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

FORM 10-Q

☒ QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the quarterly period ended September 30, 2019.

OR

☐ TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934
For the transition period from ____________________ to ____________________

Commission File Number 001-33582

SPARTAN MOTORS, INC.
(Exact Name of Registrant as Specified in Its Charter)

Michigan (State or Other Jurisdiction of Incorporation or Organization)	**38-2078923** (I.R.S. Employer Identification No.)
1541 Reynolds Road **Charlotte, Michigan** (Address of Principal Executive Offices)	**48813** (Zip Code)

Registrant's Telephone Number, Including Area Code: **(517) 543-6400**

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

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
Common Stock, $.01 par value	SPAR	NASDAQ Global Select Market

Indicate by check mark whether the registrant: (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days.

Yes X No ____

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes X No ____

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer," "accelerated filer," "smaller reporting company," and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer	☐	Accelerated filer	☒
Non-accelerated filer	☐	Smaller Reporting Company	☐
Emerging Growth Company	☐		

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

Indicate by check mark whether the registrant is a shell company (as defined in Exchange Act Rule 12b-2 of the Exchange Act). Yes ___ No X

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

Class	Outstanding at October 31, 2019
Common stock, $.01 par value	34,728,121 shares

SPARTAN MOTORS, INC.

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FORWARD-LOOKING STATEMENTS

There are certain statements within this Report that are not historical facts. These statements are called "forward-looking statements" within the meaning of Section 27A of the Securities Act of 1933 and Section 21E of the Securities Exchange Act of 1934. These statements involve important known and unknown risks, uncertainties and other factors and can be identified by phrases using "estimate," "anticipate," "believe," "project," "expect," "intend," "predict," "potential," "future," "may," "will", "should" and similar expressions or words. Our future results, performance or achievements may differ materially from the results, performance or achievements discussed in the forward-looking statements. There are numerous factors that could cause actual results to differ materially from the results discussed in forward-looking statements, including, among others:

- **Changes in economic conditions, including changes in interest rates, credit availability, financial market performance and our industries can have adverse effects on its earnings and financial condition, as well as our customers, dealers and suppliers.**

- **Changes in relationships with major customers and suppliers could significantly affect our revenues and profits.**

- **Constrained government budgets may have a negative effect on our business and its operations.**

- **The integration of businesses or assets we have acquired or may acquire in the future involves challenges that could disrupt our business and harm our financial condition.**

- **When we introduce new products, we may incur expenses that we did not anticipate, such as start-up and recall expenses, resulting in reduced earnings.**

- **Increased costs, including costs of raw materials, component parts and labor costs, potentially impacted by changes in labor rates and practices and/or new or increased tariffs or similar restrictions, could reduce our operating income.**

- **Amendments of the laws and regulations governing our businesses, or the promulgation of new laws and regulations, could have a material impact on our operations.**

- **We source components from a variety of domestic and global suppliers who may be subject to disruptions from natural or man-made causes. Disruptions in our supply of components could have a material and adverse impact on our results of operations or financial position.**

- **Changes in the markets we serve may, from time to time, require us to re-configure our production lines or re-locate production of products between buildings or to new locations in order to maximize the efficient utilization of our production capacity. Costs incurred to effect these re-configurations may exceed our estimates and efficiencies gained may be less than anticipated.**

This list provides examples of factors that could affect the results described by forward-looking statements contained in this Report. However, this list is not intended to be all-inclusive. The risk factors disclosed in Item 1A "Risk Factors" of Part II of this Quarterly Report on Form 10-Q and in Part I – Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2018, include all known risks our management believes could materially affect the results described by forward-looking statements contained in this Report. However, those risks may not be the only risks we face. Our business, operations, and financial performance could also be affected by additional factors that are not presently known to us or that we currently consider immaterial to our operations. In addition, new risks may emerge from time to time that may cause actual results to differ materially from those contained in any forward-looking statements. We believe that the forward-looking statements contained in this Report are reasonable. However, given these risks and uncertainties, we cannot provide you with any guarantee that the anticipated results will be achieved. All forward-looking statements in this Report are expressly qualified in their entirety by the cautionary statements contained in this Section and you are cautioned not to place undue reliance on the forward-looking statements contained in this Report as a prediction of actual results. We disclaim any obligation to update or revise information contained in any forward-looking statement to reflect developments or information obtained after the date this Report is filed with the Securities and Exchange Commission.

Item 1. **Financial Statements**

SPARTAN MOTORS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED BALANCE SHEETS
(In thousands, except par value)
(Unaudited)

	September 30, 2019	December 31, 2018
ASSETS		
Current assets:		
Cash and cash equivalents	$ 15,019	$ 27,439
Accounts receivable, less allowance of $384 and $133	112,455	106,801
Contract assets	49,043	36,027
Inventories	87,936	69,992
Other receivables – chassis pool agreements	16,975	-
Other current assets	6,247	5,070
Total current assets	287,675	245,329
Property, plant and equipment, net	62,189	56,567
Right of use assets-operating leases	37,110	-
Goodwill	60,333	33,823
Intangible assets, net	55,149	8,611
Other assets	2,693	2,313
Net deferred tax asset	7,463	7,141
TOTAL ASSETS	$ 512,612	$ 353,784
LIABILITIES AND SHAREHOLDERS' EQUITY		
Current liabilities:		
Accounts payable	$ 83,723	$ 76,399
Accrued warranty	18,084	16,090
Accrued compensation and related taxes	17,362	10,520
Deposits from customers	11,369	22,632
Operating lease liability	5,133	-
Other current liabilities and accrued expenses	14,849	12,396
Short-term debt – chassis pool agreements	16,975	-
Current portion of long-term debt	0	60
Total current liabilities	167,495	138,097
Other non-current liabilities	4,376	4,058
Long-term operating lease liability	32,171	-
Long-term debt, less current portion	108,944	25,547
Total liabilities	312,986	167,702
Commitments and contingencies	-	-
Shareholders' equity:		
Preferred stock, no par value: 2,000 shares authorized (none issued)	-	-
Common stock, $0.01 par value; 80,000 shares authorized; 35,333 and 35,321 outstanding	353	353
Additional paid in capital	83,565	82,816
Retained earnings	116,380	103,571
Total Spartan Motors, Inc. shareholders' equity	200,298	186,740
Non-controlling interest	(672)	(658)
Total shareholders' equity	199,626	186,082
TOTAL LIABILITIES AND SHAREHOLDERS' EQUITY	$ 512,612	$ 353,784

See Accompanying Notes to Condensed Consolidated Financial Statements.

SPARTAN MOTORS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF OPERATIONS
(In thousands, except per share data)
(Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	**2018**	**2019**	**2018**
Sales	$ 288,951	$ 226,183	$ 770,850	$ 583,203
Cost of products sold	246,769	199,965	677,216	508,457
Restructuring charges	6	25	60	25
Gross profit	**42,176**	**26,193**	**93,574**	**74,721**
Operating expenses:				
Research and development	1,869	2,117	6,507	5,323
Selling, general and administrative	26,673	17,251	68,198	54,163
Restructuring charges	131	476	259	1,292
Total operating expenses	28,673	19,844	74,964	60,778
Operating income	**13,503**	**6,349**	**18,610**	**13,943**
Other income (expense):				
Interest expense	(144)	(225)	(831)	(817)
Interest and other income	480	156	1,963	2,581
Total other income (expense)	336	(69)	1,132	1,764
Income before taxes	13,839	6,280	19,742	15,707
Taxes	3,424	1,037	4,499	2,527
Net income	10,415	5,243	15,243	13,180
Less: net income (loss) attributable to non-controlling interest	61	-	(14)	-
Net income attributable to Spartan Motors Inc.	**$ 10,354**	**$ 5,243**	**$ 15,257**	**$ 13,180**
Basic net earnings per share	**$ 0.29**	**$ 0.15**	**$ 0.43**	**$ 0.37**
Diluted net earnings per share	**$ 0.29**	**$ 0.15**	**$ 0.43**	**$ 0.37**
Basic weighted average common shares outstanding	35,317	35,182	35,311	35,179
Diluted weighted average common shares outstanding	35,463	35,182	35,355	35,179

See Accompanying Notes to Condensed Consolidated Financial Statements.

SPARTAN MOTORS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENTS OF CASH FLOWS
(In thousands)
(Unaudited)

	Nine Months Ended September 30,	
	2019	**2018**
Cash flows from operating activities:		
Net income	$ 15,243	$ 13,180
Adjustments to reconcile net income to net cash used in operating activities:		
Depreciation and amortization	7,731	7,638
Gain on disposal of assets	(2)	-
Accruals for warranty	10,173	6,068
Expense from changes in fair value of contingent consideration	-	(693)
Deferred income taxes	(594)	688
Expense on right of use assets	251	-
Stock based compensation related to stock awards	3,767	3,054
(Increase) decrease in operating assets:		
Accounts receivable	(9)	(26,799)
Contract assets	(11,518)	(13,017)
Inventories	(10,934)	(31,000)
Other assets	(1,177)	(403)
Increase (decrease) in operating liabilities:		
Accounts payable	4,393	51,955
Cash paid for warranty repairs	(8,277)	(8,093)
Accrued compensation and related taxes	6,211	(4,028)
Deposits from customers	(11,517)	(3,113)
Other current liabilities and accrued expenses	2,147	955
Other long-term liabilities	406	(259)
Other	(842)	-
Taxes on income	781	(2,080)
Total adjustments	(9,010)	(19,127)
Net cash provided by (used in) operating activities	6,233	(5,947)
Cash flows from (used in) investing activities:		
Purchases of property, plant and equipment	(7,515)	(7,395)
Proceeds from sale of property, plant and equipment	15	-
Acquisition of business, net of cash acquired	(89,650)	-
Net cash used in investing activities	(97,150)	(7,395)
Cash flows from (used in) financing activities:		
Proceeds from long-term debt	92,000	684
Payments on long-term debt	(10,102)	(50)
Payment of contingent consideration on acquisitions	-	(701)
Payment of dividends	(1,777)	(1,759)
Purchase and retirement of common stock	(793)	-
Net cash used in the exercise, vesting or cancellation of stock incentive awards	(832)	(2,688)
Net cash provided by (used in) financing activities	78,496	(4,514)
Net decrease in cash and cash equivalents	(12,420)	(17,856)
Cash and cash equivalents at beginning of period	27,439	33,523
Cash and cash equivalents at end of period	$ 15,019	$ 15,667

See Accompanying Notes to Condensed Consolidated Financial Statements.

SPARTAN MOTORS, INC. AND SUBSIDIARIES
CONDENSED CONSOLIDATED STATEMENT OF SHAREHOLDERS' EQUITY
(In thousands)
(Unaudited)

	Number of Shares	Common Stock	Additional Paid In Capital	Retained Earnings	Non-Controlling Interest	Total Shareholders' Equity
Balance at December 31, 2018	35,321	$ 353	$ 82,816	$ 103,571	$ (658)	$ 186,082
Issuance of common stock and the tax impact of stock incentive plan transactions	9	-	(922)	-	-	(922)
Issuance of restricted stock, net of cancellation	121	1	(1)	-	-	-
Purchase and retirement of common stock	(101)	(1)	(236)	(556)	-	(793)
Stock based compensation expense related to restricted stock	-	-	860	-	-	860
Transition adjustment for adoption of new lease standard	-	-	-	(113)	-	(113)
Net income	-	-	-	1,397	140	1,537
Balance at March 31, 2019	35,350	353	82,517	104,299	(518)	186,651
Issuance of common stock and the tax impact of stock incentive plan transactions	8	-	28	-	-	28
Issuance of restricted stock, net of cancellation	(42)	-	-	-	-	-
Issuance of common stock related to investment in subsidiary	(247)	(2)	(1,946)	-	-	(1,948)
Dividends declared ($0.05 per share)	-	-	-	(1,777)	-	(1,777)
Stock based compensation expense related to restricted stock	247	2	1,341	-	-	1,343
Net income	-	-	-	3,504	(215)	3,289
Balance at June 30, 2019	35,316	353	81,940	106,026	(733)	187,586
Issuance of common stock and the tax impact of stock incentive plan transactions	6	-	62	-	-	62
Issuance of restricted stock, net of cancellation	11	-	-	-	-	-
Stock based compensation expense related to restricted stock	-	-	1,563	-	-	1,563
Net income	-	-	-	10,354	61	10,415
Balance at September 30, 2019	35,333	$ 353	$ 83,565	$ 116,380	$ (672)	$ 199,626

	Number of Shares	Common Stock	Additional Paid In Capital	Retained Earnings	Non-Controlling Interest	Total Shareholders' Equity
Balance at December 31, 2017	35,097	$ 351	$ 79,721	$ 88,855	$ (658)	$ 168,269
Issuance of common stock and the tax impact of stock incentive plan transactions	3	-	(2,493)	-	-	(2,493)
Issuance of restricted stock, net of cancellation	191	2	(2)	-	-	-
Stock based compensation expense related to restricted stock	-	-	819	-	-	819
Transition adjustment for adoption of new revenue recognition standard	-	-	-	3,668	-	3,668
Net income	-	-	-	4,194	-	4,194
Balance at March 31,2018	35,291	353	78,045	96,717	(658)	174,457
Issuance of common stock and the tax impact of stock incentive plan transactions	2	-	(177)	-	-	(177)
Issuance of restricted stock, net of cancellation	(99)	(1)	1	-	-	-
Dividends declared ($0.05 per share)	-	-	-	(1,759)	-	(1,759)
Stock based compensation expense related to restricted stock	-	-	1,370	-	-	1,370
Net income	-	-	-	3,743	-	3,743
Balance at June 30, 2018	35,194	352	79,239	98,701	(658)	177,634
Issuance of common stock and the tax impact of stock incentive plan transactions	4	-	(18)	-	-	(18)
Issuance of restricted stock, net of cancellation	(28)	-	-	-	-	-
Stock based compensation expense related to restricted stock	-	-	865	-	-	865
Net income	-	-	-	5,243	-	5,243
Balance at September 30, 2018	35,170	$ 352	$ 80,086	$ 103,944	$ (658)	$ 183,724

See Accompanying Notes to Condensed Consolidated Financial Statements.

SPARTAN MOTORS, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Dollar amounts in thousands, except per share data)

NOTE 1 - GENERAL AND SUMMARY OF ACCOUNTING POLICIES

For a description of key accounting policies followed, refer to the notes to the Spartan Motors, Inc. (the “Company”, “we”, “our” or “us”) consolidated financial statements for the year ended December 31, 2018, included in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 5, 2019. Refer to the *Adoption of Lease Accounting Policy* section below for the adoption of a new lease accounting standard in the first quarter of 2019.

We are a niche market leader in specialty vehicle manufacturing and assembly for the commercial vehicle (including last-mile delivery, specialty service and vocation-specific up-fit segments), emergency response and recreational vehicle industries. Our products include walk-in vans and truck bodies used in e-commerce/parcel delivery, up-fit equipment used in the mobile retail, and utility trades, fire trucks and fire truck chassis, luxury Class A diesel motor home chassis, military vehicles, and contract manufacturing and assembly services. We also supply replacement parts and offer repair, maintenance, field service and refurbishment services for the vehicles that we manufacture. Our operating activities are conducted through our wholly-owned operating subsidiary, Spartan Motors USA, Inc. (“Spartan USA”), with locations in Charlotte, Michigan; Brandon, South Dakota; Snyder and Neligh, Nebraska; Ephrata, Pennsylvania; Pompano Beach, Florida; Bristol, Indiana; North Charleston, South Carolina; Kansas City, Missouri; Montebello, Carson, Roseville and Union City, California; Mesa, Arizona; Dallas and Weatherford, Texas; and Saltillo, Mexico.

On September 9, 2019, the Company entered into a Unit Purchase Agreement with Fortress Resources, LLC D/B/A Royal Truck Body (“Royal”), pursuant to which the Company acquired all the outstanding equity interests of Royal. Royal is a leading California-based designer, manufacturer and installer of service truck bodies and accessories. Royal manufactures and assembles truck body options for various trades, service truck bodies, stake body trucks, contractor trucks, and dump bed trucks. Royal is the largest service body company in the western United States with their principal facility in Carson, California. Royal has additional manufacturing, assembly, and service space in branch locations in Union City and Roseville, California; Mesa, Arizona; and Dallas and Weatherford, Texas. This acquisition allows us to quickly expand our footprint in the western United States supporting our strategy of coast-to-coast manufacturing and distribution. Royal is part of our Specialty Chassis & Vehicle segment.

On June 12, 2019, the Company acquired certain assets and assumed certain liabilities of General Truck Body, Inc., located in Montebello, California, through the Company’s wholly-owned subsidiary, Spartan Motors GTB, LLC (“GTB”). GTB is a provider of up-fit services for government and non-government vehicles. The acquisition will enable the Company to increase its product offerings to fleet customers, while further expanding its manufacturing capabilities in the U.S. market. Spartan Motors GTB, LLC is reported as part of the Fleet Vehicles and Services segment.

On December 17, 2018, the Company acquired all of the assets and assumed certain liabilities of Strobes-R-Us, Inc., located in Pompano Beach, Florida, through the Company’s majority-owned subsidiary, Spartan Upfit Services, Inc. dba Strobes-R-Us (“SRUS”). SRUS is a premier provider of up-fit services for government and non-government vehicles. The acquisition will enable the Company to increase its product offerings to both fleet and emergency response customers, while further expanding its manufacturing capabilities into the southeastern U.S. market. As part of this acquisition, Spartan acquired Strobes-R-Us’ state-of-the-art up-fit facility and product showroom in Pompano Beach, Florida. Spartan Upfit Services, Inc. and the related noncontrolling interest is reported as part of the Fleet Vehicles and Services segment.

Our Bristol, Indiana location manufactures vehicles used in the parcel delivery, mobile retail and trades and construction industries, and supplies related aftermarket parts and services under the Utilimaster brand name. Our Kansas City, Missouri; Pompano Beach, Florida; North Charleston, South Carolina; Montebello California; and Saltillo, Mexico locations sell and install equipment used in commercial and fleet vehicles. Our Brandon, South Dakota; Snyder and Neligh, Nebraska; and Ephrata, Pennsylvania locations manufacture emergency response vehicles under the Spartan, Smeal, US Tanker and Ladder Tower Company brand names. Our Charlotte, Michigan location manufactures heavy-duty chassis and vehicles, and supplies aftermarket parts and accessories under the Spartan Chassis and Spartan brand names. Our Carson, Roseville and Union City, California; Mesa, Arizona; and Dallas and Weatherford, Texas locations manufacture service truck bodies and accessories under the Royal Truck Body brand name. Spartan USA was also a participant in Spartan-Gimaex Innovations, LLC (“Spartan-Gimaex”), a 50/50 joint venture with Gimaex Holding, Inc. that was formed to provide emergency response vehicles for the domestic and international markets. Spartan-Gimaex is reported as a consolidated subsidiary of Spartan Motors, Inc. In February 2015, Spartan USA and Gimaex Holding, Inc. mutually agreed to begin discussions regarding the dissolution of the joint venture. In June 2015, Spartan USA and Gimaex Holding, Inc. entered into court proceedings to determine the terms of the dissolution. In February 2017, by agreement of the parties, the court proceeding was dismissed with prejudice and the judge entered an order to this effect as the parties agreed to seek a dissolution plan on their own. The Company is continuing to work on this dissolution plan and no dissolution terms have been determined as of the date of this Form 10-Q.

SPARTAN MOTORS, INC. AND SUBSIDIARIES
NOTES TO CONDENSED CONSOLIDATED FINANCIAL STATEMENTS
(Dollar amounts in thousands, except per share data)

The accompanying unaudited interim condensed consolidated financial statements reflect all normal and recurring adjustments that are necessary for the fair presentation of our financial position as of September 30, 2019, the results of operations and cash flows for the three and nine-month periods ended September 30, 2019. These condensed consolidated financial statements should be read in conjunction with the audited consolidated financial statements and footnotes included in our Annual Report on Form 10-K for the year ended December 31, 2018.

The results of operations for the three and nine-months ended September 30, 2019 are not necessarily indicative of the results expected for the full year.

We are required to disclose the fair value of our financial instruments in accordance with Financial Accounting Standards Board ("FASB") Codification relating to "Disclosures about Fair Values of Financial Instruments." The carrying amounts of cash and cash equivalents, accounts receivable, accounts payable and our variable rate debt instruments approximate their fair value at September 30, 2019 and December 31, 2018.

