit Agreement;

(g) the failure by the Borrower or any of its Restricted Subsidiaries to pay final judgments aggregating in excess of \$30,000,000 (excluding amounts covered by insurance), which judgments are either (i) not paid within 60 days after the date payment is due or (ii) not discharged or stayed for a period of 60 days from the date of such judgment;

(h) an Insolvency Proceeding is commenced by an Obligor; an Obligor makes an offer of settlement, extension or composition to its unsecured creditors generally; a trustee is appointed to take possession of any substantial Property of or to operate any of the business of an Obligor; or an Insolvency Proceeding is commenced against an Obligor and: the Obligor consents to institution of the proceeding, the petition commencing the proceeding is not timely contested by the Obligor, the petition is not dismissed within 30 days after filing, or an order for relief is entered in the proceeding; or

(i) except for such matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, an ERISA Event occurs with respect to a Pension Plan or Multiemployer Plan that has resulted or could reasonably be expected to result in liability of an Obligor to a Pension Plan, Multiemployer Plan or PBGC, or that constitutes grounds for appointment of a trustee for or termination by the PBGC of any Pension Plan or Multiemployer Plan; an Obligor or ERISA Affiliate fails to pay when due any installment payment with respect to its withdrawal liability under Section 4201 of ERISA under a Multiemployer Plan; or any event similar to the foregoing occurs or exists with respect to a Foreign Plan.

12.2 Remedies upon Default. If any Event of Default (other than an Event of Default described in clause (h) of **Section 12.1**) exists, Agent may (with the consent of the Required Lenders) and shall (upon written direction of Required Lenders) do any one or more of the following from time to time:

(a) declare any Obligations immediately due and payable (an “acceleration”) which amount shall include, if such acceleration occurs prior to third anniversary of the Closing Date, the Applicable Premium in effect on the date of such acceleration, as if such acceleration were an optional or mandatory prepayment on the principal amount of Loans accelerated, whereupon they shall be due and payable without diligence, presentment, demand, protest or notice of any kind, all of which are hereby waived by Borrower to the fullest extent permitted by law;

(b) if an Event of Default described in clause (h) of **Section 12.1** occurs and is continuing, any Obligations will become immediately due and payable without any further action or notice on the part of Agent or any Lenders;

(c) require Obligors to Cash Collateralize their Obligations that are contingent or not yet due and payable; and

(d) exercise any other rights or remedies afforded under any agreement, by law, at equity or otherwise, including the rights and remedies of a secured party under the UCC. Such rights and remedies include the rights to (i) take possession of any Collateral; (ii) require Borrower to assemble Collateral, at Borrower's expense, and make it available to Agent at a place designated by Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by Borrower, Borrower agrees not to charge for such storage); and (iv) sell or otherwise dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, at such locations, all as Agent, in its discretion, deems advisable. The Borrower agrees that 10 days' notice of any proposed sale or other disposition of Collateral by Agent shall be reasonable, and that any sale conducted on the internet or to a licensor of Intellectual Property shall be commercially reasonable. Agent may conduct sales on any Obligor's premises, without charge, and any sale may be adjourned from time to time in accordance with Applicable Law. Agent shall have the right to sell, lease or otherwise dispose of any Collateral for cash, credit or any combination thereof, and Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may credit bid and set off the amount of such price against the Obligations.

12.3 License. Agent is hereby granted an irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of Royalties or other compensation to any Person) any or all Intellectual Property of Borrower, computer hardware and software, trade secrets, brochures, customer lists, promotional and advertising materials, labels, packaging materials and other Property, in advertising for sale, marketing, selling, collecting, completing manufacture of, or otherwise exercising any rights or remedies with respect to, any Collateral. The Borrower's rights and interests under Intellectual Property shall inure to Agent's benefit.

12.4 Setoff. At any time during an Event of Default, Agent, Lenders, and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by Agent, such Lender or such Affiliate to or for the credit or the account of an Obligor against its Obligations, whether or not Agent, such Lender or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of Agent, such Lender or such Affiliate different from the branch or office holding such deposit or obligated on such indebtedness. The rights of Agent, each Lender and each such Affiliate under this **Section 12.4** are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

12.5 Remedies Cumulative; No Waiver.

12.5.1 **Cumulative Rights.** All agreements, warranties, guaranties, indemnities and other undertakings of Obligors under the Loan Documents are cumulative and

not in derogation of each other. The rights and remedies of Agent and Lenders under the Loan Documents are cumulative, may be exercised at any time and from time to time, concurrently or in any order, and are not exclusive of any other rights or remedies available by agreement, by law, at equity or otherwise. All such rights and remedies shall continue in full force and effect until Full Payment of all Obligations.

12.5.2 Waivers. No waiver or course of dealing shall be established by (a) the failure or delay of Agent or any Lender to require strict performance by any Obligor under any Loan Document, or to exercise any rights or remedies with respect to Collateral or otherwise; (b) the making of any Loan during a Default, Event of Default or other failure to satisfy any conditions precedent; or (c) acceptance by Agent or any Lender of any payment or performance by an Obligor under any Loan Documents in a manner other than that specified therein. Any failure to satisfy a financial covenant on a measurement date shall not be cured or remedied by satisfaction of such covenant on a subsequent date except as provided in **Section 10.3.3**.

SECTION 13. AGENT

13.1 Appointment, Authority and Duties of Agent.

13.1.1 Appointment and Authority. Each Lender appoints and designates Cortland Corp. as Agent under all Loan Documents and, solely with respect to the Vehicles, Cortland LLC as Agent under all Loan Documents. Agent may, and each Lender authorizes Agent to, enter into all Loan Documents to which Agent is intended to be a party and accept all Security Documents. Any action taken by Agent in accordance with the provisions of the Loan Documents, and the exercise by Agent of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Lenders. Without limiting the generality of the foregoing, Agent shall have the sole and exclusive authority to (a) act as the disbursing and collecting agent for Lenders with respect to all payments and collections arising in connection with the Loan Documents; (b) execute and deliver, as Agent, each Loan Document, including the Intercreditor Agreement and any other intercreditor or subordination agreement, and accept delivery of each Loan Document; (c) act as collateral agent for Secured Parties for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (d) manage, supervise or otherwise deal with Collateral; and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral or under any Loan Documents, Applicable Law or otherwise. In addition to the foregoing, each Lender hereby irrevocably authorizes Agent, at Agent's option and discretion, to enter into, or amend, the Intercreditor Agreement (or similar agreements with the same or similar purpose) and any other subordination or intercreditor agreement to effect the subordination of Liens securing Obligations under the Loan Documents contemplated by **Sections 10.2.1(h)** and **10.2.1(i)** as agent for and on its behalf in accordance with the terms specified in this Agreement. Any such Intercreditor Agreement or subordination or intercreditor agreement entered into by Agent on behalf of the Secured Parties shall be binding upon each Secured Party. Each Lender (and each Person that becomes a Lender hereunder pursuant to **Section 14.3**) hereby authorizes and directs Agent to enter into the Intercreditor Agreement and any such subordination and intercreditor agreement on behalf of such Lender and agrees that Agent may take such actions on its behalf as is contemplated by the terms of the Intercreditor Agreement and any such subordination or intercreditor agreement.

Agent shall notify the Lenders of the effectiveness of the Intercreditor Agreement and any such subordination or intercreditor agreement when executed and shall provide a copy of the executed Intercreditor Agreement and any such subordination or intercreditor agreement to the Lenders as and when effective.

13.1.2 Duties. The title of “Agent” is used solely as a matter of market custom and the duties of Agent are administrative in nature only. Agent has no duties except those expressly set forth in the Loan Documents, and in no event does Agent have any agency, fiduciary or implied duty to or relationship with any Lender or other Person by reason of any Loan Document or related transaction. The conferral upon Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

13.1.3 Agent Professionals. Agent may perform its duties through agents and employees. Agent may consult with and employ Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an Agent Professional. Agent shall not be responsible for the negligence or misconduct of any agents, employees or Agent Professionals selected by it with reasonable care.

13.1.4 Instructions of Required Lenders. The rights and remedies conferred upon Agent under the Loan Documents may be exercised without the necessity of joining any other party, unless required by Applicable Law. In determining compliance with a condition for any action hereunder, including satisfaction of any condition in **Section 6**, Agent may presume that the condition is satisfactory to a Lender unless Agent has received notice to the contrary from such Lender before Agent takes the action. Agent may request instructions from Required Lenders with respect to any act (including the failure to act) in connection with any Loan Documents or Collateral, and may seek assurances to its satisfaction from Lenders of their indemnification obligations against Claims that could be incurred by Agent. Agent may refrain from any act until it has received such instructions or assurances, and shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon all Lenders, and no Lender shall have any right of action whatsoever against Agent as a result of Agent acting or refraining from acting pursuant to instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in **Section 15.1.1**. In no event shall Agent be required to take any action that it determines in its discretion is contrary to Applicable Law or any Loan Documents or could subject any Agent Indemnitee to liability.

13.2 Agreements Regarding Collateral and Borrower Materials.

13.2.1 Lien Releases; Care of Collateral. The Lenders authorize Agent to release any Lien with respect to any Collateral (a) upon Full Payment of the Obligations; (b) that is the subject of a disposition or Lien that Borrower certifies in writing is permitted pursuant to this Agreement or a Permitted Lien entitled to priority over Agent’s Liens (and Agent may rely conclusively on any such certificate without further inquiry); (c) that does not constitute a material part of the Collateral; or (d) subject to **Section 15.1**, with the consent of Required Lenders. The Lenders authorize Agent to subordinate its Liens to any Purchase Money Lien or other Lien entitled to priority hereunder. Agent has no obligation to assure that any Collateral

exists or is owned by an Obligor, or is cared for, protected or insured, nor to assure that Agent's 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.

13.2.2 Possession of Collateral. Agent and the Lenders 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 Agent thereof and, promptly upon Agent's request, deliver such Collateral to Agent or otherwise deal with it in accordance with Agent's instructions.

13.2.3 Reports. Agent shall promptly provide to Lenders, when complete, any field examination, audit or appraisal report prepared for Agent with respect to any Obligor or Collateral ("Report"). Reports and other Borrower Materials may be made available to Lenders by providing access to them on the Platform, but Agent shall not be responsible for system failures or access issues that may occur from time to time. Each Lender agrees (a) that Reports are not intended to be comprehensive audits or examinations, and that Agent or any other Person performing an audit or examination will inspect only limited information and will rely significantly upon Borrower's books, records and representations; (b) that Agent makes no representation or warranty as to the accuracy or completeness of any Borrower Materials and shall not be liable for any information contained in or omitted from any Borrower Materials, including any Report; and (c) to keep all Borrower Materials confidential and strictly for such Lender's internal use, not to distribute any Report or other Borrower Materials (or the contents thereof) to any Person (except to such Lender's Participants, attorneys and accountants), and to use all Borrower Materials solely for administration of the Obligations. Each Lender shall indemnify and hold harmless Agent and any other Person preparing a Report from any action such Lender may take as a result of or any conclusion it may draw from any Borrower Materials, as well as from any Claims arising as a direct or indirect result of Agent furnishing same to such Lender, via the Platform or otherwise.

13.3 Reliance By Agent. Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person. Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.

13.4 Action Upon Default. Agent shall not be deemed to have knowledge of any Default or Event of Default, or of any failure to satisfy any conditions in **Section 6**, unless it has received written notice from the Borrower or Required Lenders specifying the occurrence and nature thereof. If any Lender acquires knowledge of a Default, Event of Default or failure of such conditions, it shall promptly notify Agent and the other Lenders thereof in writing. Each Lender agrees that, except as otherwise provided in any Loan Documents or with the written consent of Agent and Required Lenders, it will not take any Enforcement Action, accelerate Obligations or assert any rights relating to any Collateral.

13.5 Ratable Sharing. If any Lender obtains any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its ratable share of such Obligation, such Lender shall forthwith purchase from the other Lenders participations in the affected Obligation as are necessary to share the excess payment or reduction on a Pro Rata basis or in accordance with **Section 5.8**, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, if a Defaulting Lender obtains a payment or reduction of any Obligation, it shall immediately turn over the full amount thereof to Agent for application under **Section 4.2.2** and it shall provide a written statement to Agent describing the Obligation affected by such payment or reduction. No Lender shall set off against a Dominion Account (as defined in the ABL Credit Agreement) without Agent's prior consent.

13.6 Indemnification; Waiver.

(a) **EACH LENDER SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY OBLIGORS, ON A PRO RATA BASIS, AGAINST ALL CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH INDEMNITEE, PROVIDED THAT ANY CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT).** In Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Secured Parties. If Agent is sued by any receiver, trustee or other Person for any alleged preference or fraudulent transfer, then any monies paid by Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to Agent by each Lender to the extent of its Pro Rata share.