New Accounting Standards

In June 2016, the FASB issued Accounting Standards Update 2016-13, *Financial Instruments - Credit Losses: Measurement of Credit Losses on Financial Instruments* ("ASU 2016-13"). ASU 2016-13 is intended to introduce a revised approach to the recognition and measurement of credit losses, emphasizing an updated model based on expected losses rather than incurred losses. The provisions of this standard are effective for reporting periods beginning after December 15, 2019 and early adoption is permitted. We believe that the adoption of the provisions of ASU 2016-13 will not have a material impact on our consolidated financial position, results of operations or cash flows.

In February 2016, the FASB issued Accounting Standards Update No. 2016-02, *Leases* ("ASU 2016-02"). The new standard establishes a right-of-use ("ROU") model that requires a lessee to record a ROU asset and a lease liability on the balance sheet for all leases with terms longer than 12 months. Leases will be classified as either finance or operating, with classification affecting the pattern of expense recognition in the income statement. The new standard is effective for fiscal years beginning after December 15, 2018, including interim periods within those fiscal years. A modified retrospective transition approach is required for lessees with capital and operating leases existing at, or entered into after, the beginning of the earliest comparative period presented in the financial statements, with certain practical expedients available. We adopted ASU 2016-02 as of January 1, 2019 using the modified retrospective approach. See the "*Adoption of Lease Accounting Policy*" section below and Note 7 - *Leases* for a description of the impact of the adoption of the provisions of ASU 2016-02 on our consolidated financial position, results of operations and cash flows

Except for the changes below, we have consistently applied the accounting policies to all periods presented in these condensed consolidated financial statements.

Adoption of Lease Accounting Policy

We applied ASU 2016-02 and all related amendments ("ASC 842") using the modified retrospective method by recognizing the cumulative effect of adoption as an adjustment to the opening balance of retained earnings at January 1, 2019. Therefore, the comparative information has not been adjusted and continues to be reported under prior leasing guidance. In addition, we elected to apply the following package of practical expedients on a consistent basis permitting entities not to reassess: (i) whether any expired or existing contracts are or contain a lease; (ii) lease classification for any expired or existing leases and (iii) whether initial direct costs for any expired or existing leases qualify for capitalization under the amended guidance. As a result, as of January 1, 2019 we recorded ROU assets of $13,582 for operating leases and $675 for financing leases. We also recorded operating lease liabilities of $13,716 and finance lease liabilities of $696. The decrease to retained earnings was $113, net of the tax effect of $42 reflecting the cumulative impact of the accounting change. The standard did not have a material effect on consolidated net income or cash flows.

We determine if an arrangement is a lease at inception. Operating leases are included in ROU assets - operating leases, Operating lease liability, and Long-term operating lease liability on our Condensed Consolidated Balance Sheets. Finance leases are included in Other assets, Other current liabilities and accrued expenses and Other non-current liabilities on our Condensed Consolidated Balance Sheets.

ROU assets represent our right to use an underlying asset for the lease term and lease liabilities represent our obligation to make lease payments arising from the lease. Operating lease ROU assets and liabilities are recognized at commencement date based on the present value of lease payments over the lease term. As most of our leases do not provide an implicit rate, we use our incremental borrowing rate based on the information available at commencement date in determining the present value of lease payments. The operating lease ROU asset also includes any lease payments made and excludes lease incentives and initial direct costs incurred. We include options to extend or terminate the lease in our lease term when it is reasonably certain that we will exercise that option. Lease expense for lease payments on operating leases is recognized on a straight-line basis over the lease term.

We do not record a ROU asset or lease liability for leases with an expected term of 12 months or less. Expenses for these leases are recognized on a straight-line basis over the lease term.

We have lease agreements with lease and non-lease components, which are accounted for separately for leases related to real property. For leases related to personal property we account for lease and non-lease components associated with a lease as a single lease component.

Revenue Recognition Accounting Policy

Essentially all of our revenue is generated through contracts with our customers. We may recognize revenue over time or at a point in time when or as obligations under the terms of a contract with our customer are satisfied, depending on the terms and features of the contract and the products supplied. Our contracts generally do not have any significant variable consideration. The collectability of consideration on the contract is reasonably assured before revenue is recognized. On certain vehicles, payment may be received in advance of us satisfying our performance obligations. Such payments are recorded in Customer deposits on the Condensed Consolidated Balance Sheets. The corresponding performance obligations are generally satisfied within one year of the contract inception. In such cases, we have elected to apply the practical expedient to not adjust the promised amount of consideration for the effects of a significant financing component. The financing impact on contracts that contain performance obligations that are not expected to be satisfied within one year are expected to be immaterial to our condensed consolidated financial statements.

We have elected to utilize the practical expedient to recognize the incremental costs of obtaining a contract as an expense when incurred because the amortization period for the prepaid costs that would have otherwise been deferred and amortized is one year or less. Revenue recognized in a current period from performance obligations satisfied in a prior period, if any, is immaterial to our condensed consolidated financial statements. We use an observable price to allocate the stand-alone selling price to separate performance obligations within a contract or a cost-plus margin approach when an observable price is not available. The estimated costs to fulfill our base warranties are recognized as expense when the products are sold (see "*Note* 8 - *Commitments and Contingent Liabilities*" for further information on warranties). Our contracts with customers do not contain a provision for product returns, except for contracts related to certain parts sales.

Revenue for parts sales for all segments is recognized at the time that control and risk of ownership has passed to the customer, which is generally when the ordered part is shipped to the customer. Historical return rates on parts sales have been immaterial. Accordingly, no return reserve has been recorded. Instead, returns are recognized as a reduction of revenue at the time that they are received.

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For certain of our vehicles and chassis, we sell separately priced service contracts that provide roadside assistance or extend certain warranty coverage beyond our base warranty agreements. These separately priced contracts range from 1 to 6 years from the date of the shipment of the related vehicle or chassis. We receive payment with the shipment of the related vehicle or at the inception of the extended service contract, if later, and recognize revenue over the coverage term of the agreement, generally on a straight-line basis, which approximates the pattern of costs expected to be incurred in satisfying the obligations under the contract.

Distinct revenue recognition policies for our segments are as follows:

Fleet Vehicles and Services
Our walk-in vans and truck bodies are generally built on a chassis that is owned and controlled by the customer. Due to the customer ownership of the chassis, the performance obligation for these walk-in vans and truck bodies is satisfied as the vehicles are built. Accordingly, the revenue and corresponding cost of products sold associated with these contracts are recognized over time based on the inputs completed for a given performance obligation during the reporting period. Certain contracts will specify that a walk-in van or truck body is to be built on a chassis that we purchase and subsequently sell to the customer. The revenue on these contracts is recognized at the time that the performance obligation is satisfied and control and risk of ownership has passed to the customer, which is generally upon shipment of the vehicle from our manufacturing facility to the customer or receipt of the vehicle by the customer, depending on contract terms. We have elected to treat shipping and handling costs subsequent to transfer of control as fulfillment activities and, accordingly, recognize these costs as the revenue is recognized.

Revenue for up-fit and field service contracts is recognized over time, as equipment is installed in the customer's vehicle or as repairs and enhancements are made to the customer's vehicles. Revenue and the corresponding cost of products sold is estimated based on the inputs completed for a given performance obligation. Our performance obligation for up-fit and field service contracts is satisfied when the equipment installation or repairs and enhancements of the customer's vehicle has been completed. Our receivables will generally be collected in less than three months, in accordance with our underlying payment terms.

Emergency Response Vehicles
Our emergency response chassis and apparatuses are generally manufactured to order based on customer-supplied specifications. Due to the custom nature of the products and the attributes of the contracts, we do not have a ready alternative use for our emergency response chassis and apparatuses, and we have an enforceable right to payment on the contracts. Accordingly, performance obligations for these custom ordered chassis and apparatuses are satisfied as the apparatuses and chassis are built. We recognize revenue and the corresponding cost of products sold on these contracts over time based on the inputs completed for a given performance obligation during the reporting period. We have elected to treat shipping and handling costs subsequent to transfer of control as fulfillment activities and, accordingly, recognize these costs as the revenue is recognized. Our receivables will generally be collected in less than six months, in accordance with our underlying payment terms.

Revenue on certain emergency response chassis and apparatuses that are sold from stock or utilized as demonstration units is recognized at the point in time that the contract is received. Revenue related to modifications made to trucks sold from stock or that were utilized as demonstration units is recognized over time as the modifications are completed. Our receivables will generally be collected in less than three months, in accordance with our underlying payment terms.

Specialty Chassis and Vehicles
We recognize revenue and the corresponding cost of products sold on the sale of motor home chassis when the performance obligation is completed and control and risk of ownership of the chassis has passed to our customer, which is generally upon shipment of the chassis to the customer.

Revenue and the corresponding cost of products sold associated with other specialty chassis is recognized over time based on the inputs completed for a given performance obligation during the reporting period. Other specialty chassis are generally built on a chassis that is owned and controlled by the customer. Due to the customer ownership of the chassis, the performance obligations for other specialty chassis contracts are satisfied as the products are assembled. Our receivables will generally be collected in less than three months, in accordance with our underlying payment terms.

NOTE 2 – ACQUISITION ACTIVITIES

2019 Acquisition

On September 9, 2019, the Company completed the acquisition of Fortress Resources, LLC D/B/A Royal Truck Body ("Royal") pursuant to which the Company acquired all the outstanding equity interests of Royal. The Company paid $90,081 in cash. The purchase price is subject to certain customary post-closing adjustments. The acquisition was financed using $90,081 borrowed from our existing $175,000 line of credit, as set forth in the Second Amended and Restated Credit Agreement, dated as of August 8, 2018. Included in our results since the September 9, 2019 acquisition are net sales of $3,871 and operating income of $801 for the quarter ended September 30, 2019.

Royal is a leading California-based designer, manufacturer and installer of service truck bodies and accessories. Royal manufactures and assembles truck body options for various trades, service truck bodies, stake body trucks, contractor trucks, and dump bed trucks. Royal is the largest service body company in the western United States with their principal facility in Carson, California. Royal has additional manufacturing, assembly, and service space in branch locations in Union City and Roseville, California; Mesa, Arizona; and Dallas and Weatherford, Texas. This acquisition allows us to quickly expand our footprint in the western United States supporting our strategy of coast-to-coast manufacturing and distribution. Royal is part of our Specialty Chassis & Vehicle segment.

During the third quarter of 2019, we recorded pretax charges totaling $982 for legal expenses and other transaction costs related to the acquisition. These charges, which were expensed in accordance with the accounting guidance for business combinations, were recorded in "Selling, general and administrative" and reflected within the "Eliminations and Other" column in the business segment table in Note 11, *Business Segments*.

Purchase Price Allocation

This acquisition was accounted for using the acquisition method of accounting with the purchase price allocated to the assets purchased and liabilities assumed based upon their estimated fair values at the date of acquisition. Identifiable intangible assets include customer relationships, trade names & trademarks, patented technology and non-competition agreements. The preliminary excess of the purchase price over the estimated fair values of the net tangible and intangible assets acquired of $28,188 was recorded as goodwill, which is expected to be deductible for tax purposes. The preliminary goodwill recognized is subject to a final net working capital adjustment.

The fair value of the net assets acquired was based on a preliminary valuation and the estimates and assumptions are subject to change within the measurement period. The Company is continuing to evaluate the (i) inventory, (ii) intangible assets, (iii) deferred taxes and liabilities, and (iv) income tax and non-income tax accruals. The Company will finalize the purchase price allocation as soon as practicable within the measurement period, but in no event later than one year following the acquisition date.

The preliminary allocation of purchase price to assets acquired and liabilities assumed is as follows:

Cash and cash equivalents	$	431
Accounts receivable, less allowance		5,019
Contract assets		1,499
Inventory		6,453
Other receivables – chassis pool agreements		10,424
Property, plant and equipment, net		4,980
Right of use assets-operating leases		12,767
Intangible assets, net		47,150
Goodwill		28,188
Total assets acquired		116,911
Accounts payable		(1,658)
Customer prepayments		(255)
Accrued warranty		(98)
Operating lease liabilities		(1,693)
Accrued compensation and related taxes		(569)
Other current liabilities and accrued expenses		(30)
Short-term debt – chassis pool agreements		(10,424)
Long-term operating lease liability		(11,074)
Long-term debt, less current portion		(1,029)
Total liabilities assumed		(26,830)
Total purchase price	$	90,081

Goodwill Assigned

Intangible assets totaling $47,150 have provisionally been assigned to customer relationships, trade names & trademarks, patented technology and non-competition agreements as a result of the acquisition and consist of the following (in thousands):

		Amount	Useful Life (in years)
Customer relationships	$	30,000	15
Trade names & Trademarks		13,000	Indefinite
Patented Technology		2,200	8
Non-Competition Agreements		1,950	5
	$	47,150	

The Company plans to amortize the customer relationships utilizing an accelerated approach and plans to amortize patented technology and non-competition agreements assets utilizing a straight-line approach. Amortization expense, including the intangible assets preliminarily recorded from the Royal acquisition, is estimated to be $666, $2,665, $2,665, $3,162, and $3,072 for the years 2019 through 2023, respectively.

Goodwill consists of operational synergies that are expected to be realized in both the short and long-term and the opportunity to enter into new markets which will enable us to increase value to our customers and shareholders. Key areas of expected cost savings include an expanded dealer network, complementary product portfolios and manufacturing and supply chain work process improvements.

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Pro Forma Results (Unaudited)

The following table provides unaudited pro forma net sales and results of operations for the three and nine months ended September 30, 2019 and 2018. The unaudited pro forma results reflect certain adjustments related to the acquisition, such as changes in the depreciation and amortization expense on the Royal assets acquired resulting from the fair valuation of assets acquired, expenses incurred to complete the acquisition and the impact of acquisition financing. The pro forma results do not include any anticipated cost synergies or other effects of the planned integration of Royal. Accordingly, such pro forma amounts are not necessarily indicative of the results that actually would have occurred nor are they indicative of the future operating results of the combined company.

	Three Months Ended September 30,	
Pro forma results of operations	2019	2018
Net sales	$ 301,699	$ 237,083
Net income	$ 10,476	$ 5,453
Diluted net earnings per share	$ 0.30	$ 0.15

	Nine Months Ended September 30,	
Pro forma results of operations	2019	2018
Net sales	$ 807,660	$ 615,099
Net income	$ 16,862	$ 13,640
Diluted net earnings per share	$ 0.48	$ 0.39

The information presented above is for informational purposes only and is not necessarily indicative of the actual results that would have occurred had the acquisition been completed at the beginning of the respective periods, nor are they necessarily indicative of the future operating results of the combined companies.

2018 Acquisition

On December 17, 2018, the Company acquired the assets and assumed certain liabilities of Strobes-R-Us, Inc. through the Company's majority-owned subsidiary, Spartan Upfit Services, Inc. dba Strobes-R-Us ("SRUS"). SRUS is a premier provider of up-fit services for government and non-government vehicles. The acquisition will enable the Company to increase its product offerings to both fleet and emergency response customers, while further expanding its manufacturing capabilities into the southeastern U.S. market. As part of this acquisition, Spartan acquired Strobes-R-Us' state-of-the-art up-fit facility and product showroom in Pompano Beach, Florida.

Purchase Price Allocation

The total purchase price paid for our acquisition of SRUS was $8,032, subject to a net working capital adjustment. The consideration paid consisted of $5,200 in cash, plus a $2,832 contingency for performance-based earn-out payments. The price paid pursuant to the purchase agreement was the subject of negotiation between the sellers and us.

This acquisition was accounted for using the acquisition method of accounting, which requires the purchase price to be allocated to the assets purchased and liabilities assumed based upon their estimated fair values at the date of acquisition. The excess of the estimated purchase price over the preliminary estimated fair values of the net tangible and intangible assets acquired of $4,728 was recorded as preliminary estimated goodwill. During the third quarter of 2019, we made certain adjustments to our purchase price allocation related to the deferred tax asset, which resulted in a $272 increase in goodwill.

The fair value of the net assets acquired was based on a preliminary valuation and the estimates and assumptions are subject to change within the measurement period. The Company is continuing to evaluate the (i) inventory, (ii) intangible assets, (iii) deferred taxes and liabilities, (iv) income tax and non-income tax accruals and (v) the contingent consideration. The Company will finalize the purchase price allocation as soon as practicable within the measurement period, but in no event later than one year following the acquisition date.

The allocation of purchase price to assets acquired and liabilities assumed was as follows:

Accounts receivable	$ 1,165
Inventory	893
Other current assets	3
Property, plant and equipment	1,942
Goodwill	4,728
Other Assets	(272)
Total assets acquired	8,459
Accounts payable	382
Other current liabilities	45
Total liabilities assumed	427
Total purchase price	$ 8,032

Contingent Consideration
Pursuant to the purchase agreement, the former owners of the SRUS business may receive additional consideration through 2021 in the form of certain performance-based earn-out payments, up to an aggregate maximum of $3,250. The purchase agreement specifies annual payments for each calendar year beginning in 2019 through and including 2021 as a percentage of and contingent upon EBITDA for that calendar year exceeding predetermined thresholds. In accordance with accounting guidance for business combinations, at the date of sale the Company recorded a contingent liability of $2,832 for the value of the future consideration based upon its best estimate of the likelihood of the payments, discounted to its present value using a discount rate of 4.7%.

The change in the carrying amount of goodwill for the nine months ended September 30, 2019 and 2018 were as follows (in thousands):

	2019	2018
Balance as of January 1	$ 33,823	$ 27,417
Acquisition and measurement period adjustment of Strobes-R-Us	(1,678)	6,406
Acquisition of Royal	28,188	-
Balance as of September 30	$ 60,333	$ 33,823

NOTE 3 – INVENTORIES

Inventories are summarized as follows:

	September 30, 2019	**December 31, 2018**
Finished goods	$ 14,895	$ 14,696
Work in process	10,072	5,926
Raw materials and purchased components	68,990	52,474
Reserve for slow-moving inventory	(6,021)	(3,104)
Total inventory	$ 87,936	$ 69,992

We also have a number of demonstration units as part of our sales and training program. These demonstration units are included in the “Finished goods” line item above and amounted to $9,977 and $8,807 at September 30, 2019 and December 31, 2018. When the demonstration units are sold, the cost related to the demonstration unit is included in Cost of products sold on our Condensed Consolidated Statements of Operations.

NOTE 4 - DEBT

Short-term debt consists of the following:

	September 30, 2019	**December 31, 2018**
Chassis pool agreements	$ 16,975	$ -
Total short-term debt	$ 16,975	$ -

Chassis Pool Agreements
The Company obtains certain vehicle chassis for its walk-in vans, truck bodies and specialty vehicles directly from the chassis manufacturers under converter pool agreements. Chassis are obtained from the manufacturers based on orders from customers, and in some cases, for unallocated orders. The agreements generally state that the manufacturer will provide a supply of chassis to be maintained at the Company’s facilities with the condition that we will store such chassis and will not move, sell, or otherwise dispose of such chassis except under the terms of the agreement. In addition, the manufacturer typically retains the sole authority to authorize commencement of work on the chassis and to make certain other decisions with respect to the chassis including the terms and pricing of sales of the chassis to the manufacturer’s dealers. The manufacturer also does not transfer the certificate of origin to the Company nor permit the Company to sell or transfer the chassis to anyone other than the manufacturer (for ultimate resale to a dealer). Although the Company is party to related finance agreements with manufacturers, the Company has not historically settled, nor expects to in the future settle, any related obligations in cash. Instead, the obligation is settled by the manufacturer upon reassignment of the chassis to an accepted dealer, and the dealer is invoiced for the chassis by the manufacturer. Accordingly, as of September 30, 2019, the Company’s outstanding chassis converter pool with manufacturers totaled $16,975 and the Company has included this financing agreement on the Company’s Condensed Consolidated Balance Sheets within *Other receivables – chassis pool agreements and Short-term debt – chassis pool agreements*. Typically, chassis are converted and delivered to customers within 90 days of the receipt of the chassis by the Company. The chassis converter pool is a non-cash arrangement and is offsetting between current assets and current liabilities on the Company's Condensed Consolidated Balance Sheets.