(b) The Borrower acknowledges and agrees that if payment of the Obligations are accelerated or the Loans and other Obligation otherwise become due prior to the Maturity Date, in each case, in respect of any Event of Default (including, but not limited to, upon the occurrence of a bankruptcy or insolvency event (including the acceleration of claims by operation of law)), the Applicable Premium with respect to an optional or mandatory redemption of the Loans will also be due and payable as though the Loans were redeemed and shall constitute part of the Obligations, in view of the impracticability and extreme difficulty of ascertaining actual damages and by mutual agreement of the parties as to a reasonable calculation of each Lender's lost profits as a result thereof. Any premium payable above shall be presumed to be the liquidated damages sustained by each holder as the result of the early redemption and the Borrower agrees that it is reasonable under the circumstances currently existing. The premium shall also be payable in the event the Loans are satisfied or released by foreclosure (whether by power of judicial proceeding), deed in lieu of foreclosure or by any other means. **THE BORROWER EXPRESSLY WAIVES (TO THE FULLEST EXTENT IT MAY LAWFULLY DO SO) THE PROVISIONS OF ANY PRESENT OR FUTURE STATUTE OR LAW THAT PROHIBITS OR MAY PROHIBIT THE COLLECTION OF THE FOREGOING PREMIUM IN CONNECTION WITH ANY SUCH ACCELERATION.** The Borrower expressly agrees (to the fullest extent it may lawfully do so) that: (A) the premium is reasonable and is the

product of an arm's length transaction between sophisticated business people, ably represented by counsel; (B) the premium shall be payable notwithstanding the then prevailing market rates at the time payment is made; (C) there has been a course of conduct between holders and the Borrower giving specific consideration in this transaction for such agreement to pay the premium; and (D) the Borrower shall be estopped hereafter from claiming differently than as agreed to in this paragraph. The Borrower expressly acknowledges that its agreement to pay the premium to Lenders as herein described is a material inducement to Lenders to purchase the Loans.

13.7 Limitation on Responsibilities of Agent. Agent shall not be liable to any Lender for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by Agent's gross negligence or willful misconduct. Agent does not assume any responsibility for any failure or delay in performance or any breach by any Obligor or Lender of any obligations under the Loan Documents. Agent does not make any express or implied representation, warranty or guarantee to the Lenders with respect to any Obligations, Collateral, Liens, Loan Documents or Obligor. No Agent Indemnitee shall be responsible to Secured Parties for any recitals, statements, information, representations or warranties contained in any Loan Documents or Borrower Materials; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectability, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectability of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Obligor or Account Debtor. No Agent Indemnitee shall have any obligation to any Secured Party to ascertain or inquire into the existence of any Default or Event of Default, the observance by any Obligor of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

13.8 Successor Agent and Co-Agents.

13.8.1 **Resignation; Successor Agent.** Either Cortland Corp. or Cortland LLC may resign at any time by giving at least 30 days written notice thereof to Lenders and Borrower. If Cortland Corp. or Cortland LLC is a Defaulting Lender under clause (d) of the definition thereof, Required Lenders may, to the extent permitted by Applicable Law, remove such Agent by written notice to Borrower and Agent. Required Lenders may appoint a successor to replace the resigning or removed Agent, which successor shall be (a) a Lender or an Affiliate of a Lender; or (b) a financial institution reasonably acceptable to Required Lenders and (provided no Default or Event of Default exists) Borrower. If no successor agent is appointed prior to the effective date of Agent's resignation or removal, then Cortland Corp. or Cortland LLC, as applicable, may appoint a successor agent that is a financial institution acceptable to it (which shall be a Lender unless no Lender accepts the role) or in the absence of such appointment, Required Lenders shall on such date assume all rights and duties of Agent hereunder. Upon acceptance by any successor Agent of its appointment hereunder, such successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent without further act. On the effective date of its resignation or removal, the retiring or removed Agent shall be discharged from its duties and obligations hereunder but shall continue to have all rights and protections under the Loan Documents with respect to actions taken or omitted to be taken by it while Agent, including the indemnification set forth in **Sections 13.6 and 15.2**, and all

rights and protections under this **Section 13**. Any successor to Cortland Corp. or Cortland LLC by merger or acquisition of stock or this loan shall continue to be Agent hereunder without further act on the part of any Lender or Obligor.

13.8.2 Co-Collateral Agent. If appropriate under Applicable Law, Agent may appoint a Person to serve as a co-collateral agent or separate collateral agent under any Loan Document. Each right, remedy and protection intended to be available to Agent under the Loan Documents shall also be vested in such agent. Lenders shall execute and deliver any instrument or agreement that Agent may request to effect such appointment. If any such agent shall die, dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of the agent, to the extent permitted by Applicable Law, shall vest in and be exercised by Agent until appointment of a new agent.

13.9 Due Diligence and Non-Reliance. Each Lender acknowledges and agrees that it has, independently and without reliance upon Agent or any other Lenders, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of each Obligor and its own decision to enter into this Agreement and to fund Loans hereunder. Each Lender has made such inquiries as it feels necessary concerning the Loan Documents, Collateral and Obligors. Each Lender acknowledges and agrees that the other Secured Parties have made no representations or warranties concerning any Obligor, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Lender will, independently and without reliance upon any other Secured Party, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making Loans, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, Agent shall have no duty or responsibility to provide any Lender with any notices, reports or certificates furnished to Agent by any Obligor or any credit or other information concerning the affairs, financial condition, business or Properties of any Obligor (or any of its Affiliates) which may come into possession of Agent or its Affiliates.

13.10 Remittance of Payments and Collections

13.10.1 Remittances Generally. All payments by any Lender to Agent shall be made by the time and on the day set forth in this Agreement, in immediately available funds. If no time for payment is specified or if payment is due on demand by Agent and request for payment is made by Agent by 1:00 p.m. on a Business Day, payment shall be made by Lender not later than 3:00 p.m. on such day, and if request is made after 1:00 p.m., then payment shall be made by 11:00 a.m. on the next Business Day. Payment by Agent to any Lender shall be made by wire transfer, in the type of funds received by Agent. Any such payment shall be subject to Agent's right of offset for any amounts due from such payee under the Loan Documents.

13.10.2 Failure to Pay. If any Lender fails to pay any amount when due by it to Agent pursuant to the terms hereof, such amount shall bear interest, from the due date until paid in full, at the greater of the Federal Funds Rate or the rate determined by Agent as customary for interbank compensation for two Business Days and thereafter at the Default Rate. In no event

shall Borrower be entitled to credit for any interest paid by a Lender to Agent, nor shall a Defaulting Lender be entitled to interest on amounts held by Agent pursuant to **Section 4.2**.

13.10.3 Recovery of Payments. If Agent pays an amount to a Lender in the expectation that a related payment will be received by Agent from an Obligor and such related payment is not received, then Agent may recover such amount from the Lender. If Agent determines that an amount received by it must be returned or paid to an Obligor or other Person pursuant to Applicable Law or otherwise, then Agent shall not be required to distribute such amount to any Lender. If any amounts received and applied by Agent to Obligations held by a Lender are later required to be returned by Agent pursuant to Applicable Law, such Lender shall pay to Agent, on demand, its share of the amounts required to be returned.

13.11 Individual Capacities. Agent, Lenders and their Affiliates may accept deposits from, lend money to, provide Bank Products to, act as financial or other advisor to, and generally engage in any kind of business with, Obligors and their Affiliates, as if they were not Agent or Lenders hereunder, without any duty to account therefor to any Secured Party. In their individual capacities, Agent, Lenders and their Affiliates may receive information regarding Obligors, their Affiliates and their Account Debtors (including information subject to confidentiality obligations), and shall have no obligation to provide such information to any Secured Party.

13.12 Titles. Each Lender that is designated in connection with this credit facility as an “Agent” of any kind shall have no right or duty under any Loan Documents other than those applicable to all Lenders, and shall in no event have any fiduciary duty to any Secured Party.

13.13 No Third Party Beneficiaries. This **Section 13** is an agreement solely among Lenders and Agent, and shall survive Full Payment of the Obligations. Except as set forth in **Section 13.8** with respect to the Borrower, this **Section 13** does not confer any rights or benefits upon the Borrower or any other Person. As between the Borrower and Agent, any action that Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by the Lenders.

SECTION 14. BENEFIT OF AGREEMENT; ASSIGNMENTS

14.1 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the Borrower, Agent, Lenders, Secured Parties, and their respective successors and assigns, except that (a) the Borrower shall not have the right to assign its rights or delegate its obligations under any Loan Documents; and (b) any assignment by a Lender must be made in compliance with **Section 14.3**. Agent may treat the Person which made any Loan as the owner thereof for all purposes until such Person makes an assignment in accordance with **Section 14.3**. Any authorization or consent of a Lender shall be conclusive and binding on any subsequent transferee or assignee of such Lender.

14.2 Participations

14.2.1 Permitted Participants; Effect. Subject to **Section 14.3.3**, any Lender may sell to a financial institution (“Participant”) a participating interest in the rights and obligations of such Lender under any Loan Documents. Despite any sale by a Lender of

participating interests to a Participant, such Lender's obligations under the Loan Documents shall remain unchanged, it shall remain solely responsible to the other parties hereto for performance of such obligations, it shall remain the holder of its Loans for all purposes, all amounts payable by Borrower shall be determined as if it had not sold such participating interests, and Borrower and Agent shall continue to deal solely and directly with such Lender in connection with the Loan Documents. Each Lender shall be solely responsible for notifying its Participants of any matters under the Loan Documents, and Agent and the other Lenders shall not have any obligation or liability to any such Participant. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of **Section 5.10** unless Borrower agrees otherwise in writing.

14.2.2 Voting Rights. Each Lender shall retain the sole right to approve, without the consent of any Participant, any amendment, waiver or other modification of a Loan Document other than that which forgives principal, interest or fees, reduces the stated interest rate or fees payable with respect to any Loan in which such Participant has an interest, postpones the Maturity Date or any date fixed for any regularly scheduled payment of principal, interest or fees on such Loan, or releases the Borrower, any Guarantor or substantially all Collateral.

14.2.3 Participant Register. Each Lender that sells a participation shall, acting as a non-fiduciary agent of Borrower (solely for tax purposes), maintain a register in which it enters the Participant's name, address and interest in Loans (including principal and stated interest). Entries in the register shall be conclusive, absent manifest error, and such Lender shall treat each Person recorded in the register as the owner of the participation for all purposes, notwithstanding any notice to the contrary. No Lender shall have an obligation to disclose any information in such register except to the extent necessary to establish that a Participant's interest is in registered form under the Code.

14.2.4 Benefit of Setoff. Borrower agrees that each Participant shall have a right of set-off in respect of its participating interest to the same extent as if such interest were owing directly to a Lender, and each Lender shall also retain the right of set-off with respect to any participating interests sold by it. By exercising any right of set-off, a Participant agrees to share with Lenders all amounts received through its set-off, in accordance with **Section 13.5** as if such Participant were a Lender.

14.3 Assignments

14.3.1 Permitted Assignments. A Lender may assign to an Eligible Assignee any of its rights and obligations under the Loan Documents, as long as (a) each assignment is of a constant, and not a varying, percentage of the transferor Lender's rights and obligations under the Loan Documents and, in the case of a partial assignment, is in a minimum principal amount of \$1,000,000 (unless otherwise agreed by Agent in its discretion) and integral multiples of \$1,000,000 in excess of that amount; (b) the prior written consent of Agent shall have been obtained, which consent shall not be unreasonably withheld, conditioned or delayed, provided, that, the consent of Agent shall not be required in connection with an assignment to another Lender, any Affiliate of a Lender, any Approved Fund, an Affiliated Lender or the Borrower or any of its Subsidiaries and (c) the parties to each such assignment shall execute and deliver an Assignment to Agent for acceptance and recording. Nothing herein shall limit the right of a

Lender to pledge or assign any rights under the Loan Documents to secure obligations of such Lender, including a pledge or assignment to a Federal Reserve Bank; provided, however, that no such pledge or assignment shall release the Lender from its obligations hereunder nor substitute the pledge or assignee for such Lender as a party hereto.

14.3.2 Effect; Effective Date. Upon delivery to Agent of a fully executed Assignment in the form of **Exhibit A-1** or **Exhibit A-2**, as applicable, and a processing fee of \$3,500 (unless otherwise agreed or waived by Agent in its discretion), the assignment shall become effective as specified in the Assignment, if it complies with this **Section 14.3**. From such effective date, the Eligible Assignee shall for all purposes be a Lender under the Loan Documents, and shall have all rights and obligations of a Lender thereunder. Upon consummation of an assignment, the transferor Lender, Agent and Borrower shall make appropriate arrangements for issuance of replacement and/or new notes, if applicable. The transferee Lender shall comply with **Section 5.11** and deliver, upon request, an administrative questionnaire satisfactory to Agent.