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Long-term debt consists of the following:

	September 30, 2019	December 31, 2018
Line of credit revolver (1)	$ 107,461	$ 25,460
Capital lease obligations	-	147
Finance lease obligation	667	-
Other	1,029	-
Total debt	109,157	25,607
Less current portion of long-term debt	(213)	(60)
Total long-term debt	$ 108,944	$ 25,547

(1) On August 8, 2018, we entered into a Credit Agreement (the "Credit Agreement") by and among us and certain of our subsidiaries as borrowers, Wells Fargo Bank, N.A., as administrative agent ("Wells Fargo"), and the lenders party thereto consisting of Wells Fargo, JPMorgan Chase Bank, N.A. and PNC Bank National Association (the "Lenders"). Under the Credit Agreement, we may borrow up to $150,000 (subsequently increased to $175,000) from the Lenders under a five-year secured revolving credit facility. The credit facility matures August 8, 2023. We may also request an increase in the facility of up to $75,000 (subsequently decreased to $50,000) in the aggregate, subject to customary conditions. The credit facility is also available for the issuance of letters of credit of up to $20,000 and swing line loans of up to $15,000 (subsequently increased to $30,000), subject to certain limitations and restrictions. This line carries an interest rate of either (i) the highest of prime rate, the federal funds effective rate from time to time plus 0.5%, or the one month adjusted LIBOR plus 1.0%; or (ii) adjusted LIBOR plus margin based upon our ratio of debt to earnings from time to time. The applicable borrowing rate including margin was 3.3125% (or one-month LIBOR plus 1.25%) at September 30, 2019. The credit facility is secured by security interests in, and liens on, all assets of the borrowers, other than real property and certain other excluded assets.

On September 9, 2019, the Credit Agreement was amended by a Second Amendment to the Credit Agreement. The Second Amendment increased the revolving credit facility by $25,000, decreased future increases by $25,000, increased the availability of swing line loans by $5,000 and joined Royal as a borrower. Under the Credit Agreement, as amended by the Second Amendment, the Company may borrow up to $175,000 and may also request an increase in the facility of up to $50,000 in the aggregate, subject to customary conditions. The credit facility is also available for the issuance of letters of credit of up to $20,000 and swing line loans of up to $20,000 (subsequently increased to $30,000), subject to certain limitations and restrictions.

On September 25, 2019, the Credit Agreement was amended by a Third Amendment to the Credit Agreement. The Third Amendment increased the availability of swing line loans by $10,000. Under the Credit Agreement, as amended by the Second Amendment and the Third Amendment, the Company may borrow up to $175,000 and may also request an increase in the facility of up to $50,000 in the aggregate, subject to customary conditions. The credit facility is also available for the issuance of letters of credit of up to $20,000 and swing line loans of up to $30,000, subject to certain limitations and restrictions.

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On December 1, 2017, we entered into a First Amendment to the Second Amended and Restated Credit Agreement (the "First Credit Agreement") by and among us and certain of our subsidiaries, as borrowers, Wells Fargo, National Association, as agent, and the lenders party thereto consisting of Wells Fargo, National Association, JPMorgan Chase Bank, N.A. and PNC Bank National Association. Under the First Credit Agreement, we were able to borrow up to $100,000 under a three-year unsecured revolving credit facility. The First Credit Agreement was paid off and terminated when the “Credit Agreement” described above was entered into on August 8, 2018. This line carried an interest rate of the higher of either (i) the highest of prime rate, the federal funds effective rate plus 0.5%, or the one month adjusted LIBOR plus 1.00%; or (ii) adjusted LIBOR plus margin based upon our ratio of debt to earnings from time to time.

Under the terms of our Credit Agreement we are required to maintain certain financial ratios and other financial covenants, which limited our available borrowings (exclusive of outstanding borrowings) under our line of credit to a total of approximately $41,219 and $86,410 at September 30, 2019 and December 31, 2018, respectively. The Credit Agreement also prohibits us from incurring additional indebtedness; limits certain acquisitions, investments, advances or loans; limits our ability to pay dividends in certain circumstances; and restricts substantial asset sales. At September 30, 2019 and December 31, 2018, we were in compliance with all covenants in the Credit Agreement.

NOTE 5 – REVENUE

Contract assets and liabilities
The tables below disclose changes in contract assets and liabilities as of the periods indicated.

Contract assets		
Opening balance (January 1, 2019)	$	36,027
Reclassification of the beginning contract assets to receivables, as the result of rights to consideration becoming unconditional		(36,027)
Contract assets recognized, net of reclassification to receivables		49,043
Net change		13,016
Ending balance (September 30, 2019)	$	49,043

Contract liabilities		
Opening balance (January 1, 2019)	$	22,632
Reclassification of the beginning contract liabilities to revenue, as the result of performance obligations satisfied		(21,572)
Cash received in advance and not recognized as revenue		10,309
Net change		(11,263)
Ending balance (September 30, 2019)	$	11,369

The aggregate amount of the transaction price allocated to remaining performance obligations in existing contracts that are yet to be completed are expected to be recognized as revenue in the following annual time-periods:

		1-12 Months (1)		13 Months and beyond(1)		Total
Revenue expected to be recognized as of September 30, 2019:						
Fleet Vehicles and Services	$	223,753	$	-	$	223,753
Emergency Response Vehicles		194,369		1,623		195,992
Specialty Chassis and Vehicles		39,981		18		39,999
Total	$	458,103	$	1,641	$	459,744

(1) Revenue above includes amounts related to extended warranties and roadside assistance contracts of $245 and $34 for one to 12 months and $608 and $18 for 13 months and beyond, respectively.

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For performance obligations that are satisfied over time, revenue is expected to be recognized evenly over the time period to complete the contract due to the assembly line nature of the business operations. For performance obligations that are satisfied at a point in time, revenue is expected to be recognized when the customer obtains control of the product, which is generally upon shipment from our facility. No amounts have been excluded from the transaction prices above related to the guidance on constraining estimates of variable consideration.

In the following tables, revenue is disaggregated by primary geographical market and timing of revenue recognition for the three and nine months ended September 30, 2019. The tables also include a reconciliation of the disaggregated revenue with the reportable segments.

	Three Months Ended September 30, 2019					
	Fleet Vehicles and Services	Emergency Response Vehicles	Specialty Chassis and Vehicles	Total Reportable Segments	Other	Total
Primary geographical markets						
United States	$ 176,689	$ 55,226	$ 45,079	$ 276,994	$ -	$ 276,994
Other	2,905	9,015	37	11,957	-	11,957
Total sales	$ 179,594	$ 64,241	$ 45,116	$ 288,951	$ -	$ 288,951
Timing of revenue recognition						
Products transferred at a point in time	$ 41,830	$ 3,367	$ 35,831	$ 81,028	$ -	$ 81,028
Products and services transferred over time	137,764	60,874	9,285	207,923	-	207,923
Total sales	$ 179,594	$ 64,241	$ 45,116	$ 288,951	$ -	$ 288,951

	Three Months Ended September 30, 2018					
	Fleet Vehicles and Services	Emergency Response Vehicles	Specialty Chassis and Vehicles	Total Reportable Segments	Other	Total
Primary geographical markets						
United States	$ 106,531	$ 49,861	$ 51,626	$ 208,018	$ (4,188)	$ 203,830
Other	11,902	10,402	49	22,353	-	22,353
Total sales	$ 118,433	$ 60,263	$ 51,675	$ 230,371	$ (4,188)	$ 226,183
Timing of revenue recognition						
Products transferred at a point in time	$ 38,153	$ 5,795	$ 42,034	$ 85,982	$ -	$ 85,982
Products and services transferred over time	80,280	54,468	9,641	144,389	(4,188)	140,201
Total sales	$ 118,433	$ 60,263	$ 51,675	$ 230,371	$ (4,188)	$ 226,183

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	Nine Months Ended September 30, 2019					
	Fleet Vehicles and Services	Emergency Response Vehicles	Specialty Chassis and Vehicles	Total Reportable Segments	Other	Total
Primary geographical markets						
United States	$ 426,984	$ 170,781	$ 138,417	$ 736,182	$ (5,271)	$ 730,911
Other	16,361	23,479	99	39,939	-	39,939
Total sales	$ 443,345	$ 194,260	$ 138,516	$ 776,121	$ (5,271)	$ 770,850
Timing of revenue recognition						
Products transferred at a point in time	$ 146,146	$ 16,050	$ 109,626	$ 271,822	$ (5,271)	$ 266,551
Products and services transferred over time	297,199	178,210	28,890	504,299	-	504,299
Total sales	$ 443,345	$ 194,260	$ 138,516	$ 776,121	$ (5,271)	$ 770,850

	Nine Months Ended September 30, 2018					
	Fleet Vehicles and Services	Emergency Response Vehicles	Specialty Chassis and Vehicles	Total Reportable Segments	Other	Total
Primary geographical markets						
United States	$ 240,871	$ 162,559	$ 147,204	$ 550,634	$ (7,318)	$ 543,316
Other	15,669	24,032	186	39,887	-	39,887
Total sales	$ 256,540	$ 186,591	$ 147,390	$ 590,521	$ (7,318)	$ 583,203
Timing of revenue recognition						
Products transferred at a point in time	$ 65,947	$ 16,403	$ 123,504	$ 205,854	$ -	$ 205,854
Products and services transferred over time	190,593	170,188	23,886	384,667	(7,318)	377,349
Total sales	$ 256,540	$ 186,591	$ 147,390	$ 590,521	$ (7,318)	$ 583,203

NOTE 6 – SHARE-BASED COMPENSATION

Performance Units

During the nine months ended September 30, 2019, we granted 218,148 performance units ("PSUs") to certain employees, which are earned over a three-year service period.

After completion of the performance period, the number of performance units earned will be issued as shares of Common Stock. The aggregate number of shares of Common Stock that ultimately may be issued under performance units where the performance period has not been completed ranged from zero to 218,148 shares as of September 30, 2019. The awards will generally be forfeited if a participant leaves the Company for reasons other than retirement, disability or death.

A dividend equivalent is calculated based on the actual number of units earned at the end of the performance period equal to the dividends that would have been payable on the earned units had they been held during the entire performance period as Common Stock. At the end of the performance period, the dividend equivalents are paid in the form of additional shares of Common Stock based on the then-current market value of the Common Stock.

87,260 of the performance units granted in 2019 are earned based on our three-year cumulative GAAP net income, subject to such adjustments as approved by the Company's Human Resources and Compensation Committee in its sole discretion (Net Income PSUs), which is a performance condition. The number of shares that may be earned under the Net Income PSUs can range from 0% to 200% of the target amount. The Net Income PSUs are expensed and recorded in *Additional paid-in capital* on the Condensed Consolidated Balance Sheets over the performance period based on the probability that the performance condition will be met. The expense recorded will be adjusted as the estimate of the total number of Net Income PSUs that will ultimately be earned changes. The grant date fair value per share of Net Income PSUs granted was $8.99. The grant date fair value per unit is equal to the closing price of the Company's stock on the date of grant.

130,888 of the performance units granted in 2019 are earned based on achievement of certain total shareholder return results relative to a comparison group of companies ("TSR PSUs"), which is a market condition. The number of shares that may be earned under the TSR PSUs can range from 0% to 200% of the target amount. The TSR PSUs are expensed and recorded in *Additional paid-in capital* on the Condensed Consolidated Balance Sheets over the performance period.

The fair value of the TSR PSUs was calculated using the Monte Carlo simulation model which resulted in the grant date fair value for these TSR PSUs of $13.71 per unit.

The Monte Carlo simulation was computed using the following assumptions:

Three-year risk-free interest rate [(1)]	2.37%
Expected term (in years)	2.7
Estimated volatility [(2)]	53.7%

1. Based on the U.S. government bond benchmark on the grant date.
2. Represents the historical price volatility of the Company's common stock for the three-year period preceding the grant date.

The total PSU expense and associated tax benefit for all outstanding awards for the three and nine months ended September 30, 2019 and September 30, 2018 are as follows:

	Three Months Ended September 30	
	2019	2018
Expense	$ 275	$ -
Tax benefits	47	-

	Nine Months Ended September 30	
	2019	2018
Expense	$ 415	$ -
Tax benefits	64	-

The PSU activity for the nine months ended September 30, 2019 is as follows:

	Total	Weighted-Average Grant Date Fair Value per Unit
Nonvested as of December 31, 2018	-	$ -
Granted	218,148	11.82
Nonvested as of September 30, 2019	218,148	$ 11.82

As of September 30, 2019, there was $1,651 of remaining unrecognized compensation cost related to nonvested PSUs, which is expected to be recognized over a remaining weighted-average period of 2.25 years.

Restricted Stock Units
During the nine months ended September 30, 2019, we awarded 182,333 restricted stock units ("RSUs") to certain employees and Board members. These RSUs vest ratably over three years after the date of grant for employees and vest one year after date of grant for Board members, at which time the units will be issued as unrestricted shares of Common Stock. RSUs are expensed and recorded in *Additional paid-in capital* on the Condensed Consolidated Balance Sheets over the requisite service period based on the value of the underlying shares on the date of grant. At the time any RSUs vest and are settled through the issuance of Common Stock, the value of the dividends that would have been payable on the shares of Common Stock issued upon settlement of the vested RSUs had such shares been held during the entire vesting period will be paid to the employee or director in cash or, in the discretion of the Human Resources and Compensation Committee, in shares of Common Stock based on the then-current market value of the Common Stock.

The RSU expense and associated tax benefit for all outstanding awards for the three and nine months ended September 30, 2019 and September 30, 2018 are as follows:

	Three Months Ended September 30,	
	2019	2018
Expense	$ 256	$ -
Tax benefits	56	-

	Nine Months Ended September 30,	
	2019	2018
Expense	$ 389	$ -
Tax benefits	81	-

As of September 30, 2019, there was $1,248 of remaining unrecognized compensation cost related to nonvested RSUs, which is expected to be recognized over a weighted-average period of 1.3 years.

The RSU activity for the nine months ended September 30, 2019 is as follows:

	Total	**Weighted-Average Grant Date Fair Value per Unit**
Nonvested as of December 31, 2018	-	$ -
Granted	182,333	8.98
Nonvested as of September 30, 2019	182,333	$ 8.98

NOTE 7 – LEASES

We have operating and finance leases for land, buildings and certain equipment. Our leases have remaining lease terms of one year to 18 years, some of which include options to extend the leases for up to 10 years. Our leases do not contain residual value guarantees. As of September 30, 2019, assets recorded under finance leases were immaterial (See Note 4 - *Debt*).

Operating lease expenses are classified as cost of products sold and operating expenses on the Condensed Consolidated Statements of Operations. The components of lease expense were as follows:

	Nine months ended September 30, 2019
Operating leases	$ 2,785
Short-term leases[1]	214
Total lease expense	$ 2,999

1. Includes expenses for month-to-month equipment leases, which are classified as short-term as the Company is not reasonably certain to renew the lease term beyond one month.

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The weighted average remaining lease term and weighted average discount rate were as follows:

	Nine months ended September 30, 2019
Weighted average remaining lease term of operating leases (in years)	9.0
Weighted average discount rate of operating leases	4.0%

Supplemental cash flow information related to leases was as follows:

	Nine months ended September 30, 2019
Cash paid for amounts included in the measurement of lease liabilities:	
Operating cash flow for operating leases	$ 2,785
Right of use assets obtained in exchange for lease obligations:	
Operating leases	$ 2,340
Finance leases	$ -

Maturities of operating lease liabilities as of September 30, 2019 are as follows:

Years ending December 31:	
2019[1]	$ 1,687
2020	6,431
2021	5,508
2022	5,072
2023	5,110
Thereafter	20,904
Total lease payments	44,712
Less: imputed interest	7,408
Total lease liabilities	$ 37,304

(1) Excluding the nine months ended September 30, 2019.

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The aggregate amount of future minimum annual rental payments applicable to noncancelable leases as of December 31, 2018 were as follows:

	Future Minimum Lease Payments
Year ending December 31:	
2019	$ 3,291
2020	2,831
2021	2,193
2022	1,849
2023	1,863
Thereafter	4,149
Total	$ 16,176

NOTE 8 - COMMITMENTS AND CONTINGENT LIABILITIES

Under the terms of the Credit Agreement we have the ability to issue letters of credit totaling $20,000. At September 30, 2019 and December 31, 2018, we had outstanding letters of credit totaling $653 and $913 related to certain emergency response vehicle contracts and our workers compensation insurance.

At September 30, 2019, we and our subsidiaries were parties, both as plaintiff and defendant, to a number of lawsuits and claims arising out of the normal course of our businesses. In the opinion of management, our financial position, future operating results or cash flows will not be materially affected by the final outcome of these legal proceedings.

Warranty Related

We provide limited warranties against assembly/construction defects. These warranties generally provide for the replacement or repair of defective parts or workmanship for a specified period following the date of sale. The end users also may receive limited warranties from suppliers of components that are incorporated into our chassis and vehicles.

Certain warranty and other related claims involve matters of dispute that ultimately are resolved by negotiation, arbitration or litigation. Infrequently, a material warranty issue can arise which is beyond the scope of our historical experience. We provide for any such warranty issues as they become known and are estimable. It is reasonably possible that additional warranty and other related claims could arise from disputes or other matters beyond the scope of our historical experience.

Changes in our warranty liability during the nine months ended September 30, 2019 and 2018 were as follows:

	2019	2018
Balance of accrued warranty at January 1	$ 16,090	$ 18,268
Warranties issued during the period	8,580	5,381
Cash settlements made during the period	(8,277)	(8,093)
Changes in liability for pre-existing warranties during the period, including expirations	1,691	687
Balance of accrued warranty at September 30	$ 18,084	$ 16,243

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Spartan-Gimaex Joint Venture

In February 2015, Spartan USA and Gimaex Holding, Inc. mutually agreed to begin discussions regarding the dissolution of the Spartan-Gimaex joint venture. In June 2015, Spartan USA and Gimaex Holding, Inc. entered into court proceedings to determine the terms of the dissolution. In February 2017, by agreement of the parties, the court proceeding was dismissed with prejudice and the judge entered an order to this effect as the parties agreed to seek a dissolution plan on their own. No dissolution terms have been determined as of the date of this Form 10-Q. Costs associated with the wind-down will be impacted by the final dissolution terms. The costs we have accrued so far represent the low end of the range of the estimated total charges that we believe we may incur related to the wind-down. While we are unable to determine the final cost of the wind-down with certainty at this time, we may incur additional charges, depending on the final terms of the dissolution, and such charges are not expected to be material to our results. For the nine months ended September 30, 2019, we incurred charges totaling $216 to write down certain inventory items associated with this joint venture to their estimated fair values.

NOTE 9 – TAXES ON INCOME

Our effective income tax rate was 24.7% and 22.8% for the three and nine months ended September 30, 2019 compared to 16.5% and 16.1% for the three and nine months ended September 30, 2018.

The effective tax rate for the three months ended September 30, 2019 reflects the impact of current statutory income tax rates on our Income before taxes. The effective tax rate for the nine months ended September 30, 2019 was primarily impacted by the recording of a discrete tax benefit recorded in the first quarter related to additional state tax credits from prior years becoming available for utilization in future tax returns, with a net reduction in income tax expense of $296.

Our effective tax rate for the three months ended September 30, 2018 was impacted by two favorable adjustments, one related to a change in expected full year financial performance and the other to provisional tax amounts recorded at December 31, 2017 as a result of the 2017 Tax Act. During the third quarter of 2018 we recorded a reduction in income tax expense of $361 to decrease the balance of the tax expense recorded for the first nine months of 2018 to the Company's current estimated full year effective tax rate of 25.0% before discrete items.

We also recorded a $373 favorable adjustment upon completion of our 2017 federal income tax return, from provisional amounts recorded in our 2017 Annual Report on Form 10-K, as a result of the provisions of the 2017 Tax Act enacted in December 2017. The 2017 Tax Act includes a number of changes to previous U.S. tax laws that impact us, most notably a reduction of the U.S. corporate income tax rate from 35 percent to 21 percent for tax years beginning after December 31, 2017. We recognized the income tax effects of the 2017 Tax Act in the financial statements included in our 2017 Annual Report on Form 10-K in accordance with Staff Accounting Bulletin No. 118, which provides SEC staff guidance for the application of ASC Topic 740, Income Taxes, in the reporting period in which the 2017 Tax Act was signed into law.

The effective tax rate for the nine months ended September 30, 2018 was primarily impacted by a $1,403 discrete tax benefit related to the difference in stock compensation expense recognized for book purposes and tax purposes upon vesting.

NOTE 10 - INTEREST AND OTHER INCOME

Interest and other income is as shown below:

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Net working capital settlement from acquisition of Smeal [1]	$ -	$ -	$ -	$ 1,500
Gain from adjustment of contingent liability from acquisition of Smeal [2]	-	-	-	693
Smeal post-acquisition escrow receipt[3]	-	-	1,000	-
Other miscellaneous	480	156	963	388
Total interest and other income	$ 480	$ 156	$ 1,963	$ 2,581

1. The net working capital settlement from the acquisition of Smeal was recorded to other income because the settlement occurred after the expiration of the measurement period on January 1, 2018.
2. This gain represents the reduction of a contingent liability from the Smeal acquisition that was made after the expiration of the measurement period on January 1, 2018.
3. This amount represents funds received from the Smeal escrow account for post-acquisition costs.

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NOTE 11 - BUSINESS SEGMENTS

We identify our reportable segments based on our management structure and the financial data utilized by our chief operating decision makers to assess segment performance and allocate resources among our operating units. We have three reportable segments: Fleet Vehicles and Services, Emergency Response Vehicles and Specialty Chassis and Vehicles.

We evaluate the performance of our reportable segments based on Adjusted EBITDA. Adjusted EBITDA is defined as earnings before interest, taxes, depreciation and amortization, and other adjustments made in order to present comparable results from period to period. For the periods covered by this Form 10-Q, these adjustments include: restructuring charges; accruals and adjustments to prior accruals for product recalls; various items related to business acquisition, litigation and strategic planning activities; certain stock compensation; and the impact of severe natural phenomena in areas surrounding our production facilities. We exclude these items from earnings because we believe they will be incurred infrequently and/or are otherwise not indicative of a segment's regular, ongoing operating performance. Adjusted EBITDA is also used as a performance metric for certain of our compensation programs, as discussed in our proxy statement for our 2019 annual meeting of shareholders, which proxy statement was filed with the SEC on April 19, 2019.

Our Fleet Vehicles and Services segment consists of our operations at our Bristol, Indiana location, and beginning in 2018 certain operations at our Ephrata, Pennsylvania location along with our operations at our up-fit centers in Kansas City, Missouri; North Charleston, South Carolina; Pompano Beach, Florida; Montebello, California and Saltillo, Mexico. The segment focuses on designing and manufacturing walk-in vans for parcel delivery, mobile retail, and trades and construction industries, the production of commercial truck bodies, and the distribution of related aftermarket parts and accessories.

Our Emergency Response Vehicles segment consists of the emergency response chassis operations at our Charlotte, Michigan location and our operations at our Brandon, South Dakota; Snyder and Neligh, Nebraska; and Ephrata, Pennsylvania locations. This segment engineers and manufactures emergency response chassis and apparatus and distributes related aftermarket parts and accessories.

Our Specialty Chassis and Vehicles segment consists of our Charlotte, Michigan operations that engineer and manufacture motor home chassis, defense vehicles, truck bodies and other specialty chassis, and distribute related aftermarket parts and assemblies. In addition, beginning in September 2019 with the acquisition of Royal, the Specialty Chassis and Vehicles segment includes operations in Carson and Union City, California; Mesa, Arizona; and Dallas and Weatherford, Texas. Royal is a leading California-based designer, manufacturer and installer of service truck bodies and accessories.

The accounting policies of the segments are the same as those described, or referred to, in Note 1 - *General and Summary of Accounting Policies*. Assets and related depreciation expense in the column labeled “Eliminations and Other” pertain to capital assets maintained at the corporate level. Eliminations for inter-segment sales are shown in the column labeled “Eliminations and Other”. Appropriate expense amounts are allocated to the three reportable segments and are included in their reported operating income or loss. Segment loss from operations in the “Eliminations and Other” column contains corporate related expenses not allocable to the operating segments. Interest expense and Taxes on income are not included in the information utilized by the chief operating decision makers to assess segment performance and allocate resources, and accordingly, are excluded from the segment results presented below.

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Three Months Ended September 30, 2019

	Fleet Vehicles and Services	Emergency Response Vehicles	Specialty Chassis and Vehicles	Eliminations and Other	Consolidated
Fleet vehicle sales	$ 172,530	$ -	$ -	$ -	$ 172,530
Emergency response vehicle sales	-	60,874	-	-	60,874
Motor home chassis sales	-	-	33,038	-	33,038
Other specialty vehicle sales	-	-	9,377	-	9,377
Aftermarket parts and accessories sales	7,064	3,367	2,701	-	13,132
Total sales	$ 179,594	$ 64,241	$ 45,116	$ -	$ 288,951
Depreciation and amortization expense	$ 641	$ 731	$ 372	$ 947	$ 2,691
Adjusted EBITDA	24,689	(1,063)	4,079	(8,507)	19,198
Segment assets	147,168	136,759	159,295	69,390	512,612
Capital expenditures	1,166	257	1,184	1,176	3,783

Three Months Ended September 30, 2018

	Fleet Vehicles and Services	Emergency Response Vehicles	Specialty Chassis and Vehicles	Eliminations and Other	Consolidated
Fleet vehicle sales	$ 91,984	$ -	$ 4,188	$ (4,188)	$ 91,984
Emergency response vehicle sales	-	57,549	-	-	57,549
Motor home chassis sales	-	-	38,892	-	38,892
Other specialty vehicle sales	-	-	5,453	-	5,453
Aftermarket parts and accessories sales	26,449	2,714	3,142	-	32,305
Total sales	$ 118,433	$ 60,263	$ 51,675	$ (4,188)	$ 226,183
Depreciation and amortization expense	$ 603	$ 625	$ 357	$ 1,015	$ 2,600
Adjusted EBITDA	7,243	601	5,919	(3,180)	10,583
Segment assets	109,139	139,060	41,545	60,151	349,895
Capital expenditures	250	304	19	2,739	3,312

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Nine Months Ended September 30, 2019

	Fleet Vehicles and Services	Emergency Response Vehicles	Specialty Chassis and Vehicles	Eliminations and Other	Consolidated
Fleet vehicle sales	$ 381,429	$ -	$ 5,271	$ (5,271)	$ 381,429
Emergency response vehicle sales	-	184,109	-	-	184,109
Motor home chassis sales	-	-	101,824	-	101,824
Other specialty vehicle sales	-	-	23,705	-	23,705
Aftermarket parts and accessories sales	61,916	10,151	7,716	-	79,783
Total sales	$ 443,345	$ 194,260	$ 138,516	$ (5,271)	$ 770,850
Depreciation and amortization expense	$ 1,796	$ 2,146	$ 1,119	$ 2,670	$ 7,731
Adjusted EBITDA	39,585	(2,243)	14,128	(18,154)	33,316
Segment assets	147,168	136,759	159,295	69,390	512,612
Capital expenditures	1,864	465	1,490	3,685	7,504

Nine Months Ended September 30, 2018

	Fleet Vehicles and Services	Emergency Response Vehicles	Specialty Chassis and Vehicles	Eliminations and Other	Consolidated
Fleet vehicle sales	$ 194,917	$ -	$ 7,318	$ (7,318)	$ 194,917
Emergency response vehicle sales	-	178,592	-	-	178,592
Motor home chassis sales	-	-	115,643	-	115,643
Other specialty vehicle sales	-	-	16,568	-	16,568
Aftermarket parts and accessories sales	61,623	7,999	7,861	-	77,483
Total sales	$ 256,540	$ 186,591	$ 147,390	$ (7,318)	$ 583,203
Depreciation and amortization expense	$ 1,780	$ 1,877	$ 1,092	$ 2,889	$ 7,638
Adjusted EBITDA	20,205	2,038	13,431	(10,601)	25,073
Segment assets	109,139	139,060	41,545	60,151	349,895
Capital expenditures	1,815	459	116	5,005	7,395

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The table below presents the reconciliation of our consolidated income before taxes to total segment Adjusted EBITDA. Adjusted EBITDA is not a measurement of our financial performance under GAAP and should not be considered as an alternative to net income. Adjusted EBITDA may have limitations as an analytical tool and should not be considered in isolation or as a substitute for analysis of our results as reported under GAAP. In addition, although we have excluded certain charges in calculating Adjusted EBITDA, we may in the future incur expenses similar to these adjustments, despite our assessment that such expenses are infrequent and/or not indicative of our regular, ongoing operating performance. Our presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or infrequent items.

	Three Months Ended September 30, 2019	Three Months Ended September 30, 2018	Nine Months Ended September 30, 2019	Nine Months Ended September 30, 2018
Total segment adjusted EBITDA	$ 27,705	$ 13,763	$ 51,470	$ 35,674
Add (subtract):				
Interest expense	(144)	(225)	(831)	(817)
Depreciation and amortization expense	(2,691)	(2,600)	(7,731)	(7,638)
Restructuring expense	(371)	(501)	(553)	(1,317)
Acquisition related expenses including stock compensation	(1,684)	(267)	(2,474)	(802)
Litigation expense	-	(321)	(52)	(321)
Nebraska flooding expenses	-	-	(123)	-
Recall expense	-	(112)	(777)	331
Long-term strategic planning expense	-	(277)	-	(995)
Executive compensation plan expense	(531)	-	(804)	-
Impact of acquisition adjustments for net working capital and contingent liability	-	-	-	2,193
Joint venture inventory adjustment	-	-	(216)	-
Unallocated corporate expenses	(8,445)	(3,180)	(18,167)	(10,601)
Consolidated income before taxes	$ 13,839	$ 6,280	$ 19,742	$ 15,707

Item 2. Management's Discussion and Analysis of Financial Condition and Results of Operations.

Spartan Motors, Inc. was organized as a Michigan corporation on September 18, 1975, and is headquartered in Charlotte, Michigan. Spartan Motors began development of its first product that same year and shipped its first fire truck chassis in October 1975.

We are a niche market leader in specialty vehicle manufacturing and assembly for the commercial vehicle (including last-mile delivery, specialty service and vocation-specific up-fit segments), emergency response and recreational vehicle industries. Our products include walk-in vans and truck bodies used in e-commerce/parcel delivery, up-fit equipment used in the mobile retail, and utility trades, fire trucks and fire truck chassis, luxury Class A diesel motor home chassis, military vehicles, and contract manufacturing and assembly services. We also supply replacement parts and offer repair, maintenance, field service and refurbishment services for the vehicles that we manufacture. Our operating activities are conducted through our wholly-owned operating subsidiary, Spartan Motors USA, Inc. ("Spartan USA"), with locations in Charlotte, Michigan; Brandon, South Dakota; Snyder and Neligh, Nebraska; Ephrata, Pennsylvania; Pompano Beach, Florida; Bristol, Indiana; North Charleston, South Carolina; Kansas City, Missouri; Montebello, Carson, Roseville and Union City, California; Mesa, Arizona; Dallas and Weatherford, Texas; and Saltillo, Mexico.

Our Bristol, Indiana location manufactures vehicles used in the parcel delivery, mobile retail and trades and construction industries, and supplies related aftermarket parts and services under the Utilimaster brand name. Our Kansas City, Missouri, North Charleston, South Carolina and Saltillo, Mexico locations sell and install equipment used in fleet vehicles. Our Charlotte, Michigan location manufactures heavy-duty chassis and specialty vehicles, and supplies aftermarket parts and accessories under the Spartan Chassis and Spartan ER brand names. Our Northern California, Arizona and Texas locations also manufacture heavy-duty commercial and specialty vehicles under the Royal Truck Body brand name. Our Brandon, South Dakota; Snyder and Neligh, Nebraska; and Ephrata, Pennsylvania locations manufacture emergency response vehicles under the Spartan ER, Smeal, US Tanker and Ladder Tower Company brand names.

Our diversification across several product lines provides numerous opportunities while reducing overall risk as the various markets we serve tend to have different cyclicality. We have an innovative team focused on building lasting relationships with our customers by designing and delivering market leading specialty vehicles, vehicle components, and services. Additionally, our business structure provides the agility to quickly respond to market needs, take advantage of strategic opportunities when they arise and correctly size and scale operations to ensure stability and growth. Our expansion of equipment up-fit services in our Fleet Vehicles and Services segment and the growing opportunities that we have capitalized on in last mile delivery as a result of the rapidly changing e-commerce market are excellent examples of our ability to generate growth and profitability by quickly fulfilling customer needs.

We believe we can best carry out our long-term business plan and obtain optimal financial flexibility by using a combination of borrowings under our credit facilities, as well as internally or externally generated equity capital, as sources of expansion capital.

Executive Overview

- Revenue of $289.0 million in the third quarter of 2019, an increase of 27.8% compared to $226.2 million in the third quarter of 2018.
- Gross profit of $42.2 million in the third quarter of 2019, an increase of 61.1% compared to $26.2 million in the third quarter of 2018.
- Gross Margin of 14.6% in the third quarter of 2019, compared to 11.6% in the third quarter of 2018.
- Operating expense of $28.7 million, or 9.9% of sales in the third quarter of 2019, compared to $19.8 million, or 8.8% of sales in the third quarter of 2018.
- Operating income of $13.5 million in the third quarter of 2019, compared to $6.3 million in the third quarter of 2018.
- Net income of $10.4 million in the third quarter of 2019, compared to $5.2 million in the third quarter of 2018.
- Earnings per share of $0.29 in the third quarter of 2019, compared to $0.15 in the third quarter of 2018.
- Order backlog of $458.8 million at September 30, 2019, a decrease of $26.1 million or 5.4% from our backlog of $484.9 million at September 30, 2018.

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We believe we are well positioned to take advantage of long-term opportunities and continue our efforts to bring product innovations to each of the markets that we serve. Some of our recent innovations, strategic developments and strengths include:

- Our diversified business model. We believe the major strength of our business model is diversity in products, customers and customization abilities. Our Fleet Vehicles and Specialty Chassis and Vehicles segments serve mainly business and consumer markets with vehicle classes 1 to 7, effectively diversifying our company and complementing our Emergency Response Vehicles and Specialty Chassis and Vehicles segments, which primarily serves governmental entities and consumer markets, respectively. Additionally, the fleet vehicle market is an early-cycle industry, complementary to the late-cycle emergency response vehicle industry. We intend to continue to pursue additional areas that build on our core competencies to grow our business further.

- Innovative product offerings such as the purpose-built up-fit featuring vehicle flooring with integrated mounting for the Ford Transit 130" wheelbase cargo van, which is built to withstand tough conditions, endure extra payload, and offer a quiet ride. The product boasts multiple storage and shelving options, as well as LED lights, a maximum-view partition, and a double-clamp ladder rack.

- Our alliance with Motiv Power Systems, a leading producer of all-electric chassis for walk-in vans, box trucks, work trucks, buses and other specialty vehicles that provides Spartan with exclusive access to Motiv’s EPIC™ all-electric chassis in manufacturing Class 4 – Class 6 walk-in vans. This alliance demonstrates Spartan’s ability to innovate and advance the markets we serve, and places us ahead of the curve in the electric vehicle (EV) fleet market.

- Our expansion into the equipment up-fit market for vehicles used in the parcel delivery, trades and construction industries. This rapidly expanding market offers an opportunity to add value to current and new customers for our fleet vehicles and vehicles produced by other original equipment manufacturers.

- Spartan introduced its refrigeration technology to demonstrate our ability to apply the latest technical advancements with our unique understanding of last-mile delivery optimization. Utilimaster's Work-Driven Design™ process provides best-in-class conversion solutions in walk-in vans, truck bodies, and cargo van vehicles. The refrigerated van is up-fitted to optimally preserve cold cargo quality while offering customizations such as removable bulkheads and optional thermal curtains. The multi-temperature solution requires no additional fuel source, so it can serve a wide variety of categories from food and grocery to time and temperature sensitive healthcare deliveries.

- The introduction of the K3 605 chassis. The K3 605 is equipped with Spartan Connected Coach, a technology bundle featuring the new digital dash display and keyless push-button start. It also features Spartan's Advanced Protection System, a collection of safety systems that includes collision mitigation with adaptive cruise control; electronic stability control; automatic traction control; Spartan Safe Haul; and factory chassis-integrated air supply for tow vehicle braking systems.

- The introduction of Spartan Safe Haul. Spartan Safe Haul is the motor home industry’s only chassis-integrated air supply for tow vehicle braking systems, available on Spartan Class A motor home chassis for the 2019 model year.

- Spartan Connected Coach, a technology bundle for our motor home chassis that includes a 15-inch digital dash displaying gauge functions, tire pressure monitoring, blind spot indicators, navigation, and other information. Connected Coach also offers passive keyless start and adjustable Adaptive Cruise Control, and brings proven automotive technology to the RV market.

- Spartan will introduce the all new purpose-built 93' Mid-Mount Platform designed for operation in tight spaces, and an evolution to the Intelligent Pump Solution pumper, the IPS-NXT, which allows for traditional pumper volume in a more maneuverable platform.

- The strength of our balance sheet, which includes robust working capital, low debt and access to credit through our revolving line of credit.

The following section provides a narrative discussion about our financial condition and results of operations. Certain amounts in the narrative may not sum due to rounding. The comments should be read in conjunction with our Condensed Consolidated Financial Statements and related Notes thereto included in Item 1 of this Form 10-Q and in conjunction with our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 5, 2019.

RESULTS OF OPERATIONS

The following table sets forth, for the periods indicated, the components of the Company's Condensed Consolidated Statements of Operations as a percentage of sales (percentages may not sum due to rounding):

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Sales	100.0	100.0	100.0	100.0
Cost of products sold	85.4	88.4	87.9	87.2
Restructuring charge	0.0	0.0	0.0	0.0
Gross profit	14.6	11.6	12.1	12.8
Operating expenses:				
Research and development	0.6	0.9	0.8	0.9
Selling, general and administrative	9.2	7.6	8.8	9.3
Restructuring charge	0.0	0.2	0.0	0.2
Operating income	4.7	2.8	2.4	2.4
Other income (expense), net	0.1	0.0	0.1	0.3
Income before taxes	4.8	2.8	2.6	2.7
Taxes	1.2	0.5	0.6	0.4
Net income	3.6	2.3	2.0	2.3

We adopted Accounting Standards Update 2016-02, *Leases* ("ASU 2016-02" or "ASC 842") on January 1, 2019. Our adoption of ASC 842 resulted in changes to our lease policy whereby we now recognize a right of use asset and lease liability for operating and finance leases, among certain other changes. Please see Note 1 - *General and Summary of Accounting Policies*, in the Notes to Condensed Consolidated Financial Statements appearing in Item 1 of this Form 10-Q for further information regarding our adoption of ASC 842.

Quarter Ended September 30, 2019 Compared to the Quarter Ended September 30, 2018

Sales
For the quarter ended September 30, 2019, we reported consolidated sales of $289.0 million, compared to $226.2 million for the third quarter of 2018 an increase of $62.8 million or 27.7%. This increase reflects sales volume increases of $60.2 million and price increases of $0.9 million in our Fleet Vehicles and Services segment. Our Emergency Response Vehicles segment also had sales volume increases of $3.5 million and price increases of $0.5 million in 2019. Our Specialty Vehicles and Chassis segment had an increase of $1.6 million attributable to pricing increases. These increases were partially offset by a $7.5 million decrease in sales volume and a $0.7 million decrease in product mix for our Specialty Vehicles and Chassis segment. Intersegment sales eliminations decreased by $4.3 million. Please refer to our segment discussion below for further information about segment sales.

Cost of Products Sold
Cost of products sold was $246.8 million in the third quarter of 2019, compared to $200.0 million in the third quarter of 2018, an increase of $46.8 million or 23.4%. Cost of products sold increased by $31.6 million due to the higher unit sales volumes, $1.7 million due to unfavorable product mix and $13.5 million increase due to supplier and other cost increases in 2019. As a percentage of sales, cost of products sold decreased to 85.4% in the third quarter of 2019, compared to 88.4% in the third quarter of 2018, driven by favorable product mix impacting the third quarter of 2019.

Gross Profit
Gross profit was $42.2 million for the third quarter of 2019, compared to $26.2 million for the third quarter of 2018, an increase of $16.0 million, or 61.0%. The increase was due to favorable volume and product mix of $7.1 million, pricing improvements of $1.4 million, productivity and cost reductions of $7.1 million and decreased supplier and other cost of $0.4 million. Gross margin increased to 14.6% from 11.6% over the same period.

Operating Expenses
Operating expense was $28.7 million for the third quarter of 2019, compared to $19.8 million for the third quarter of 2018, an increase of $8.9 million or 44.5%. Research and development expense in the third quarter of 2019 was $1.9 million, compared to $2.1 million in the third quarter of 2018, a decrease of $0.2 million, or 11.7% due to slightly lower spending on new product development projects in 2019. Selling, general and administrative expense was $26.7 million in the third quarter of 2019, compared to $17.3 million for the third quarter of 2018, an increase of $9.4 million or 54.3%. This increase was primarily due to $8.2 million in additional salaried employees, annual merit increases and incentive compensation. The remaining increase of $1.2 million related to the expansion of locations and the GTB and Royal acquisitions. Restructuring charges decreased by $0.3 million in the third quarter of 2019, compared to the same period of 2018, due to decreased severance costs in 2019.

Other income/(expense)
Interest expense was $0.1 million for the third quarter of 2019, compared to $0.2 million for the third quarter of 2018, essentially flat quarter over quarter. Interest and other income was $0.5 million in the third quarter of 2019, compared to $0.2 million for the third quarter of 2018, an increase of $0.3 million or 150%, driven by certain acquisition related adjustments.