14.3.3 Certain Assignees.

(a) No assignment or participation may be made to any Defaulting Lender or natural person. Agent shall have no obligation to determine whether any assignee is permitted under the Loan Documents. Assignment by a Defaulting Lender shall be effective only if there is concurrent satisfaction of all outstanding obligations of the Defaulting Lender under the Loan Documents in a manner satisfactory to Agent, including payment by the Eligible Assignee or Defaulting Lender to Agent of an aggregate amount sufficient upon distribution (through direct payment, purchases of participations or other methods acceptable to Agent) to satisfy all funding and payment liabilities of the Defaulting Lender. If assignment by a Defaulting Lender occurs (by operation of law or otherwise) without compliance with the foregoing sentence, the assignee shall be deemed a Defaulting Lender for all purposes until compliance occurs.

(b) (i) Any Lender who, together with its Affiliates, owns more than 20% of the Equity Interests of any Person identified in clause (a)(ii) of the definition of “Disqualified Institution” will not be entitled to receive any private-side information and (ii) the consent of any Lender who, together with its Affiliates, owns more than 50% of the Equity Interests of any Person identified in clause (a)(ii) of the definition of “Disqualified Institution” will be excluded from any vote hereunder that requires the consent of such Lender other than any vote in connection with any waiver, modification or amendment of the Loan Documents which would (x) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2**); (y) extend the Maturity Date; or (z) require the consent of all Lenders or each affected Lender and which by its terms affects such Lender more adversely than other affected Lenders; it being understood and agreed that the foregoing limitations shall be apply to the Lenders as of the Closing Date (or any of their Affiliates).

14.3.4 Assignments to Affiliated Lenders and Borrower.

(a) Loans may be purchased by and assigned to Platinum or any of its Affiliates (each, an “Affiliated Lender”, which shall be deemed to exclude the Borrower and its Subsidiaries and any natural person) on a non-pro rata basis through (a) open market purchases

(which includes, for the avoidance of doubt, through privately negotiated transactions) and/or (b) Dutch auctions open to all Lenders on a pro rata basis in accordance with customary procedures, in each case, so long as no Default or Event of Default has occurred; provided that (i) Affiliated Lenders (x) shall not receive information provided solely to Lenders or be permitted to attend or participate in Lender-only conference calls or meetings (in each case in their capacity as a Lender), (y) shall not have access to any electronic site established for the Lenders or confidential communications from counsel to or financial advisors of Agent or Lenders and (z) shall not be permitted to receive the advice of counsel to Agent or the Lenders and shall not, solely acting in its capacity as an Affiliated Lender, have the right to challenge the Lenders' attorney-client privilege, (ii) for purposes of any amendment, waiver or modification of the Loan Documents that does not require the consent of each Lender or each affected Lender and adversely affects such Affiliated Lender more adversely than other affected Lenders, Affiliated Lenders shall be deemed to have voted in the same proportion as non-affiliated Lenders voting on such matter, (iii) in connection with a plan of reorganization under any insolvency proceeding unless the plan of reorganization affects the Affiliated Lender in its capacity as a Lender in a disproportionately adverse manner than its effect on the other Lenders Agent shall vote on behalf of the Affiliated Lenders, (iv) such Loans owned or held by an Affiliated Lender shall not, in the aggregate, exceed 25% of Loans outstanding at any time and (v) the applicable assignee Affiliated Lender shall make a representation to the assigning Lender that it does not possess material non-public information with respect to the Borrower and its Subsidiaries that has not been disclosed to the Lenders generally (other than Lenders that have elected not to receive such information). For the avoidance of doubt, the limitations of the preceding clauses (i) through (v) in the immediately preceding sentence shall not apply to Debt Fund Affiliates; provided that in any vote requiring the consent of the Required Lenders, Debt Fund Affiliates cannot, in the aggregate, account for more than 49.9% of the amounts included in determining whether such consent or waiver has been obtained.

(b) Notwithstanding any other provision of this **Section 14.3**, the Affiliated Lenders, may, at their option, contribute Loans to the Borrower solely for the purpose of cancelling such Loans. Such contribution may include contributions made to the Borrower (whether through any of its direct or indirect parent entities or otherwise) in exchange for Debt or Equity Interests of such parent entity or the Borrower that are otherwise permitted to be issued hereunder by such entity at such time; provided that, immediately upon the effectiveness of the contribution of any Loan by an Affiliated Lender to the Borrower, such contributed Loan shall be automatically and permanently cancelled and shall thereafter no longer be outstanding for any purpose hereunder.

(c) So long as no Event of Default has occurred and is continuing, Loans may be purchased by and assigned to the Borrower or any of its Subsidiaries on a non-pro rata basis through (a) open-market purchases (which includes, for the avoidance of doubt, through privately negotiated transactions) and/or (b) Dutch auctions open to all Lenders on a pro rata basis in accordance with customary procedures; provided that (1) immediately upon purchasing any Loan, such Loan shall be automatically and permanently cancelled upon the effectiveness of such purchase and shall thereafter no longer be outstanding for any purpose hereunder, and (2) in connection with such purchase the Borrower shall make a representation to the assigning Lender that it does not possess material non-public information with respect to the Borrower and its

Subsidiaries that has not been disclosed to the Lenders generally (other than Lenders that have elected not to receive such information).

14.3.5 Register. Agent, acting as a non-fiduciary agent of Borrower (solely for tax purposes), shall maintain (a) a copy (or electronic equivalent) of each Assignment delivered to it, and (b) a register for recordation of the names, addresses of, and the Loans, principal and interest owing to, each Lender. Entries in the register shall be conclusive, absent manifest error, and Borrower, Agent and Lenders shall treat each Person recorded in such register as a Lender for all purposes under the Loan Documents, notwithstanding any notice to the contrary. Agent may choose to show only one Borrower as the borrower in the register, without any effect on the liability of any Obligor with respect to the Obligations. The register shall be available for inspection by Borrower or any Lender, from time to time upon reasonable notice.

14.4 Replacement of Certain Lenders. If a Lender (a) within the last 120 days failed to give its consent to any amendment, waiver or action for which consent of all Lenders was required and Required Lenders consented, (b) is a Defaulting Lender, or (c) within the last 120 days gave a notice under **Section 3.5** or requested payment or compensation under **Section 3.7** or **5.10** (and has not designated a different Lending Office pursuant to **Section 3.8**), then Agent or the Borrower may, upon 10 days' notice to such Lender, require it to assign its rights and obligations under the Loan Documents to Eligible Assignee(s), pursuant to appropriate Assignment(s), within 20 days after such notice. Agent is irrevocably appointed as attorney-in-fact to execute any such Assignment if the Lender fails to execute it. Such Lender shall be entitled to receive, in cash, concurrently with such assignment, all amounts owed to it under the Loan Documents through the date of assignment.

SECTION 15. MISCELLANEOUS

15.1 Consents, Amendments and Waivers

15.1.1 Amendment. No modification of any Loan Document, including any extension or amendment of a Loan Document or any waiver of a Default or Event of Default, shall be effective without the prior written agreement of Agent (with the consent of Required Lenders) and each Obligor party to such Loan Document; provided, however, that

(a) without the prior written consent of Agent, no modification shall alter any provision in a Loan Document that relates to any rights, duties or discretion of Agent;

(b) without the prior written consent of each affected Lender, including a Defaulting Lender, no modification shall (i) reduce the amount of, or waive or delay payment of, any principal, interest or fees payable to such Lender (except as provided in **Section 4.2**); (ii) extend the Maturity Date; or (iii) amend this clause (b);

(c) without the prior written consent of all Lenders (except any Defaulting Lender), no modification shall (i) waive the conditions precedent contained in **Section 6**; (ii) alter **Section 5.8.2, 7.1** (except to add Collateral), **13.5** or **15.1.1**; (iii) change any provision of this **Section 15.1.1(c)** or the definition of "Required Lenders", or any other provision hereof

specifying the number or percentages of Lenders required to amend, waive or otherwise modify any rights hereunder or any other Loan Document or make any determination or grant any consent hereunder; (iv) release all or substantially all Collateral; or (v) except in connection with a merger, disposition or similar transaction expressly permitted hereby, release any Obligor from liability for any Obligations;

and, provided further that, notwithstanding the foregoing, Lenders accepting Extension Offers may enter into (or direct Agent to enter into) Extension Amendments as contemplated by **Section 2.5.4**.

15.1.2 Limitations. The agreement of Borrower shall not be required for any modification of a Loan Document that deals solely with the rights and duties of Lenders and/or Agent as among themselves but the parties to such shall provide prompt written notice thereof to the Borrower. Only the consent of the parties to any agreement relating to fees or a Bank Product shall be required for modification of such agreement, and no Bank Product provider (in such capacity) shall have any right to consent to modification of any Loan Document other than its Bank Product agreement. Any waiver or consent granted by Agent or Lenders hereunder shall be effective only if in writing and only for the matter specified.

15.1.3 Payment for Consents. No Borrower will, directly or indirectly, pay any remuneration or other thing of value, whether by way of additional interest, fee or otherwise, to any Lender (in its capacity as a Lender hereunder) as consideration for agreement by such Lender with any modification of any Loan Documents, unless such remuneration or value is concurrently paid, on the same terms, on a Pro Rata basis to all Lenders providing their consent.

15.2 Indemnity. THE BORROWER SHALL INDEMNIFY AND HOLD HARMLESS THE INDEMNITEES AGAINST ANY CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY INDEMNITEE, INCLUDING CLAIMS ASSERTED BY ANY OBLIGOR OR OTHER PERSON AND, IN ALL CASES, WHETHER OR NOT CAUSED OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE OR SOLE NEGLIGENCE OF AN INDEMNITEE. In no event shall any party to a Loan Document have any obligation thereunder to indemnify or hold harmless an Indemnitee with respect to a Claim (a) that is determined in a final, non-appealable judgment by a court of competent jurisdiction to result from the bad faith, gross negligence or willful misconduct of such Indemnitee or (b) arises out of or is in connection with any claim, litigation, loss or proceeding not involving an act or omission of the Borrower or any of its Affiliates and that is brought by an Indemnitee against another Indemnitee (other than against Agent in its capacity as such); and Claims consisting of attorneys' fees and expenses incurred by the Indemnites will be limited to the reasonable and documented fees, disbursements and other charges of one firm of counsel to the Indemnites taken as a whole and one firm of local counsel to the Indemnites taken as a whole in each appropriate jurisdiction and, in the case of an actual or potential conflict of interest as determined by the affected Indemnitee, one additional counsel to such affected Indemnitee.

15.3 Notices and Communications

15.3.1 Notice Address. All notices and other communications by or to a party hereto shall be in writing and shall be given to the Borrower, at the Borrower's address shown on

the signature pages hereof, and to any other Person at its address shown on the signature pages hereof (or, in the case of a Person who becomes a Lender after the Closing Date, at the address shown on its Assignment), or at such other address as a party may hereafter specify by notice in accordance with this **Section 15.3**. Each communication shall be effective only (a) if given by facsimile transmission, when transmitted to the applicable facsimile number, if confirmation of receipt is received; (b) if given by mail, three Business Days after deposit in the U.S. mail, with first-class postage pre-paid, addressed to the applicable address; or (c) if given by personal delivery, when duly delivered to the notice address with receipt acknowledged. Notwithstanding the foregoing, no notice to Agent pursuant to **Section 3.1.2** shall be effective until actually received by the individual to whose attention at Agent such notice is required to be sent. Any written communication that is not sent in conformity with the foregoing provisions shall nevertheless be effective on the date actually received by the noticed party.

15.3.2 Communications. Electronic communications (including e-mail, messaging and websites) may be used only in a manner acceptable to Agent and only for routine communications, such as delivery of Borrower Materials, administrative matters and distribution of Loan Documents. Secured Parties make no assurance as to the privacy or security of electronic communications. E-mail and voice mail shall not be effective notices under the Loan Documents.

15.3.3 Platform. Borrower Materials shall be delivered pursuant to procedures approved by Agent, including electronic delivery (if possible) upon request by Agent to an electronic system maintained by Agent (“Platform”). Borrower shall notify Agent of each posting of Borrower Materials on the Platform and the materials shall be deemed received by Agent only upon its receipt of such notice. Borrower Materials and other information relating to this credit facility may be made available to Secured Parties on the Platform. The Platform is provided “as is” and “as available.” Agent does not warrant the accuracy or completeness of any information on the Platform nor the adequacy or functioning of the Platform, and expressly disclaims liability for any errors or omissions in the Borrower Materials or any issues involving the Platform. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS, OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY AGENT WITH RESPECT TO BORROWER MATERIALS OR THE PLATFORM. No Agent Indemnitee shall have any liability to Borrower, Secured Parties or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) relating to use by any Person of the Platform, including any unintended recipient, nor for delivery of Borrower Materials and other information via the Platform, internet, e-mail, or any other electronic platform or messaging system.

15.3.4 Public Information. Obligors and Secured Parties acknowledge that “public” information may not be segregated from material non-public information on the Platform. Secured Parties acknowledge that Borrower Materials may include Obligors’ material non-public information, and should not be made available to personnel who do not wish to receive such information or may be engaged in investment or other market-related activities with respect to an Obligor’s securities.