Taxes
Our effective income tax rate was 24.7% in the third quarter of 2019, compared to 16.5% in the third quarter of 2018. Our effective tax rate in 2019 compares unfavorably to 2018 due to two favorable adjustments recorded in 2018 totaling $0.7 million which were the result of a change in our expected full year financial performance and the finalization of provisional tax amounts recorded in 2017 due to the 2017 Tax Act.

Net Income
We recorded net income of $10.4 million or $0.29 per share for the third quarter of 2019, compared to net income of $5.2 million, or $0.15 per share, for the third quarter of 2018. Driving the increase in net income for the three months ended September 30, 2019 compared with the prior year were the factors discussed above.

Adjusted EBITDA
Our consolidated adjusted EBITDA in the third quarter of 2019 was $19.2 million, compared to $10.6 million for the third quarter of 2018, an increase of $8.6 million or 8.1%.

The table below describes the changes in Adjusted EBITDA for the three months ended September 30, 2019 compared to the same period of 2018 (in millions):

Adjusted EBITDA three months ended September 30, 2018	$	10.6
Sales volume		15.1
Sales mix		(2.3)
Pricing changes impacting 2019		3.0
Supplier and other cost increases		0.1
Acquisition related costs		1.3
New product development expense		0.2
General and administrative costs and other		(9.3)
Compensation expense in 2019		0.5
Adjusted EBITDA three months ended September 30, 2019	$	19.2

Adjusted net income
Our consolidated adjusted net income in the third quarter of 2019 was $12.3 million, compared to $6.0 million for the third quarter of 2018, an increase of $6.3 million or 105%. This increase was due to the factors impacting adjusted EBITDA described above, in addition to a $0.6 million decrease in adjusted income tax expense in 2019.

Order Backlog

Our order backlog by reportable segment is summarized in the following table (in thousands):

	September 30, 2019	September 30, 2018
Fleet Vehicles and Services	$ 223,753	$ 275,216
Emergency Response Vehicles	195,139	175,699
Specialty Chassis and Vehicles	39,947	33,998
Total consolidated	$ 458,839	$ 484,913

Our Fleet Vehicles and Services backlog decreased by $51.5 million, or 18.7%, driven primarily by the conclusion of the USPS truck body contract in our Ephrata, Pennsylvania facility. Our Emergency Response Vehicles backlog increased by $19.4 million, or 11.1%, primarily due to increased orders received in 2019 as a result of improvements made to the dealer network. Our Specialty Chassis and Vehicles segment backlog increased by $5.9 million, or 17.5%, due to acquisition of Royal. We anticipate filling our current backlog orders for our Fleet Vehicles and Services segment over the next six months, for our Emergency Response Vehicles segment over the next nine months and our Specialty Chassis and Vehicles segment over the next three months.

While orders in the backlog are subject to modification, cancellation or rescheduling by customers, this has not been a major factor in the past. Although the backlog of unfilled orders is one of many indicators of market demand, several factors, such as changes in production rates, available capacity, new product introductions and competitive pricing actions, may affect actual sales. Accordingly, a comparison of backlog from period-to-period is not necessarily indicative of eventual actual shipments.

Nine Months Ended September 30, 2019 Compared to the Nine Months Ended September 30, 2018

Sales

For the nine months ended September 30, 2019, we reported consolidated sales of $770.9 million, compared to $583.2 million for the same period in 2018, an increase of $187.7 million or 32.2%. This increase reflects sales volume increases of $185.5 million and price increases of $1.3 million in our Fleet Vehicles and Services segment. The sales volume increase in 2019 includes $91.4 million of chassis pass-thru revenues compared to only $31.3 million in 2018. There were also sales volume increases of $5.5 million and price increases of $2.2 million in our Emergency Response Vehicles segment. These increases were partially offset by a $10.5 million sales volume decrease and an unfavorable mix of $1.2 million in our Specialty Chassis and Vehicles segment offset by price increases of $2.9 million. Intersegment sales eliminations decrease by $2.1 million. Please refer to our segment discussion below for further information about segment sales.

Cost of Products Sold

Cost of products sold was $677.2 million in the nine months ended September 30, 2019, compared to $508.5 million in the same period of 2018, an increase of $168.7 million or 33.2%. Cost of products sold increased by $155.3 million due to the higher sales volumes, $13.8 million due to favorable product mix and $4.4 million due to supplier and other cost increases in 2019. These increases were partially offset by decreases of $4.8 million due to productivity improvements and cost reductions in 2019. As a percentage of sales, cost of products sold increased to 87.9% in the nine months ended September 30, 2019, compared to 87.2% in the same period of 2018.

Gross Profit

Gross profit was $93.6 million for the nine months ended September 30, 2019, compared to $74.7 million for the same period of 2018, an increase of $18.9 million, or 25.2%. The increase was due to favorable volume and product mix of $7.5 million, pricing improvements of $3.9 million and productivity and cost reductions of $12.0 million. These increases were partially offset by supplier and other cost increases of $4.5 million. Gross margin decreased to 12.1% from 12.8% over the same period, mainly due to chassis pass-thru revenues in 2019.

Operating Expenses

Operating expense was $75.0 million for the nine months ended September 30, 2019, compared to $60.8 million for the same period of 2018, an increase of $14.2 million or 23.3%. Research and development expense for the nine months ended September 30, 2019 was $6.5 million, compared to $5.3 million in the same period of 2018, an increase of $1.2 million, or 22.2%, mainly due to higher spending on new product development projects in 2019. Selling, general and administrative expense was $68.2 million in the nine months ended September 30, 2019, compared to $54.2 million in the same period of 2018, an increase of $14.0 million or 25.9%. This increase was primarily due to $11.5 million in additional salaried employees, annual merit increases and incentive compensation. The remaining increase of $2.5 million related to the expansion of locations and the GTB and Royal acquisitions. Restructuring charges decreased by $1.0 million in the nine months ended September 30, 2019, compared to the same period of 2018 due to decreased severance costs in 2019.

Other income and expense
Interest expense for the nine months ended September 30, 2019 was $0.8 million, compared to $0.8 million for the same period of 2018. Interest and other income was $2.0 million in the nine months ended September 30, 2019, compared to $2.6 million for the same period of 2018, a decrease of $0.6 million or 24.0%. This decrease was due primarily to certain adjustments related to the Smeal acquisition including a net working capital adjustment which was received after the expiration of the measurement period. These adjustments were recognized in other income and expense rather than on the opening balance sheet for the acquisition.

Taxes
Our effective income tax rate was 22.8% for the nine months ended September 30, 2019, compared to 16.1% for the same period in 2018. Our effective tax rate in 2019 was favorably impacted by a net $0.3 million tax benefit related to additional state tax credits from prior years becoming available for utilization in future tax returns. Our effective tax rate for the nine months ended September 30, 2018 was favorably impacted by a $1.4 million tax benefit related to the difference in stock compensation expense recognized for book purposes and tax purposes upon vesting.

Net Income
We recorded net earnings of $15.3 million or $0.43 per share for the nine months ended September 30, 2019, compared to net income of $13.2 million or $0.37 for the same period of 2018. Driving the increase in net income for the nine months ended September 30, 2019 compared with the prior year were the factors discussed above.

Adjusted EBITDA
Our consolidated adjusted EBITDA for the nine months ended September 30, 2019 was $33.3 million, compared to $25.1 million for the same period of 2018, an increase of $8.2 million or 32.9%.

The table below describes the changes in Adjusted EBITDA for the nine months ended September 30, 2019 compared to the same period of 2018 (in millions):

Adjusted EBITDA nine months ended September 30, 2018	$	25.1
Unit sales volume		26.6
Sales mix		(16.5)
Pricing changes impacting 2019		8.7
Increased professional fees		(2.1)
Supplier and other cost increases		(0.8)
Operational and organizational improvements		4.6
New product development expense		(2.2)
Acquisition related costs		2.0
Increased marketing costs for new locations and other		(1.5)
General and administrative costs and other		(11.7)
Compensation expense in 2019		1.1
Adjusted EBITDA nine months ended September 30, 2019	$	33.3

Adjusted net income
Our consolidated adjusted net income for the nine months ended September 30, 2019 was $18.9 million, compared to $13.6 million for the same period of 2018, an increase of $5.3 million or 39.6%. This increase was due to the factors impacting adjusted EBITDA described above, in addition to a $1.2 million increase in adjusted income tax expense in 2019.

Reconciliation of Non-GAAP Financial Measures

This Form 10-Q contains adjusted EBITDA (earnings before interest, taxes, depreciation and amortization) and adjusted net income, which are both non-GAAP financial measures. These non-GAAP financial measures are calculated by excluding items that we believe to be infrequent or not indicative of our continuing operating performance. For the periods covered by this Form 10-Q, such items include: restructuring charges; accruals and adjustments to prior accruals for product recalls; various items related to business acquisition, litigation, and strategic planning activities; certain stock compensation; and the impact of severe natural phenomena in areas surrounding our production facilities.

We present the non-GAAP financial measures adjusted EBITDA and adjusted net income because we consider them to be important supplemental measures of our performance. The presentation of adjusted EBITDA enables investors to better understand our operations by removing items that we believe are not representative of our continuing operations and may distort our longer term operating trends. The presentation of adjusted net income enables investors to better understand our operations by removing the impact of tax adjustments, including the impact that our deferred tax asset valuation allowance adjustment has had on our tax expense and net income in 2019, and other items that we believe are not indicative of our longer term operating trends. We believe these measures to be useful to improve the comparability of our results from period to period and with our competitors, as well as to show ongoing results from operations distinct from items that are infrequent or not indicative of our continuing operating performance. We believe that presenting these non-GAAP financial measures is useful to investors because it permits investors to view performance using the same tools that management uses to budget, make operating and strategic decisions, and evaluate our historical performance. We believe that the presentation of these non-GAAP financial measures, when considered together with the corresponding GAAP financial measures and the reconciliations to those measures, provides investors with additional understanding of the factors and trends affecting our business than could be obtained in the absence of these disclosures.

Our management uses adjusted EBITDA to evaluate the performance of and allocate resources to our segments. In addition, non-GAAP measures are used by management to review and analyze our operating performance and, along with other data, as internal measures for setting annual budgets and forecasts, assessing financial performance, and comparing our financial performance with our peers. Adjusted EBITDA is also used, along with other financial and non-financial measures, for purposes of determining certain incentive compensation for our management team.

Financial Summary (Non-GAAP)
Consolidated
(In thousands, Unaudited)

	Three Months Ended September 30,		Nine Months Ended September 30,	
	2019	2018	2019	2018
Net income attributable to Spartan Motors, Inc.	$ 10,354	$ 5,243	$ 15,256	$ 13,180
Add (subtract):				
Restructuring expense	371	501	553	1,317
Acquisition related expenses including stock compensation	1,684	267	2,474	802
Litigation expense	-	321	52	321
Nebraska flooding expenses	-	-	123	-
Recall expense	-	112	777	(331)
Long-term strategic planning expense	-	277	-	995
Executive compensation plan expense	531	-	804	-
Impact of acquisition adjustments for net working capital and contingent liability	-	-	-	(2,193)
Joint venture inventory adjustment	-	-	216	-
Deferred tax asset valuation allowance	-	(373)	(66)	(299)
Tax effect of adjustments	(605)	(360)	(1,240)	(223)
Adjusted net income attributable to Spartan Motors, Inc.	$ 12,335	$ 5,988	$ 18,949	$ 13,569
Net income attributable to Spartan Motors, Inc.	$ 10,354	$ 5,243	$ 15,256	$ 13,180
Add (subtract):				
Interest expense	144	225	831	817
Depreciation and amortization expense	2,691	2,600	7,731	7,638
Taxes on income	3,424	1,037	4,499	2,527
Restructuring expense	370	501	553	1,317
Acquisition related expenses including stock compensation	1,684	267	2,474	802
Litigation expense	-	321	52	321
Nebraska flooding expenses	-	-	123	-
Recall expense	-	112	777	(331)
Long-term strategic planning expense	-	277	-	995
Executive compensation plan expense	531	-	804	-
Impact of acquisition adjustments for net working capital and contingent liability	-	-	-	(2,193)
Joint venture inventory adjustment	-	-	216	-
Adjusted EBITDA	$ 19,198	$ 10,583	$ 33,316	$ 25,073

Our Segments

We identify our reportable segments based on our management structure and the financial data utilized by our chief operating decision makers to assess segment performance and allocate resources among our operating units. We have three reportable segments: Fleet Vehicles and Services, Emergency Response Vehicles, and Specialty Chassis and Vehicles. Our Specialty Chassis and Vehicles segment now manufactures certain fleet vehicles due to a realignment of our operating segments completed during the second quarter of 2017. These vehicles are sold via intercompany transactions to our Fleet Vehicles and Services segment, which then sells the vehicles to the final customer.

We evaluate the performance of our reportable segments based on Adjusted EBITDA. Adjusted EBITDA is defined as earnings before interest, taxes, depreciation and amortization, and other adjustments made in order to present comparable results from period to period. For the periods covered by this Form 10-Q, these adjustments include: restructuring charges; accruals and adjustments to prior accruals for product recalls; various items related to business acquisition, litigation, and strategic planning activities; certain stock compensation; and the impact of severe natural phenomena in areas surrounding our production facilities. We exclude these items from earnings because we believe they will be incurred infrequently and/or are otherwise not indicative of a segment's regular, ongoing operating performance. Adjusted EBITDA is also used as one performance metric for certain of our compensation programs, as discussed in our proxy statement for our 2019 annual meeting of shareholders, which proxy statement was filed with the SEC on April 19, 2019.

The table below presents the reconciliation of our total segment Adjusted EBITDA to consolidated income before taxes. Adjusted EBITDA is not a measurement of our financial performance under GAAP and should not be considered as an alternative to net income. Adjusted EBITDA may have limitations as an analytical tool and should not be considered in isolation or as a substitute for analysis of our results as reported under GAAP. In addition, although we have excluded certain charges in calculating Adjusted EBITDA, we may in the future incur expenses similar to these adjustments, despite our assessment that such expenses are infrequent and/or not indicative of our regular, ongoing operating performance. Our presentation of Adjusted EBITDA should not be construed as an inference that our future results will be unaffected by unusual or infrequent items.

	Three Months Ended September 30, 2019	Three Months Ended September 30, 2018	Nine Months Ended September 30, 2019	Nine Months Ended September 30, 2018
Total segment adjusted EBITDA	$ 27,705	$ 13,763	$ 51,470	$ 35,674
Add (subtract):				
Interest expense	(144)	(225)	(831)	(817)
Depreciation and amortization expense	(2,691)	(2,600)	(7,731)	(7,638)
Restructuring expense	(371)	(501)	(553)	(1,317)
Acquisition related expenses including stock compensation	(1,684)	(267)	(2,474)	(802)
Litigation expense	-	(321)	(52)	(321)
Nebraska flooding expenses	-	-	(123)	-
Recall expense	-	(112)	(777)	331
Long-term strategic planning expense	-	(277)	-	(995)
Executive compensation plan expense	(531)	-	(804)	-
Impact of acquisition adjustments for net working capital and contingent liability	-	-	-	2,193
Joint venture inventory adjustment	-	-	(216)	-
Unallocated corporate expenses	(8,445)	(3,180)	(18,167)	(10,601)
Consolidated income before taxes	$ 13,839	$ 6,280	$ 19,742	$ 15,707

Our Fleet Vehicles and Services segment consists of our operations at our Bristol, Indiana location, along with our operations at our up-fit centers in Kansas City, Missouri; North Charleston, South Carolina; Pompano Beach, Florida; and Saltillo, Mexico. This segment focuses on designing and manufacturing walk-in vans for the parcel delivery, mobile retail, and trades and construction industries, and supplies related aftermarket parts and services under the Utilimaster brand name.

Our Emergency Response Vehicles segment consists of the emergency response chassis operations at our Charlotte, Michigan location and our operations at our Brandon, South Dakota; Snyder and Neligh, Nebraska; and Ephrata, Pennsylvania locations. This segment engineers and manufactures emergency response chassis and vehicles.

Our Specialty Chassis and Vehicles segment consists of our Charlotte, Michigan operations that engineer and manufacture motor home chassis, defense vehicles, the Reach delivery van and other specialty chassis and distribute related aftermarket parts and accessories.

For certain financial information related to each segment, see Note 11 - *Business Segments*, of the Notes to Condensed Consolidated Financial Statements appearing in Item 1 of this Form 10-Q.

Fleet Vehicles and Services

	Financial Data (Dollars in Thousands)			
	Three Months Ended September 30,			
	2019		2018	
	Amount	%	Amount	%
Sales	$ 179,594	100.0%	$ 118,433	100.0%
Adjusted EBITDA	24,689	13.7%	7,243	6.1%

	Nine Months Ended September 30,			
	2019		2018	
	Amount	%	Amount	%
Sales	$ 443,345	100.0%	$ 256,540	100.0%
Adjusted EBITDA	39,585	8.9%	20,205	7.9%
Segment assets	147,168		109,139	

Comparison of the Three-Month Periods Ended September 30, 2019 and 2018

Sales in our Fleet Vehicles and Services segment were $179.6 million for the third quarter of 2019, compared to $118.4 million for the third quarter of 2018, an increase of $61.2 million or 51.6%, driven by increased vehicle sales of $59.2 million, an increase of $1.1 million in parts sales and price increases of $0.9 million.

Adjusted EBITDA in our Fleet Vehicles and Services segment for the third quarter of 2019 was $24.7 million compared to $7.2 million in the third quarter of 2018, an increase of $17.4 million. Higher unit sales volume resulted in a $5.4 million increase, increase as a result of product mix of $4.1 million, price increases added $0.9 million, reduction in supplier costs added $1.7 million, and productivity and cost reductions of $7.1 million. These increases were partially offset by a $1.8 million increase in marketing and administrative costs related to the North Charleston, South Carolina, GTB and SRUS locations.

Comparison of the Nine-Month Periods Ended September 30, 2019 and 2018

Sales in our Fleet Vehicles and Services segment were $443.3 million for the nine months ended September 30, 2019, compared to $256.5 million for the same period of 2018, an increase of $186.8 million or 72.8%. This increase was driven by a $186.5 million increase in vehicle sales mainly due to higher unit volume and a $0.3 million increase in aftermarket parts and accessories sales. The sales volume increase in 2019 includes $91.4 million of chassis pass-thru revenues compared to only $31.3 million in 2018.

Adjusted EBITDA in our Fleet Vehicles and Services segment for the nine months ended September 30, 2019 was $39.6 million compared to $20.2 million for the same period of 2018, an increase of $19.4 million. Higher sales volumes in 2019 contributed $16.7 million to the overall increase along with pricing increases of $1.7 million and productivity improvements and cost reductions generated $12.0 million. These increases were partially offset by decreases of $6.6 million due to the mix of products sold in 2019, a $4.4 million increase in marketing, administrative and research and development costs, and supplier increases of $0.1 million in 2019.

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Emergency Response Vehicles

	Financial Data (Dollars in Thousands) Three Months Ended September 30,			
	2019		2018	
	Amount	%	Amount	%
Sales	$ 64,241	100.0%	$ 60,263	100.0%
Adjusted EBITDA	(1,063)	(1.7)%	601	1.0%

	Nine Months Ended September 30,			
	2019		2018	
	Amount	%	Amount	%
Sales	$ 194,260	100.0%	$ 186,591	100.0%
Adjusted EBITDA	(2,243)	(1.2)%	2,038	1.1%
Segment assets	136,759		139,060	

Comparison of the Three-Month Periods Ended September 30, 2019 and 2018

Sales in our Emergency Response Vehicles segment were $64.2 million in the third quarter of 2019, compared to $60.3 million in the same period of 2018, an increase of $3.9 million or 6.6%. Higher unit volume and pricing changes resulted in increases of $3.4 million and $0.5 million, respectively in 2019 revenue.

Adjusted EBITDA for our Emergency Response Vehicles segment was $(1.1) million in the third quarter of 2019, compared to $0.6 million in the third quarter of 2018, a decrease of $1.7 million. This decrease was driven by $0.6 million for volume and product mix and $1.6 million for supplier and other cost increases. The overall decrease was partially offset by $0.5 million in pricing increases.

Comparison of the Nine-Month Periods Ended September 30, 2019 and 2018

Sales in our Emergency Response Vehicles segment were $194.3 million in the nine months ended September 30, 2019 compared to $186.6 million in the same period of 2018, an increase of $7.7 million or 4.1%. Higher unit sales volume accounted for $5.5 million of the increase. An additional $2.2 million increase in sales is attributable to pricing changes realized in 2019.