15.3.5 Non-Conforming Communications. Agent and Lenders may rely upon any communications purportedly given by or on behalf of the Borrower even if they were not made in a manner specified herein, were incomplete or were not confirmed, or if the terms thereof, as understood by the recipient, varied from a later confirmation. The Borrower shall indemnify and hold harmless each Indemnitee from any liabilities, losses, costs and expenses arising from any electronic or telephonic communication purportedly given by or on behalf of the Borrower.

15.4 Performance of Borrower's Obligations. Agent may, in its discretion at any time and from time to time, at Borrower's expense, pay any amount or, upon notice to Borrower unless an Event of Default exists, do any act required of the Borrower under any Loan Documents or otherwise lawfully requested by Agent to (a) enforce any Loan Documents or collect any Obligations; (b) protect, insure, maintain or realize upon any Collateral; or (c) defend or maintain the validity or priority of Agent's Liens in any Collateral, including any payment of a judgment, insurance premium, warehouse charge, finishing or processing charge, or landlord claim, or any discharge of a Lien. All reasonable and documented payments, costs and expenses (including Extraordinary Expenses) of Agent under this **Section 15.4** shall be reimbursed to Agent by Borrower, on demand, with interest from the date incurred until paid in full, at the Default Rate. Any payment made or action taken by Agent under this **Section 15.4** shall be without prejudice to any right to assert an Event of Default or to exercise any other rights or remedies under the Loan Documents.

15.5 Credit Inquiries. Agent and the Lenders may (but shall have no obligation) to respond to usual and customary credit inquiries from third parties concerning any Obligor or Subsidiary.

15.6 Severability. Wherever possible, each provision of the Loan Documents shall be interpreted in such manner as to be valid under Applicable Law. If any provision is found to be invalid under Applicable Law, it shall be ineffective only to the extent of such invalidity and the remaining provisions of the Loan Documents shall remain in full force and effect.

15.7 Cumulative Effect; Conflict of Terms. The provisions of the Loan Documents are cumulative. The parties acknowledge that the Loan Documents may use several limitations or measurements to regulate similar matters, and they agree that these are cumulative and that each must be performed as provided. Except as otherwise provided in another Loan Document (by specific reference to the applicable provision of this Agreement), if any provision contained herein is in direct conflict with any provision in another Loan Document (other than the Intercreditor Agreement), the provision herein shall govern and control.

15.8 Counterparts; Execution. Any Loan Document may be executed in counterparts, each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement shall become effective when Agent has received counterparts bearing the signatures of all parties hereto. Delivery of a signature page of any Loan Document by telecopy or other electronic means shall be effective as delivery of a manually executed counterpart of such agreement. Any signature, contract formation or record-keeping through electronic means, which shall have the same legal validity and enforceability as manual or paper-based methods, to the fullest extent permitted by Applicable Law, including the Federal

Electronic Signatures in Global and National Commerce Act, the New York State Electronic Signatures and Records Act, or any similar state law based on the Uniform Electronic Transactions Act.

15.9 Entire Agreement. Time is of the essence with respect to all Loan Documents and Obligations. The Loan Documents constitute the entire agreement, and supersede all prior understandings and agreements, among the parties relating to the subject matter hereof and thereof.

15.10 Relationship with Lenders. The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of Agent, Lenders or any other Secured Party pursuant to the Loan Documents or otherwise shall be deemed to constitute Agent and any Secured Party to be a partnership, joint venture or similar arrangement, nor to constitute control of any Obligor.

15.11 No Advisory or Fiduciary Responsibility. In connection with all aspects of each transaction contemplated by any Loan Document, Borrower acknowledges and agrees that (a)(i) this credit facility and any arranging or other services by Agent, any Lender, any of their Affiliates or any arranger are arm's-length commercial transactions between Borrower and its Affiliates, on one hand, and Agent, any Lender, any of their Affiliates or any arranger, on the other hand; (ii) Borrower has consulted its own legal, accounting, regulatory and tax advisors to the extent it has deemed appropriate; and (iii) Borrower is capable of evaluating, and understand and accept, the terms, risks and conditions of the transactions contemplated by the Loan Documents; (b) each of Agent, Lenders, their Affiliates and any arranger is and has been acting solely as a principal and, except as expressly agreed in writing by the relevant parties, has not been, is not, and will not be acting as an advisor, agent or fiduciary for Borrower, its Affiliates or any other Person, and has no obligation with respect to the transactions contemplated by the Loan Documents except as expressly set forth therein; and (c) Agent, Lenders, their Affiliates and any arranger may be engaged in a broad range of transactions that involve interests that differ from those of Borrower and its Affiliates, and have no obligation to disclose any of such interests to Borrower or its Affiliates. To the fullest extent permitted by Applicable Law, the Borrower hereby waives and releases any claims that it may have against Agent, Lenders, their Affiliates and any arranger with respect to any breach of agency or fiduciary duty in connection with any transaction contemplated by a Loan Document.

15.12 Confidentiality. Each of Agent and Lenders shall maintain the confidentiality of all Information (as defined below), except that Information may be disclosed (a) to its Affiliates, and to its and their partners, directors, officers, employees, agents, advisors and representatives (provided they are informed of the confidential nature of the Information and instructed to keep it confidential); (b) to the extent requested by any governmental, regulatory or self-regulatory authority purporting to have jurisdiction over it or its Affiliates; provided that unless specifically prohibited by Applicable Law, each of Agent and each Lender shall endeavor to notify the Borrower (without any liability for a failure to so notify the Borrower) of any request made to such Lender or Agent, as applicable, by any governmental, regulatory or self-regulatory agency

or representative thereof (other than any such request in connection with an examination of the financial condition of such Lender by such governmental agency) for disclosure of any such Information prior to disclosure of such Information; (c) to the extent required by Applicable Law or by any subpoena or other legal process; (d) to any other party hereto; (e) in connection with any action or proceeding relating to any Loan Documents or Obligations; (f) subject to an agreement containing provisions substantially the same as this **Section 15.12**, to any Transferee or any actual or prospective party (or its advisors) to any Bank Product or to any swap, derivative or other transaction under which payments are to be made by reference to an Obligor or Obligor's obligations; (g) to the extent such Information (i) becomes publicly available other than as a result of a breach of this **Section 15.12** or (ii) is available to Agent, any Lender, or any of their Affiliates on a nonconfidential basis from a source other than Borrower; (h) on a confidential basis to a provider of a Platform; or (i) with the consent of the Borrower. Notwithstanding the foregoing, Agent and Lenders may publish or disseminate general information concerning this credit facility for league table, tombstone and advertising purposes, and may use Borrower's logos, trademarks or product photographs approved by Borrower in advertising materials; provided, however that (x) Agent and Lenders provide Borrower with a copy for its review prior to publishing or disseminating such information and (y) such general information does not include any Information required to be kept confidential by this **Section 15.12**. As used herein, "Information" means information received from an Obligor or Subsidiary relating to it or its business that is identified as confidential when delivered. A Person required to maintain the confidentiality of Information pursuant to this **Section 15.12** shall be deemed to have complied if it exercises a degree of care similar to that accorded its own confidential information. Each of Agent and Lenders acknowledges that (i) Information may include material non-public information; (ii) it has developed compliance procedures regarding the use of such information; and (iii) it will handle the material non-public information in accordance with Applicable Law.

15.13 GOVERNING LAW. UNLESS EXPRESSLY PROVIDED IN ANY LOAN DOCUMENT, THIS AGREEMENT, THE OTHER LOAN DOCUMENTS AND ALL CLAIMS SHALL BE GOVERNED BY THE LAWS OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ANY CONFLICT OF LAW PRINCIPLES EXCEPT FEDERAL LAWS RELATING TO NATIONAL BANKS.

15.14 Consent to Forum.

15.14.1 Forum. **THE BORROWER HEREBY CONSENTS TO THE EXCLUSIVE JURISDICTION OF ANY STATE COURT SITTING IN NEW YORK COUNTY OR THE UNITED STATES DISTRICT COURT OF THE SOUTHERN DISTRICT OF NEW YORK, IN ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING RELATING IN ANY WAY TO ANY LOAN DOCUMENTS, AND AGREES THAT ANY DISPUTE, ACTION, LITIGATION OR OTHER PROCEEDING SHALL BE BROUGHT BY IT SOLELY IN ANY SUCH COURT. THE BORROWER IRREVOCABLY AND UNCONDITIONALLY WAIVES ALL CLAIMS, OBJECTIONS AND DEFENSES THAT IT MAY HAVE REGARDING ANY SUCH COURT'S PERSONAL OR SUBJECT MATTER JURISDICTION, VENUE OR INCONVENIENT FORUM. EACH PARTY HERETO IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE JURISDICTION OF SUCH COURTS AND CONSENTS TO**

SERVICE OF PROCESS IN THE MANNER PROVIDED FOR NOTICES IN SECTION 15.3.1. A final judgment in any proceeding of any such court shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or any other manner provided by Applicable Law.

15.14.2 Other Jurisdictions. Nothing herein shall limit the right of Agent or any Lender to bring proceedings against any Obligor in any other court, nor limit the right of any party to serve process in any other manner permitted by Applicable Law. Nothing in this Agreement shall be deemed to preclude enforcement by Agent of any judgment or order obtained in any forum or jurisdiction.

15.15 Waivers by Borrower. To the fullest extent permitted by Applicable Law, the Borrower waives (a) the right to trial by jury (which Agent and each Lender hereby also waives) in any proceeding or dispute of any kind relating in any way to any Loan Documents, Obligations or Collateral; (b) presentment, demand, protest, notice of presentment, default, non-payment, maturity, release, compromise, settlement, extension or renewal of any commercial paper, accounts, documents, instruments, chattel paper and guaranties at any time held by Agent on which the Borrower may in any way be liable, and hereby ratifies anything Agent may do in this regard; (c) notice prior to taking possession or control of any Collateral; (d) any bond or security that might be required by a court prior to allowing Agent to exercise any rights or remedies; (e) the benefit of all valuation, appraisal and exemption laws; (f) any claim against any party hereto, on any theory of liability, for special, indirect, consequential, exemplary or punitive damages (as opposed to direct or actual damages) in any way relating to any Enforcement Action, Obligations, Loan Documents or transactions relating thereto (which Agent and each Lender hereby also waives); and (g) notice of acceptance hereof. The Borrower acknowledges that the foregoing waivers are a material inducement to Agent and Lenders entering into this Agreement and that they are relying upon the foregoing in their dealings with the Borrower. The Borrower has reviewed the foregoing waivers with its legal counsel and has knowingly and voluntarily waived its jury trial and other rights following consultation with legal counsel. In the event of litigation, this Agreement may be filed as a written consent to a trial by the court.

15.16 PATRIOT Act Notice. Agent and Lenders hereby notify Borrower that pursuant to the PATRIOT Act, Agent and Lenders are required to obtain, verify and record information that identifies the Borrower, including its legal name, address, tax ID number and other information that will allow Agent and Lenders to identify it in accordance with the PATRIOT Act. Agent and Lenders will also require information regarding each personal guarantor, if any, and may require information regarding Borrower's management and owners, such as legal name, address, social security number and date of birth. Borrower shall, promptly upon request, provide all documentation and other information as Agent or any Lender may request from time to time in order to comply with any obligations under any "know your customer," anti-money laundering or other requirements of Applicable Law.

15.17 NO ORAL AGREEMENT. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR,

CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS BETWEEN THE PARTIES. THERE ARE NO UNWRITTEN AGREEMENTS BETWEEN THE PARTIES.

[Remainder of page intentionally left blank; signatures begin on following page]

IN WITNESS WHEREOF, this Agreement has been executed and delivered as of the date set forth above.

BORROWER:

KEY ENERGY SERVICES, INC.

By: _____
Title:

Address for Borrower:
1301 McKinney Street, Suite 1800
Houston, TX 77010
Attn: Marshall Dodson
Telecopy: 713.651.4556

Signature Page to Term Loan and Security Agreement (Key Energy)

Sig-1

GUARANTOR:

KEY ENERGY SERVICES, LLC

By: _____
Title:

Address for Guarantor:
1301 McKinney Street, Suite 1800
Houston, TX 77010
Attn: Marshall Dodson
Telecopy: 713.651.4556

Signature Page to Term Loan and Security Agreement (Key Energy)

Sig-2

#88856315v3
SC1:~~4200853-15~~[4200853.19A](#)
218431836

-

AGENT AND LENDERS:

CORTLAND PRODUCTS CORP., as Agent

By: _____

Title:

Address:

Attn:

Telecopy:

**CORTLAND CAPITAL MARKET
SERVICES LLC, as Agent**

By: _____

Title:

Address:

Attn:

Telecopy:

Signature Page to Term Loan and Security Agreement (Key Energy)

Sig-3

as a Lender

By: _____
Title:

Address:

Attn:
Telecopy:

Signature Page to Term Loan and Security Agreement (Key Energy)

Sig-4

[EXHIBITS AND SCHEDULES TO BE CIRCULATED SEPARATELY]