Adjusted EBITDA for our Emergency Response Vehicles segment was $(2.2) million in the nine months ended September 30, 2019, compared to $2.0 million in the same period of 2018, a decrease of $4.3 million. This change was driven by a $3.3 million decrease relating to lower volume and product mix, $4.0 million in supplier and other cost increases and $0.3 million in restructuring and other costs. These reductions were partially offset by a $1.1 million decrease in acquisition adjustments and a $2.2 million increase due to pricing changes.

Specialty Chassis and Vehicles

	Financial Data (Dollars in Thousands)			
	Three Months Ended September 30,			
	2019		2018	
	Amount	%	Amount	%
Sales	$ 45,116	100.0%	$ 51,675	100.0%
Adjusted EBITDA	4,079	9.0%	5,919	11.4%

	Nine Months Ended September 30,			
	2019		2018	
	Amount	%	Amount	%
Sales	$ 138,516	100.0%	$ 147,390	100.0%
Adjusted EBITDA	14,128	10.2%	13,431	9.1%
Segment assets	159,295		41,545	

Comparison of the Three-Month Periods Ended September 30, 2019 and 2018

Sales in our Specialty Chassis and Vehicles segment were $45.1 million in the third quarter of 2019, compared to $51.7 million in 2018, a decrease of $6.6 million or 12.7%. This decrease was driven by a decrease of $5.8 million in motor home chassis sales and $4.6 million in other specialty chassis and vehicles due to lower unit volume. This decrease was partially offset by sales attributable to the Royal acquisition of $3.8 million.

Adjusted EBITDA for our Specialty Chassis and Vehicles segment for the third quarter of 2019 was $4.1 million, compared to $5.9 million in the same period of 2018, a decrease of $1.8 million, or 31.1%. This decrease was driven by a decrease of $0.1 million in motor home chassis and $2.5 million in other specialty chassis and vehicles. This decrease was partially offset by an increase in EBITDA attributable to the Royal acquisition of $0.8 million.

Comparison of the Nine-Month Periods Ended September 30, 2019 and 2018

Sales in our Specialty Chassis and Vehicles segment were $138.5 million for the nine months ended September 30, 2019, compared to $147.4 million in the same period of 2018, a decrease of $8.9 million or 6.0%. This decrease was driven by a decrease of $13.8 million in motor home chassis sales. This decrease was partially offset by $1.1 million in other specialty chassis and vehicles due to higher unit volume and by sales attributable to the Royal acquisition of $3.8 million.

Adjusted EBITDA for our Specialty Chassis and Vehicles segment for the nine months ended September 30, 2019 was $14.1 million, compared to $13.4 million in the same period of 2018, an increase of $0.7 million or 5.2%. This increase was driven by $1.5 million attributable to other specialty chassis and vehicles and $0.8 million attributable to the Royal acquisition. This increase was partially offset by $1.6 million in motor home chassis.

Financial Condition

Balance Sheet at September 30, 2019 compared to December 31, 2018

For line items impacted by our adoption of the new revenue recognition standard on January 1, 2019, please see "*Note 1 – General and Summary of Accounting Policies*" in the Notes to Condensed Consolidated Financial Statements contained in Part 1 of this Form 10-Q for further information regarding the impact of this new accounting standard.

Cash decreased by $12.4 million, or 45.3%, to $15.0 million at September 30, 2019 from $27.4 million at December 31, 2018. Please see the discussion of cash flow activity below for more information on our sources and uses of cash in the first nine months of 2019.

Accounts receivable increased by $5.7 million, or 5.3%, to $112.5 million at September 30, 2019, compared to $106.8 million at December 31, 2018. The increase is the result of increases of $3.1 million in Fleet Vehicles and Services, $2.5 million in Specialty Vehicles, and $0.1 million in Emergency Response due to higher sales volume in the latter half of the third quarter of 2019 compared to sales in the latter half of the fourth quarter of 2018.

Inventory increased by $17.9 million, or 25.6%, to $87.9 million at September 30, 2019 compared to $70.0 million at December 31, 2018 as a result of an increase in raw material and work in process inventory driven by the ramp up of production primarily in the Fleet Vehicles and Services segment and inventory acquired from Royal.

Contract assets increased by $13.0 million, or 36.1%, to $49.0 million at September 30, 2019 compared to $36.0 million at December 31, 2018 due to the ramp up in production following our traditional year-end shut down in December.

Accounts payable increased by $7.3 million or 9.6% to $83.7 million at September 30, 2019 compared to $76.4 million at December 31, 2018. The increase due primarily to the timing of payments and the ramp up in other production following our traditional year-end shut down in December.

Accrued warranty increased by $2.0 million or 12.4 % to $18.1 million at September 30, 2019 compared to $16.1 million at December 31, 2018 due to payments for repairs made during the year of $8.3 million, partially offset by $8.5 million for accruals for new warranties.

Accrued compensation and related taxes increased by $6.8 million or 65.0% to $17.4 million at September 30, 2019 compared to $10.5 million at December 31, 2018 due to the increase for employee merit and incentive compensation.

Deposits from customers decreased by $11.3 million or 49.8% to $11.4 million at September 30, 2019 compared to $22.6 million at December 31, 2018 as a result of more deposits applied to invoices than received from customers.

LIQUIDITY AND CAPITAL RESOURCES

Cash Flows

Cash and cash equivalents decreased by $12.4 million to $15.0 million at September 30, 2019, compared to $27.4 million at December 31, 2018. These funds, in addition to cash generated from future operations and available credit facilities, are expected to be sufficient to finance the Company's foreseeable liquidity and capital needs.

Cash Flow from Operating Activities

We generated $6.2 million of cash from operating activities during the nine months ended September 30, 2019, an increase of $12.2 million from $5.9 million of cash utilized from operations for the nine months ended September 30, 2018. Cash flow from operating activities increased from 2018 due to a $40.0 million increase in cash generated in the fulfilment of customer orders (including changes in accounts receivable, inventory, contract assets, and customer deposits). This increase was partially offset by a $34.4 million decrease in cash generated through changes in other working capital items, mainly accounts payable and related accruals.

See the Financial Condition section contained in Item 2 of this Form 10-Q for further information regarding balance sheet line items that drove cash flows for the nine month period ended September 30, 2019. Also see the Condensed Consolidated Statements of Cash Flows contained in Item 1 of this Form 10-Q for the other various factors that represented the remaining fluctuation of cash from operations between the periods.

Cash Flow from Investing Activities

We utilized $97.2 million in investing activities in the first nine months of 2019, for acquisition of capital assets related to our operations, as well as the acquisition of Royal in September 2019. This is a $89.8 million increase compared to the $7.4 million utilized in the first nine months of 2018.

During the remainder of 2019, we expect to make additional cash capital investments of $3.0 million to $5.0 million, including capital spending for the replacement and upgrades of machinery and equipment used in operations and the implementation of our ERP system.

Cash Flow from Financing Activities

We were provided $78.5 million of cash through financing activities in the first nine months of 2019, compared to $4.5 million utilized in the first nine months of 2018. This increase is mainly due to proceeds from new debt arranged to finance the acquisition of Royal.

Working Capital

Our working capital was as follows (in thousands):

	September 30, 2019	December 31, 2018	Change
Current assets	$ 287,675	$ 245,329	$ 42,346
Current liabilities	167,495	138,097	29,643
Working capital	$ 120,180	$ 107,232	$ 12,703

The increase in our working capital at September 30, 2019 from December 31, 2018, results from changes in accounts receivable, inventory and contract assets, and deposits from customers, which were partially offset by an increase in accounts payable and the current portion of the operating lease liability. Refer to the balance sheet discussion appearing above in Management's Discussion and Analysis of Financial Condition and Results of Operations for an explanation of the causes of the material changes in working capital line items.

As of September 30, 2019, the Company's outstanding chassis converter pool with manufacturers totaled $16,975 and the Company has included this financing agreement on the Company's Condensed Consolidated Balance Sheets within *Other receivables – chassis pool agreements and Short-term debt – chassis pool agreements*. The chassis converter pool is a non-cash arrangement and is offsetting between current assets and current liabilities on the Company's Condensed Consolidated Balance Sheets.

Contingent Obligations

Spartan-Gimaex joint venture

In February 2015, Spartan USA and Gimaex Holding, Inc. mutually agreed to begin discussions regarding the dissolution of the Spartan-Gimaex joint venture. In June 2015, Spartan USA and Gimaex Holding, Inc. entered into court proceedings to determine the terms of the dissolution. In February 2017, by agreement of the parties, the court proceeding was dismissed with prejudice and the judge entered an order to this effect as the parties agreed to seek a dissolution plan on their own. Spartan USA has initiated court proceedings to dissolve and liquidate the joint venture, but no dissolution terms have been determined as of the date of this Form 10-Q. In the second quarter of 2019 and the fourth quarters of 2015 and 2014, we accrued charges totaling $0.4 million, $1.0 million and $0.2 million to write down certain inventory items associated with this joint venture to their estimated fair values. Costs associated with the wind-down will be impacted by the final dissolution terms. The costs we have accrued so far represent the low end of the range of the estimated total charges that we believe we may incur related to the wind-down. While we are unable to determine the final cost of the wind-down with certainty at this time, we may incur additional charges, depending on the final terms of the dissolution, and such charges are not expected to be material to our results.

Debt

On September 9, 2019, the Credit Agreement was amended by a Second Amendment to the Credit Agreement. The Second Amendment increased the revolving credit facility by $25.0 million, decreased future increases by $25.0 million, increased the availability of swing line loans by $5.0 million and joined Royal as a borrower. Under the Credit Agreement, as amended by the Second Amendment, the Company may borrow up to $175.0 million and may also request an increase in the facility of up to $50.0 million in the aggregate, subject to customary conditions. The credit facility is also available for the issuance of letters of credit of up to $20.0 million and swing line loans of up to $20.0 million (subsequently increased to $30.0 million), subject to certain limitations and restrictions.

On September 25, 2019, the Credit Agreement was amended by a Third Amendment to the Credit Agreement. The Third Amendment increased the availability of swing line loans by $10.0 million. Under the Credit Agreement, as amended by the Second Amendment and the Third Amendment, the Company may borrow up to $175.0 million and may also request an increase in the facility of up to $50.0 million in the aggregate, subject to customary conditions. The credit facility is also available for the issuance of letters of credit of up to $20.0 million and swing line loans of up to $30.0 million, subject to certain limitations and restrictions.

Under the terms of our Credit Agreement, we have the ability to issue letters of credit totaling $20.0 million. At September 30, 2019 and December 31, 2018, we had outstanding letters of credit totaling $0.7 million and $0.9 million, respectively, related to certain emergency response vehicle contracts and our workers compensation insurance.

Under the terms of our Credit Agreement we are required to maintain certain financial ratios and other financial covenants, which limited our available borrowings (exclusive of outstanding borrowings) under our line of credit to a total of approximately $41.2 million and $86.4 million at September 30, 2019 and December 31, 2018, respectively. The Credit Agreement also prohibits us from incurring additional indebtedness; limits certain acquisitions, investments, advances or loans; limits our ability to pay dividends in certain circumstances; and restricts substantial asset sales. At September 30, 2019 and December 31, 2018, we were in compliance with all covenants in the Credit Agreement.

Equity Securities
On April 28, 2016, our Board of Directors authorized the repurchase of up to 1.0 million shares of our common stock in open market transactions. At September 30, 2019 there were 0.8 million shares remaining under this repurchase authorization. If we were to repurchase the remaining 0.8 million shares of stock under the repurchase program, it would cost us approximately $14.1 million based on the closing price of our stock on October 31, 2019. We believe that we have sufficient resources to fund any potential stock buyback in which we may engage.

Dividends

The amounts or timing of any dividend distribution are subject to earnings, financial condition, liquidity, capital requirements and such other factors as our Board of Directors deems relevant. We declared dividends on our outstanding common shares in 2019 and 2018 as shown in the table below.

Date dividend declared	Record date	Payment date	Dividend per share ($)	Total dividend paid ($000)
May 6, 2019	May 17, 2019	June 17, 2019	$ 0.05	$ 1,777
October 24, 2018	November 14, 2018	December 14, 2018	0.05	1,757
May 2, 2018	May 15, 2018	June 15, 2018	0.05	1,759

CRITICAL ACCOUNTING POLICIES

The following discussion of critical accounting policies is intended to supplement Note 1 - *General and Summary of Accounting Policies*, of the Notes to Consolidated Financial Statements contained in Item 8 in our Annual Report on Form 10-K filed with the Securities and Exchange Commission on March 5, 2019. These policies were selected because they are broadly applicable within our operating units, and they involve additional management judgment due to the sensitivity of the methods, assumptions and estimates necessary in determining the related statement of income, asset and/or liability amounts.

Revenue Recognition
Essentially all of our revenue is generated through contracts with our customers. We may recognize revenue over time or at a point in time when or as obligations under the terms of a contract with our customer are satisfied, depending on the terms and features of the contract and the products supplied. Our contracts generally do not have any significant variable consideration. The collectability of consideration on the contract is reasonably assured before revenue is recognized. On certain vehicles, payment may be received in advance of us satisfying our performance obligations. Such payments are recorded in Customer deposits on the Condensed Consolidated Balance Sheets. The corresponding performance obligations are generally satisfied within one year of the contract inception. In such cases, we have elected to apply the practical expedient to not adjust the promised amount of consideration for the effects of a significant financing component. The financing impact on contracts that contain performance obligations that are not expected to be satisfied within one year are expected to be immaterial to our financial statements. We have elected to utilize the practical expedient to recognize the incremental costs of obtaining a contract as an expense when incurred because the amortization period for the prepaid costs that would have otherwise been deferred and amortized is one year or less. Revenue recognized in a current period from performance obligations satisfied in a prior period, if any, is immaterial to our financial statements. We use an observable price to allocate the stand-alone selling price to separate performance obligations within a contract or a cost-plus margin approach when an observable price is not available. The estimated costs to fulfill our base warranties are recognized as expense when the products are sold. Our contracts with customers do not contain a provision for product returns, except for contracts related to certain parts sales.

Revenue for parts sales for all segments is recognized at the time that control and risk of ownership has passed to the customer, which is generally, when the ordered part is shipped to the customer. Historical return rates on parts sales have been immaterial. Accordingly, no return reserve has been recorded. Instead, returns are recognized as a reduction of revenue at the time that they are received.

For certain of our vehicles and chassis, we sell separately priced service contracts that provide roadside assistance or extend certain warranty coverage beyond our base warranty agreements. These separately priced contracts range from 1 to 6 years from the date of the shipment of the related vehicle or chassis. We receive payment with the shipment of the related vehicle or at the inception of the extended service contract, if later, and recognize revenue over the coverage term of the agreement, generally on a straight-line basis, which approximates the pattern of costs expected to be incurred in satisfying the obligations under the contract.

See Note 1, *General and Summary of Accounting Policies*, of the Notes to Condensed Consolidated Financial Statements contained in Item 1 of this Form 10-Q for more information regarding our revenue recognition policies.

Accounts Receivable

We maintain an allowance for customer accounts that reduces receivables to amounts that are expected to be collected. In estimating the allowance for doubtful accounts, we make certain assumptions regarding the risk of uncollectable open receivable accounts. This risk factor is applied to the balance on accounts that are aged over 90 days: generally, this reserve has an estimated range from 10-25%. The risk percentage applied to the aged accounts may change based on conditions such as: general economic conditions, industry-specific economic conditions, historical and anticipated customer performance, historical experience with write-offs and the level of past due amounts from year to year. However, generally our assumptions are consistent year-over-year and there has been little adjustment made to the percentages used. In addition, in the event there are certain known risk factors with an open account, we may increase the allowance to include estimated losses on such “specific” account balances. The “specific” reserves are identified by a periodic review of the aged accounts receivable. If there is an account in question, credit checks are made and there is communication with the customer, along with other means to try to assess if a specific reserve is required. The inclusion of the “specific” reserve has historically caused the greatest fluctuation in our allowance for doubtful accounts balance. Please see Note 1, *General and Summary of Accounting Policies*, in the Notes to Consolidated Financial Statements contained in Item 8 of our Annual Report on Form 10-K for the year ended December 31, 2018 for further details.

Goodwill and Other Indefinite-Lived Intangible Assets

In accordance with authoritative guidance on goodwill and other indefinite-lived intangible assets, such assets are tested for impairment at least annually and written down when and to the extent impaired. We perform our annual impairment test for goodwill and indefinite-lived intangible assets as of October 1 of each year, which effectively means we are performing the test in the fourth quarter, or more frequently if an event occurs or conditions change that would more likely than not reduce the fair value of the asset below its carrying value.

At September 30, 2019 and December 31, 2018, we had recorded goodwill at our Fleet Vehicles and Services, Emergency Response Vehicles and Specialty Chassis and Vehicles reportable segments. The Fleet Vehicles and Services and Emergency Response Vehicles reportable segments were determined to be reporting units for goodwill impairment testing, while the reporting unit for the goodwill recorded in the Specialty Chassis and Vehicles segment was determined to be limited to the Reach Manufacturing component of that reportable segment. The goodwill recorded in these reporting units was evaluated for impairment as of October 1, 2018 using a discounted cash flow valuation, except for SRUS which is included in the Fleet Vehicles and Services segment and was recently acquired in December 2018 and Royal which is included in the Specialty Chassis and Vehicles segment and was recently acquired in September 2019.

We first assess qualitative factors including, but not limited to, macroeconomic conditions, industry conditions, the competitive environment, changes in the market for our products and current and forecasted financial performance to determine whether it is more likely than not that the fair value of a reporting unit is less than its carrying amount. If we determine that it is more likely than not that the fair value of the reporting unit is greater than its carrying amount, we are not required to calculate the fair value of a reporting unit. We have the option to bypass this qualitative assessment and proceed to a quantitative goodwill impairment assessment. If we elect to bypass the qualitative assessment, or if after completing the assessment it is determined to be more likely than not that the fair value of a reporting unit is less than its carrying value, we perform an impairment test by comparing the fair value of a reporting unit with its carrying amount, including goodwill. The fair value of the reporting unit is determined by estimating the future cash flows of the reporting unit to which the goodwill relates, and then discounting the future cash flows at a market-participant-derived weighted-average cost of capital ("WACC"). In determining the estimated future cash flows, we consider current and projected future levels of income based on our plans for that business; business trends, prospects and market and economic conditions; and market-participant considerations. If the fair value of a reporting unit exceeds its carrying amount, goodwill of the reporting unit is considered to not be impaired. If the carrying amount of the reporting unit exceeds its fair value, an impairment loss is recognized in an amount equal to the excess, up to the value of the goodwill.

We evaluate the recoverability of our indefinite lived intangible assets, which, as of September 30, 2019, consisted of our Utilimaster, Smeal and Royal Truck Body trade names, by comparing the estimated fair value of the trade names with their carrying values. We estimate the fair value of our trade names based on estimates of future royalty payments that are avoided through our ownership of the trade name, discounted to their present value. In determining the estimated fair value of the trade names, we consider current and projected future levels of revenue based on our plans for Utilimaster, Smeal and Royal Truck Body branded products, business trends, prospects and market and economic conditions.

Significant judgments inherent in these analyses include assumptions about appropriate sales growth rates, WACC and the amount of expected future net cash flows. The judgments and assumptions used in the estimate of fair value are generally consistent with the projections and assumptions that are used in current operating plans. Such assumptions are subject to change as a result of changing economic and competitive conditions. The determination of fair value is highly sensitive to differences between estimated and actual cash flows and changes in the related discount rate used to evaluate the fair value of the reporting units and trade name.

In 2018, we elected to bypass the qualitative assessment and proceed to the quantitative goodwill impairment assessment for all of our reporting units. The estimated fair values of these reporting units exceeded their carrying values by 184%, 36% and 378%, respectively, as of October 1, 2018, the most recent annual assessment date. Based on the discounted cash flow valuations at October 1, 2018, an increase in the WACC for the reporting units of 400 basis points would not result in impairment.

The acquired Utilimaster and Smeal trade names have indefinite lives as it is anticipated that they will contribute to our cash flows indefinitely. The estimated fair values of our Utilimaster and Smeal trade names exceeded their associated carrying values of $2.9 million and $2.4 million respectively, by 1,758% and 269%, respectively, as of October 1, 2018. Accordingly, there was no impairment recorded on these trade names. Based on the discounted cash flow valuations at October 1, 2018, an increase in the WACC used for these impairment analyses of 400 basis points would not result in impairment in the trade names. The recently acquired Royal Truck Body trade name has an indefinite life as it is anticipated that it will contribute to our cash flows indefinitely.

Since October 1, 2018, there have been no events or changes in circumstances that would more likely than not reduce the fair value of our Fleet Vehicles and Services, Emergency Response Vehicles, or Specialty Chassis and Vehicles reporting units or our indefinite-lived intangible assets below their respective carrying costs.

We cannot predict the occurrence of certain events or changes in circumstances that might adversely affect the carrying value of goodwill and indefinite-lived intangible assets. Such events may include, but are not limited to, the impact of the general economic environment; a material negative change in relationships with significant customers; strategic decisions made in response to economic and competitive conditions; and other risk factors as detailed in Part I, Item 1A "Risk Factors" in our Annual Report on Form 10-K for the year ended December 31, 2018.

See Note 1, *General and Summary of Accounting Policies*, in the Notes to Consolidated Financial Statements in our Annual Report on Form 10-K for the year ended December 31, 2018 for further details on our goodwill and indefinite-lived intangible assets.

Warranties
Our policy is to record a provision for the estimated cost of warranty-related claims at the time of the sale, and periodically adjust the warranty liability to reflect actual experience. The amount of warranty liability accrued reflects actual historical warranty cost, which is accumulated on specific identifiable units. From that point, there is a projection of the expected future cost of honoring our obligations under the warranty agreements. Historically, the cost of fulfilling our warranty obligations has principally involved replacement parts and labor for field retrofit campaigns and recalls, which increase the reserve. Our estimates are based on historical experience, the number of units involved and the extent of features and components included in product models. See Note 8, *Commitments and Contingent Liabilities,* in the Notes to Condensed Consolidated Financial Statements contained in Item 1 of this Form 10-Q, for further information regarding warranties.

Provision for Income Taxes
We account for income taxes under a method that requires deferred income tax assets and liabilities to be recognized using enacted tax rates for the effect of temporary differences between the book and tax bases of recorded assets and liabilities. Authoritative guidance also requires deferred income tax assets, which include state tax credit carryforwards, operating loss carryforwards and deductible temporary differences, be reduced by a valuation allowance if it is more likely than not that some portion or all of the deferred income tax assets will not be realized.

We evaluate the likelihood of realizing our deferred income tax assets by assessing our valuation allowance and by adjusting the amount of such allowance, if necessary. The factors used to assess the likelihood of realization include our forecast of future taxable income, the projected reversal of temporary differences and available tax planning strategies that could be implemented to realize the net deferred income tax assets.

We recognize the tax benefit from an uncertain tax position only if it is more likely than not that the tax position will be sustained on examination by the taxing authorities. The determination is based on the technical merits of the position and presumes that each uncertain tax position will be examined by the relevant taxing authority that has full knowledge of all relevant information. Although management believes the estimates are reasonable, no assurance can be given that the final outcome of these matters will not be different from what is reflected in the historical income tax provisions and accruals.

Interest and penalties attributable to income taxes are recorded as a component of income taxes.

EFFECT OF INFLATION

Inflation affects us in two principal ways. First, our revolving credit agreement is generally, tied to the prime and LIBOR interest rates so that increases in those interest rates would be translated into additional interest expense. Second, general inflation impacts prices paid for labor, parts and supplies. Whenever possible, we attempt to cover increased costs of production and capital by adjusting the prices of our products. However, we generally do not attempt to negotiate inflation-based price adjustment provisions into our contracts. Since order lead times can be as much as nine months, we have limited ability to pass on cost increases to our customers on a short-term basis. In addition, the markets we serve are competitive in nature, and competition limits our ability to pass through cost increases in many cases. We strive to minimize the effect of inflation through cost reductions and improved productivity. Refer to the *Commodities Risk* section in Item 3 of this Form 10-Q, for further information regarding commodity cost fluctuations.

Item 3. Quantitative and Qualitative Disclosures About Market Risk.

Interest rate risk
We are exposed to market risks related to changes in interest rates and the effect of such a change on outstanding variable rate short-term and long-term debt. At September 30, 2019, we had $107.5 million in debt outstanding under our variable rate short-term and long-term debt agreements. An increase of 100 basis points in interest rates would result in additional interest expense of $1.1 million on an annualized basis for the floating rate debt that we incurred in September 2019 for the acquisition of Royal and January 2017 for the acquisition of Smeal. We believe that we have sufficient financial resources to accommodate this hypothetical increase in interest rates. We do not enter into market-risk-sensitive instruments for trading or other purposes.

Commodities risk
We are also exposed to changes in the prices of raw materials, primarily steel and aluminum, along with components that are made from these raw materials. We generally do not enter into derivative instruments for the purpose of managing exposures associated with fluctuations in steel and aluminum prices. We do, from time to time, engage in pre-buys of components that are impacted by changes in steel, aluminum and other commodity prices in order to mitigate our exposure to such price increases and align our costs with prices quoted in specific customer orders. We also actively manage our material supply sourcing and may employ various methods to limit risk associated with commodity cost fluctuations due to normal market conditions and other factors including tariffs. Changes in input costs have impacted our results for the three and nine months ended September 30, 2019 and may continue to do so during the remainder of 2019 and beyond. See Management's Discussion and Analysis of Financial Condition and Results of Operations included in Part 1, Item 2 of this Form 10-Q for information on the impacts of changes in input costs during the three and nine months ended September 30, 2019.

Prevailing interest rates, interest rate relationships and commodity costs are primarily determined by market factors that are beyond our control. All information provided in response to this item consists of forward-looking statements. Reference is made to the section captioned "Forward-Looking Statements" before Part I of this Quarterly Report on Form 10-Q for a discussion of the limitations on our responsibility for such statements.

Item 4. Controls and Procedures.

An evaluation was performed under the supervision and with the participation of our management, including the Chief Executive Officer and Chief Financial Officer, of the effectiveness of the design and operation of our disclosure controls and procedures (as defined in Rule 13a-15(e) under the Securities Exchange Act of 1934) as of September 30, 2019. Based on and as of the time of such evaluation, our management, including the Chief Executive Officer and Chief Financial Officer, concluded that our disclosure controls and procedures were effective as of the end of the period covered by this report to ensure that information required to be disclosed by us in the reports that we file or submit is recorded, processed, summarized and reported within the time periods specified in the Securities and Exchange Commission's rules and forms. Disclosure controls and procedures include, without limitation, controls and procedures designed to ensure that information required to be disclosed by us in the reports that we file or submit under the Securities Exchange Act of 1934 is accumulated and communicated to our management, including our Chief Executive Officer and Chief Financial Officer, as appropriate to allow timely decisions regarding required disclosure.

No changes in our internal control over financial reporting were identified as having occurred during the quarter ended September 30, 2019 that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

PART II. OTHER INFORMATION

Item 1A. Risk Factors

We have included in Part I, Item 1A of our Annual Report on Form 10-K for the year ended December 31, 2018, a description of certain risks and uncertainties that could affect our business, future performance or financial condition (the "Risk Factors"). There have been no material changes from the disclosure provided in the Form 10-K for the year ended December 31, 2018 with respect to the Risk Factors. Investors should consider the Risk Factors prior to making an investment decision with respect to our stock.

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

Issuer Purchases of Equity Securities

On April 28, 2016, our Board of Directors authorized the repurchase of up to 1.0 million shares of our common stock in open market transactions. During the quarter ended September 30, 2019, no shares were repurchased under this authorization.

Period	Total Number of Shares Purchased	Average Price Paid per Share	Total Number of Shares Purchased as Part of Publicly Announced Plans or Programs	Number of Shares that May Yet Be Purchased Under the Plans or Programs (1)
July 1 to July 31	-	$ -	-	808,994
August 1 to August 31	-	-	-	808,994
September 1 to September 30	-	-	-	808,994
Total	-	$ -	-	808,994

(1) This column reflects the number of shares that may yet be purchased pursuant to the April 28, 2016 Board authorization described above.

During the quarter ended September 30, 2019, no shares were delivered by associates in satisfaction of tax withholding obligations that occurred upon the vesting of restricted shares.

Item 6. Exhibits.

(a) Exhibits. The following exhibits are filed as a part of this report on Form 10-Q:

Exhibit No.	Document
10.1	Unit Purchase Agreement, dated as of September 9, 2019, by and among Spartan Motors USA, Inc., Fortress Resources, LLC D/B/A Royal Truck Body, the owners of Fortress Resources, LLC, and Dudley D. De Zonia.
10.2	Second Amendment to Credit Agreement, dated September 9, 2019, by and among the Company and its affiliates, Wells Fargo Bank, National Association, as administrative agent, and the lenders party thereto.
10.3	Third Amendment to Credit Agreement, dated September 25, 2019, by and among the Company and its affiliates, Wells Fargo Bank, National Association, as administrative agent, and the lenders party thereto.
31.1	Certification of President and Chief Executive Officer pursuant to Section 302 of the Sarbanes-Oxley Act.
31.2	Certification of Chief Financial Officer pursuant to Section 302 of the Sarbanes-Oxley Act.
32	Certification of Chief Executive Officer and Chief Financial Officer pursuant to 18 U.S.C. § 1350.
101.INS	XBRL Instance Document
101.SCH	XBRL Schema Document
101.CAL	XBRL Calculation Linkbase Document
101.DEF	XBRL Definition Linkbase Document
101.LAB	XBRL Label Linkbase Document
101.PRE	XBRL Presentation Linkbase Document

SIGNATURES

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

Date: November 12, 2019

SPARTAN MOTORS, INC.

By /s/ Frederick J. Sohm
Frederick J. Sohm
Chief Financial Officer and Treasurer
(Principal Financial and Accounting Officer)

Exhibit 10.1

EXECUTION VERSION

UNIT PURCHASE AGREEMENT

by and between

SPARTAN MOTORS USA, INC.,

on the one hand,

FORTRESS RESOURCES, LLC D/B/A ROYAL TRUCK BODY,

ITS MEMBERS,

DUDLEY D. DEZONIA, JR.,

and

THE MEMBER REPRESENTATIVE,

on the other hand

Dated as of September 9, 2019

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EXHIBITS

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Exhibit B	R&W Insurance Policy

UNIT PURCHASE AGREEMENT

This UNIT PURCHASE AGREEMENT (this "Agreement"), dated as of September 9, 2019, is entered into by and between Spartan Motors USA, Inc., a South Dakota corporation ("Buyer"), on the one hand, and Fortress Resources, LLC, d/b/a Royal Truck Body, a California limited liability company (the "Company"), the members of the Company as identified on the signature page hereto (the "Members"), Dudley D. DeZonia, Jr., in his individual capacity ("DeZonia"), and Dudley D. DeZonia, Jr., as the Member Representative, on the other hand. Annex A hereto contains definitions of certain initially capitalized terms used in this Agreement.

W I T N E S S E T H:

WHEREAS, the Members collectively own in the aggregate all of the issued and outstanding equity interests of the Company (the "Units"); and

WHEREAS, the Members desire to sell to Buyer, and Buyer desires to purchase from the Members, the Units, for the consideration and on the terms and subject to the conditions hereinafter provided.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing premises and the representations, warranties, covenants and undertakings contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

ARTICLE 1
PURCHASE AND SALE

Section 1.1. Purchase. On the terms and subject to the conditions set forth in this Agreement, at the Closing, each Member shall sell, assign, transfer and deliver to Buyer, and Buyer shall purchase from such Member, such Person's interest in the Units.

Section 1.2. Purchase Price. The purchase price for the Units shall be Ninety Million Eighty-One Thousand Dollars ($90,081,000) (the "Base Purchase Price"), plus or minus the adjustments specified in Section 2.2 and Section 2.4 below (and as so adjusted shall equal the "Purchase Price").

Section 1.3. Closing. The closing of the purchase and sale of the Units (the "Closing") shall take place remotely via the exchange of executed documents and other deliverables by PDF or other means of electronic delivery simultaneously with the execution and delivery of this Agreement (the actual date of the Closing, the "Closing Date"). The Closing shall be deemed to be effective at 12:01 a.m. on the Closing Date (the "Effective Time").

Section 1.4. Deliveries by the Members. At the Closing, each Member shall deliver to Buyer the following:

(a) a properly executed certificate pursuant to Treasury Regulations Section 1.1445-2(b) certifying that such Member is not a foreign person within the meaning of Section 1445 of the Code;

(b) an assignment of such Member's entire membership interest in the Company, in form and substance reasonably satisfactory to Buyer; and

(c) such other documents as Buyer may reasonably request for the purpose of facilitating the consummation of any of the transactions contemplated hereby.

Section 1.5. Deliveries by the Member Representative. At the Closing, the Member Representative shall deliver or cause to be delivered to Buyer the following:

(a) a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of the Company certifying (i) that attached thereto are true and complete copies of all resolutions adopted by the Company authorizing the execution, delivery and performance of this Agreement, the Transaction Documents to which the Company is a party, and the consummation of the transactions contemplated hereby and thereby, (ii) that all such resolutions are in full force and effect, and (iii) the names and signatures of the officers of the Company authorized to sign this Agreement and the Transaction Documents to which the Company is a party;

(b) the articles of organization and all amendments thereto of the Company, duly certified as of a recent date by the Secretary of State of the State of California;

(c) a good standing certificate (or its equivalent) of the Company as of a recent date from the Secretary of State of the State of California;

(d) a counterpart to an escrow agreement in the form of Exhibit A (the "Escrow Agreement"), duly executed by the Member Representative;

(e) the Employment Agreements, each duly executed by the Employee who is a party to such Employment Agreement;

(f) the third-party consents listed in Section 1.5(f) of the Disclosure Schedule;

(g) the Consulting Agreements, each duly executed by the individual who is a party to such Consulting Agreement;

(h) a Second Amendment to Sublease, duly executed by the Company and Lyons Main Carson LLC, in form and substance reasonably agreeable to Buyer; and

(i) such other documents as Buyer may reasonably request for the purpose of facilitating the consummation of any of the transactions contemplated hereby.

Section 1.6. Deliveries by Buyer. At the Closing, Buyer shall:

(a) deliver to the Member Representative a certificate of the Secretary or an Assistant Secretary (or equivalent officer) of Buyer certifying (i) that attached thereto are true and complete copies of all resolutions adopted by the board of directors (or equivalent thereof) of Buyer authorizing the execution, delivery and performance of this Agreement, the Transaction Documents to which Buyer is a party, and the consummation of the transactions contemplated hereby and thereby, (ii) that all such resolutions are in full force and effect, and (iii) the names and signatures of the officers of Buyer authorized to sign this Agreement and the Transaction Documents to which Buyer is party;

(b) deliver to the Member Representative the certificate of incorporation (or equivalent document) and all amendments thereto of Buyer, duly certified as of a recent date by the secretary of state of the state of its organization;

(c) deliver to the Member Representative a good standing certificate (or its equivalent) of Buyer as of a recent date from the secretary of state of the state of its organization;

(d) deliver to the Member Representative a counterpart to the Escrow Agreement, duly executed by Buyer and JPMorgan Chase Bank, NA (the "Escrow Agent");

(e) deliver an Employment Agreement to each Employee who is a party to such Employment Agreement, duly executed by Buyer (or its Affiliate, as applicable);

(f) deliver a Consulting Agreement to each individual who is a party to such Consulting Agreement, duly executed by Buyer (or its Affiliate, as applicable);

(g) deliver to the Member Representative a copy of the R&W Insurance Policy; and

(h) deliver to or as directed by the Member Representative such other documents as the Member Representative may reasonably request for the purpose of facilitating the consummation of any of the transactions contemplated hereby.

Section 1.7. Funding by Buyer. At the Closing, Buyer shall:

(a) deposit by wire transfer of immediately available funds to an account designated by the Escrow Agent an amount equal to (i) one-half percent (0.5%) of the Base Purchase Price (the "Indemnity Escrow Amount"), to be held by the Escrow Agent in a segregated account pursuant to the Escrow Agreement (all funds held in such account from time to time, together with any income and earnings thereon, the "Indemnity Escrow Funds"), and to be released to the Members on the first (1st) anniversary of the Closing (except to the extent that funds have previously been released to Buyer or are then subject to claims by Buyer in each case pursuant to the Escrow Agreement); (ii) two percent (2%) of the Base Purchase Price (the "Adjustment Escrow Amount"), to be held by the Escrow Agent in another segregated account pursuant to the Escrow Agreement (all funds held in such account from time to time, together with any income and earnings thereon, the "Adjustment Escrow Funds"), and to be released as provided in Section 2.3 and Section 2.4; and (iii) Two Million Dollars ($2,000,000) (the "Environmental Indemnity Escrow Amount"), to be held by the Escrow Agent in another segregated account pursuant to the Escrow Agreement (all funds held in such account from time to time, together with any income and earnings thereon, the "Environmental Indemnity Escrow Funds"), and to be released as provided in Section 8.11;

(b) pay on behalf of the Company the Estimated Closing Company Transaction Expenses in such amounts and to such accounts as specified by the Member Representative by written notice given to Buyer no less than two (2) Business Days prior to the Closing Date; provided, however, that in the case of Estimated Closing Company Transaction Expenses owed to employees of the Company, Buyer shall contribute such amounts to the Company upon the Closing and cause the Company to pay such amounts (less applicable withholding and any Taxes required to be paid by the Company with respect thereto) to the applicable employees within thirty (30) days following the Closing;

(c) pay on behalf of the Company the Estimated Closing Funded Indebtedness in such amounts and to such accounts as specified in payoff letters delivered by the holders thereof to Buyer no less than two (2) Business Days prior to the Closing Date; provided, however, that, for the sake of clarity, the parties agree that not all Estimated Closing Funded Indebtedness (including the Axalta Liability) will be paid at Closing;

(d) pay the Members (in accordance with their respective Pro Rata Shares and to such accounts as specified by the Member Representative by written notice given to Buyer no less than two (2) Business Days prior to the Closing Date) an amount equal to the Base Purchase Price plus the Net Estimated Adjustment Amount (which may be a negative number); provided, however, that the aggregate amount paid pursuant to this paragraph to the two Members holding Class A Units (as reflected on Section 3.4 of the Disclosure Schedule) shall be reduced by the sum of the Indemnity Escrow Amount, plus the Adjustment Escrow Amount, plus the Environmental Indemnity Escrow Amount (with such reduction allocated between those two Members based on their respective ownership of such Class A Units).

ARTICLE 2
PURCHASE PRICE ADJUSTMENTS

Section 2.1. Definitions. As used herein:

(a) "Accounting Principles" means those principles set forth in Section 2.1-A of the Disclosure Schedule.

(b) "Cash on Hand" means as of any time the aggregate cash balance of the Company on hand or in banks or other financial institutions, including all cash, commercial paper, certificates of deposit and other bank deposits, treasury bills, short term investments and all other cash equivalents, and third party checks deposited or held in any of the Company's accounts that have not yet cleared, in each case as of such time; provided, however, that Cash on Hand shall be reduced by the amount of all outstanding checks on draft of the Company that are issued or outstanding at such time. For the sake of clarity, such outstanding checks shall affect the calculation of Cash on Hand and shall not be counted as a current liability in the calculation of Estimated Closing Working Capital or Closing Working Capital.

(c) "Closing Cash on Hand" means the Cash on Hand as of the Effective Time.

(d) "Closing Company Transaction Expenses" means Company Transaction Expenses that remain unpaid as of immediately prior to the Closing.

(e) "Closing Funded Indebtedness" means, without duplication and determined on a consolidated basis, the obligations of the Company outstanding and unpaid immediately prior to the Closing under any Funded Indebtedness. Closing Funded Indebtedness shall in no event include any Funded Indebtedness incurred at the direction of Buyer or any Affiliate thereof.

(f) "Closing Working Capital" means the Working Capital as of the Effective Time.

(g) "Company Transaction Expenses" means (i) any sale bonuses, change in control bonuses or retention bonuses that become payable upon, and solely by reason of, the consummation of the transactions contemplated hereby and that were incurred by the Company prior to the Closing, (ii) any investment banking, accounting, attorney or other professional fees incurred by the Company prior to the Closing with respect to the transactions contemplated hereby, (iii) all premiums for, and other costs and expenses related to, the purchase of the tail policies required by Section 6.6 below, and (iv) all amounts payable by DeZonia or any of his Affiliates in connection with the acquisition of all of the issued and outstanding membership interests in Lyons Main Carson LLC, the sublandlord of the Carson Facility (although the parties acknowledge and agree that the amount set forth in this clause (iv) is not an expense or obligation of the Company but is being treated as a Company Transaction Expense pursuant to this Agreement for the purpose of facilitating the Closing).

(h) "Funded Indebtedness" means, without duplication and determined on a consolidated basis, the sum of all amounts owing by the Company to repay in full amounts due and terminate all obligations (other than indemnity obligations that are not owing or outstanding) with respect to (i) all indebtedness for borrowed money and all obligations evidenced by bonds, debentures, notes or other similar instruments, (ii) all obligations under acceptance credit, letters of credit, performance bonds or similar arrangements, but in each case only to the extent drawn or called, (iii) all obligations under capital leases, (iv) obligations for the deferred purchase price of property or services, including, without limitation, the maximum potential amount payable with respect to earnouts, purchase price adjustments or other payments related to acquisitions (other than current accounts payable to suppliers and similar accrued liabilities incurred in the ordinary course of business and reflected as a current liability in the final calculation of Working Capital), (v) obligations under any interest rate, currency swap, or other hedging agreement or arrangement, any indebtedness secured by a Lien on a Person's assets, (vi) any unsatisfied obligation for "withdrawal liability" to a "multiemployer plan" as such terms are defined under ERISA, (vii) any amounts owed to any Person under any noncompetition or consulting arrangements, (viii) any off-balance sheet financing of any Person, including synthetic leases and project financing, (ix) without limiting the generality of any of the foregoing, the Axalta Liability, (x) all guarantee obligations in respect of obligations of the kind referred to in clauses (i) through (ix) above, and (xi) any unpaid interest, prepayment penalties, premiums, costs and/or fees that would arise or become due as a result of the prepayment of any of the obligations referred to in the foregoing clauses (i) through (x).

(i) "Target Working Capital" means Nine Million Five Hundred Thousand Dollars ($9,500,000).

(j) "Working Capital" means an amount (which may be positive or negative) equal to the consolidated current assets (other than Cash on Hand) minus the consolidated current liabilities (other than the current portion of Funded Indebtedness) of the Company determined in accordance with the Accounting Principles, but subject to the adjustments set forth in Section 2.1-A of the Disclosure Schedule. For the avoidance of doubt, outstanding checks on draft of the Company that are issued or outstanding will be treated as a reduction to Cash on Hand, and shall not counted as a current liability in the calculation of Estimated Closing Working Capital or Closing Working Capital. For illustration only, Section 2.1-B of the Disclosure Schedule sets forth the calculation of Working Capital as of the date therein indicated.

In no event will any amount included in the calculation of Estimated Closing Company Transaction Expenses, Estimated Closing Funded Indebtedness, Estimated Closing Cash on Hand or Estimated Closing Working Capital be included in any such other calculations to the extent doing so would result in double counting.

Section 2.2. Closing Estimates; Net Estimated Adjustment Amount.

(a) At least three (3) Business Days prior to the Closing Date, the Company shall prepare and deliver to Buyer a written statement that shall include a good-faith estimated consolidated balance sheet of the Company as of the Effective Time prepared in accordance with the Accounting Principles, but subject to the adjustments set forth in Section 2.1-A of the Disclosure Schedule, a statement of the Net Estimated Adjustment Amount and a good-faith estimate of the following:

(i) the Closing Company Transaction Expenses (the "Estimated Closing Company Transaction Expenses");

(ii) the Closing Funded Indebtedness (the "Estimated Closing Funded Indebtedness");

(iii) the Closing Cash on Hand (the "Estimated Closing Cash on Hand"); and

(iv) the Closing Working Capital (the "Estimated Closing Working Capital").

(b) The "Net Estimated Adjustment Amount" shall be equal to zero:

(i) minus the Estimated Closing Company Transaction Expenses;

(ii) minus the Estimated Closing Funded Indebtedness;

(iii) plus the Estimated Closing Cash on Hand;

(iv) minus the amount, if any, by which the Target Working Capital exceeds the Estimated Closing Working Capital; and

(v) plus the amount, if any, by which the Estimated Closing Working Capital exceeds the Target Working Capital.

Section 2.3. Post-Closing Determination.

(a) No later than January 31, 2020, Buyer shall prepare, or cause to be prepared, and deliver to the Member Representative a written statement (the "Closing Statement") that shall include a consolidated balance sheet of the Company as of the Effective Time prepared in accordance with the Accounting Principles, but subject to the adjustments set forth in Section 2.1-A of the Disclosure Schedule, a statement of the Net Adjustment Amount and a calculation of the following:

(i) the Closing Company Transaction Expenses;

(ii) the Closing Funded Indebtedness;

(iii) the Closing Cash on Hand; and

(iv) the Closing Working Capital.

(b) Promptly following Buyer's delivery of the Closing Statement to the Member Representative, Buyer shall provide the Member Representative and his Representatives reasonable access to the relevant books and records and employees of the Company for the purpose of facilitating the Member Representative's review of the Closing Statement. Buyer shall continue providing such access throughout the thirty (30) day period following Buyer's delivery of the Closing Statement to the Member Representative (the "Review Period"), provided that the Review Period shall be tolled and extended for an additional thirty (30) day period if the Member Representative provides written notice to Buyer prior to the expiration of the first thirty (30) days of the Review Period that Buyer's delay or failure to provide reasonable access as described above has materially prejudiced the Member Representative's ability to evaluate the Closing Statement. Buyer shall provide access to the books and records of the Company electronically and transmit financial statements, general journals and trial balances of the Company in such formats as they are prepared on the date of this Agreement.

(c) The Closing Statement shall become final and binding on the last day of the Review Period, unless prior to the end of the Review Period, the Member Representative delivers to Buyer a written notice of disagreement (a "Notice of Disagreement") specifying the nature and amount of any and all items in dispute as to the amounts set forth in the Closing Statement. The Member Representative shall be deemed to have agreed with all items and amounts in the Closing Statement not specifically referenced in a Notice of Disagreement provided prior to the end of the Review Period, as the same may be amended from time to time by the Member Representative prior to the end of the Review Period.

(d) During the 30 day period following delivery of a Notice of Disagreement by the Member Representative to Buyer (the "Resolution Period"), such parties in good faith shall seek to resolve in writing any differences that they may have with respect to the computation of the amounts as specified therein. Any disputed items resolved in writing between the Member Representative and Buyer within the Resolution Period shall be final and binding on the parties for all purposes hereunder. If the Member Representative and Buyer have not resolved all such differences by the end of the Resolution Period, the Member Representative and Buyer shall submit, in writing, such differences to the Grand Rapids office of the Accounting Expert. The "Accounting Expert" shall be Ernst & Young, or, in the event that it is not available or is not a Neutral Accounting Firm, a Neutral Accounting Firm selected by mutual agreement of Buyer and the Member Representative; provided, however, that (i) if, within thirty (30) days after the end of the Resolution Period, such parties are unable to agree on a Neutral Accounting Firm to act as the Accounting Expert, then each party shall select a Neutral Accounting Firm and such firms together shall select the Neutral Accounting Firm to act as the Accounting Expert, and (ii) if any party does not select a Neutral Accounting Firm within ten (10) days of written demand therefor by the other party, then the Neutral Accounting Firm selected by the other party shall act as the Accounting Expert. A "Neutral Accounting Firm" means an independent accounting firm of nationally recognized standing that is not at the time it is to be engaged hereunder rendering services to any party, or any Affiliate of either, and has not done so within the two year period prior thereto.

(e) The parties shall arrange for the Accounting Expert to agree in its engagement letter to act in accordance with this Section 2.3(e). Each party shall make readily available to the Accounting Expert all relevant books and records within such party's control reasonably requested by the Accounting Expert. Each party shall present a brief to the Accounting Expert (which brief shall also be concurrently provided to the other party) within twenty (20) days of the appointment of the Accounting Expert detailing such party's views as to the correct nature and amount of each item remaining in dispute from the Notice of Disagreement (and for the avoidance of doubt, no party may introduce a dispute to the Accounting Expert that was not originally set forth on the Notice of Disagreement) and such party's calculation of the Net Adjustment Amount. Within ten (10) days of receipt of the brief, the receiving party may present a responsive brief to the Accounting Expert (which responsive brief shall also be concurrently provided to the other party). Each party may make an oral presentation to the Accounting Expert (in which case, such presenting party shall notify the other party of such presentation, and the other party shall have the right to be present (and speak) at such presentation), within thirty (30) days of the appointment of the Accounting Expert. The Accounting Expert shall have the opportunity to present written questions to either party, a copy of which shall be provided to the other party. There shall be no ex parte communications between any party (or its Representatives), on the one hand, and the Accounting Expert, on the other hand, relating to any disputed matter and unless requested by the Accounting Expert in writing, no party may present any additional information or arguments to the Accounting Expert, either orally or in writing. The Accounting Expert shall consider only those items and amounts in the Member Representative's and Buyer's respective calculations that are identified as being items and amounts to which the Member Representative and Buyer have been unable to agree. In resolving any disputed item, the Accounting Expert shall select either the position of Buyer or Member Representative as a resolution for each item or amount disputed and may not impose an alternative resolution with respect to any item or amount disputed. The Accounting Expert shall make a determination (to be reflected in a written report delivered to the parties) within sixty (60) days of its appointment as to each such disputed item, which determination shall be final and binding on the parties for all purposes hereunder absent manifest mathematical error or manifest disregard for the provisions of this Section 2.3 (and, in the event of such manifest error or disregard, the written determination shall be referred back to the Accounting Expert to correct the same). Notwithstanding the foregoing, the Accounting Expert shall have no authority to resolve any dispute regarding the interpretation of any provision of this Agreement or whether Buyer has breached any covenant contained herein, it being understood and agreed that any such dispute shall be resolved solely as provided in Section 10.8. The fees and expenses of the Accounting Expert shall be borne by the party (either the Members or Buyer) whose determination of the Net Adjustment Amount was furthest from the determination of the Accounting Expert, provided that if each party's determination of the Net Adjustment Amount was within plus or minus 10% of the Accounting Expert's determination, such fees and expenses shall be shared equally by the Members (in accordance with their respective Pro Rata Shares), on the one hand, and Buyer, on the other hand.

Section 2.4. Payment.

(a) The "Net Adjustment Amount" shall equal zero:

(i) minus the amount, if any, by which the Closing Company Transaction Expenses exceed the Estimated Closing Company Transaction Expenses;

(ii) plus the amount, if any, by which the Estimated Closing Company Transaction Expenses exceed the Closing Company Transaction Expenses;

(iii) minus the amount, if any, by which the Closing Funded Indebtedness exceeds the Estimated Closing Funded Indebtedness;

(iv) plus the amount, if any, by which the Estimated Closing Funded Indebtedness exceeds the Closing Funded Indebtedness;

(v) minus the amount, if any, by which the Estimated Closing Cash on Hand exceeds the Closing Cash on Hand;

(vi) plus the amount, if any, by which the Closing Cash on Hand exceeds the Estimated Closing Cash on Hand;

(vii) minus the amount, if any, by which the Estimated Closing Working Capital exceeds the Closing Working Capital; and

(viii) plus the amount, if any, by which the Closing Working Capital exceeds the Estimated Closing Working Capital.

(b) If the Net Adjustment Amount as finally determined in accordance with Section 2.3 is positive or zero, then within five (5) Business Days of such final determination, (i) Buyer and the Member Representative shall deliver written notice to the Escrow Agent directing the Escrow Agent to transfer the Adjustment Escrow Funds to the Members (in accordance with their respective Pro Rata Shares), and (ii) Buyer shall pay the Net Adjustment Amount to the Members (in accordance with their respective Pro Rata Shares), plus interest thereon from the Closing Date to the date of such payment at a rate equal to 6.0% per annum, calculated on the basis of a year of 365 days and the number of days elapsed.

(c) If the Net Adjustment Amount as finally determined in accordance with Section 2.3 is negative, then within five (5) Business Days of such final determination, (i) Buyer and the Member Representative shall deliver written notice to the Escrow Agent directing the Escrow Agent to transfer to (A) Buyer the portion of the Adjustment Escrow Funds that is equal to the Net Adjustment Amount, plus interest thereon from the Closing Date to the date of such payment at a rate equal to 6.0% per annum, calculated on the basis of a year of 365 days and the number of days elapsed, and (B) the Members (in accordance with their respective Pro Rata Shares), the portion of the Adjustment Escrow Funds (if any) that exceeds the Net Adjustment Amount. If the Net Adjustment Amount exceeds the Adjustment Escrow Funds, the Members (in accordance with their respective Pro Rata Shares) shall pay such excess to Buyer, plus interest thereon from the Closing Date to the date of such payment at a rate equal to 6.0% per annum, calculated on the basis of a year of 365 days and the number of days elapsed, which payments shall be made within five (5) Business Days of the final determination of the Net Adjustment Amount to such account as directed by Buyer.

(d) In no event will any amount included in the calculation of Closing Company Transaction Expenses, Closing Funded Indebtedness, Closing Cash on Hand or Closing Working Capital be included in any such other calculations to the extent doing so would result in double counting.

(e) For avoidance of doubt, the Members shall not have any liability with respect to any items comprising the Closing Company Transaction Expenses, Closing Funded Indebtedness or the Closing Working Capital, except as determined by this Article 2.

(f) Any adjustments made pursuant to this Article 2 shall be deemed adjustments to the Purchase Price.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES OF THE MEMBERS

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, each Member (severally and not jointly) represents and warrants to Buyer at and as of the Closing, as follows (except as set forth in the corresponding section of the Disclosure Schedule or in any other section of the Disclosure Schedule if the application of the disclosure to the first section is reasonably apparent from the text of the Disclosure Schedule and without the need to refer to any documents described or referenced in the Disclosure Schedule):

Section 3.1. Authority and Enforceability. Such Member has all requisite power and authority, and has taken all action necessary, to execute and deliver this Agreement and each Transaction Document to which such Member is a party and to perform such Member’s obligations hereunder and thereunder. This Agreement and each Transaction Document to which such Member is a party has been duly authorized, executed and delivered by such Member and (assuming the due authorization, execution and delivery by Buyer) constitutes the legal, valid and binding obligations of such Member, and is Enforceable against such Member.

Section 3.2. Conflicts. The execution and delivery by such Member of this Agreement and each Transaction Document to which such Member is a party and the performance by him, her or it of his, her or its obligations hereunder and thereunder, do not and will not:

(a) (i) conflict with or violate any provision of Law, (ii) conflict with or violate any Order to which such Member is subject, or (iii) require a registration, filing, application, notice, consent, approval, order, qualification, or waiver with, to or from any Governmental Authority or any other Person on the part of or with respect to such Member;

(b) (i) require a consent, approval or waiver from, or notice to, any party to any Contract to which such Member is a party or to which any Units are subject, or (ii) result in a breach of, constitute a default under, or result in the acceleration of material obligations, loss of material benefit or increase in any material liabilities or fees under, or create in any party the right to terminate, cancel or modify, any Contract to which such Member is a party or to which any Units are subject; or

(c) result in the creation of any Liens on the Units.

Section 3.3. Litigation. There is no Legal Proceeding presently pending or, to the knowledge of such Member, threatened against such Member that would reasonably be expected to prevent, hinder or delay the consummation of the transactions contemplated hereby. Such Member is not subject to any outstanding Order that would reasonably be expected to prevent, hinder or delay the consummation of the transactions contemplated hereby, nor is such Member a party or, to the knowledge of such Member, threatened to be made a party, to any such Order.

Section 3.4. Ownership of Units. Such Member is the record and beneficial owner of the number and class of units of the Company as set forth on Section 3.4 of the Disclosure Schedule, free and clear of Liens. Except as set forth on Section 3.4 of the Disclosure Schedule, such Member is not a party to any option, warrant, right, Contract, call, put or other agreement or commitment providing for the disposition or acquisition of any such Units, nor is such Member a party to any voting trust, proxy or other Contract, agreement or understanding with respect to the voting of any such Units.

Section 3.5. Brokers' Fees. Such Member has not and will not become obligated to pay any fee or commission to any broker, finder or intermediary for or on account of the transactions contemplated by this Agreement.

ARTICLE 4
REPRESENTATIONS AND WARRANTIES OF THE COMPANY

As an inducement to Buyer to enter into this Agreement and to consummate the transactions contemplated hereby, the Company represents and warrants to Buyer at and as of the Closing, as follows (except as set forth in the corresponding section of the Disclosure Schedule or in any other section of the Disclosure Schedule if the application of the disclosure to the first section is reasonably apparent from the text of the Disclosure Schedule and without the need to refer to any documents described or referenced in the Disclosure Schedule):

Section 4.1. Organization and Power.

(a) The Company is a limited liability company duly organized, and validly existing and in good standing under the Laws of the State of California.

(b) The Company has the organizational power and authority to own or lease the assets it purports to own or lease and to carry on its business in the same manner as it has been and is currently conducted.

(c) The Company is licensed or qualified to conduct its business and is in good standing in every jurisdiction where it is required to be so licensed or qualified. Each such jurisdiction is listed in Section 4.1(c) of the Disclosure Schedule.

Section 4.2. Authority and Enforceability. The Company has all requisite corporate power and authority, and has taken all corporate action necessary, to execute and deliver this Agreement and each Transaction Document to which the Company is a party and to perform its obligations hereunder and thereunder. This Agreement and each Transaction Document to which the Company is a party has been duly authorized, executed and delivered by the Company, and (assuming the due authorization, execution and delivery by Buyer) constitutes the legal, valid and binding obligation of the Company, and is Enforceable against the Company.

Section 4.3. Conflicts. Except as specified in Section 4.3 of the Disclosure Schedule, the execution and delivery by the Company of this Agreement and each Transaction Document to which the Company is a party and the performance by it of its obligations hereunder and thereunder, do not and will not:

(a) violate any provision of the articles of organization, operating agreement, or other organizational documents of the Company;

(b) (i) conflict with or violate any provision of Law, (ii) conflict with or violate any Order to which the Company is subject, or (iii) require a registration, filing, application, notice, consent, approval, order, qualification, or waiver with, to or from any Governmental Authority on the part of or with respect to the Company or any Member; or

(c) (i) require a consent, approval, or waiver from, or notice to, any Person pursuant to any Contract to which the Company is a party or to which any of the Company's assets or liabilities are subject or with respect to any Permit, or (ii) conflict with, or result in the breach of, or constitute a default under, or result in the termination, cancellation, modification or acceleration (whether after the filing of notice or the lapse of time or both) of any right or obligation of the Company under, or result in a loss of any benefit to which the Company is entitled under, any Contract to which the Company is a party or to which any of the Company's assets or liabilities are subject or with respect to any Permit; or

(d) result in any Lien on any of the Company's assets.

Section 4.4. Capitalization.

(a) Section 4.4(a) of the Disclosure Schedule sets forth the capitalization of the Company and the number and class of Units and all other membership interests of the Company that are issued and outstanding. All of such Units are owned by the Members, both beneficially and of record, in the manner set forth on Section 4.4(a) of the Disclosure Schedule, free and clear of all Liens. There are no options to purchase any Units or other Membership Interests of the Company. All issued and outstanding equity securities of the Company, including all of the Units, are duly authorized, validly issued, fully paid and nonassessable. As a result of the Closing, Buyer shall obtain good and marketable title to all of the equity interests of the Company, free and clear of any Liens. All equity interests issued by the Company, including all outstanding Units, were issued in compliance with applicable Laws, and none were issued in violation of any Contract, arrangement, or commitment to which the Company is or was a party or in violation of any preemptive or similar rights of any Person. All issued and outstanding equity securities of the Company are uncertificated.

(b) There are no preemptive or other outstanding or authorized rights, options, warrants, conversion rights, stock appreciation rights, redemption rights, repurchase rights, agreements, arrangements or commitments of any character under which the Company is or may become obligated to issue or sell, or give any Person a right to subscribe for or acquire, or in any way dispose of, any shares or equity interests, or any securities or obligations exercisable or exchangeable for or convertible into any shares or equity interests, of the Company, and no securities or obligations evidencing such rights are authorized, issued or outstanding. The Company does not have outstanding or authorized any equity appreciation, phantom equity, profit participation, or similar rights. There are no voting trusts, proxies or other Contracts or understandings in effect with respect to the voting or transfer of any of the Units.

Section 4.5. No Subsidiaries. The Company does not own or have any interest in any shares or equity securities of, or have an ownership interest of any kind in, any other Person.

Section 4.6. Financial Statements.

(a) The Company has delivered to Buyer: (i) true and complete copies of the Company's unaudited balance sheet (the "Most Recent Balance Sheet") as of July 31, 2019 (the "Most Recent Balance Sheet Date") and the related unaudited statements of income for the seven-month period then ended (together, the "Interim Financial Statements"), (ii) true and complete copies of the Company's audited balance sheet dated December 31, 2018 and the related audited statements of income and cash flows for the twelve (12)-month period then ended, and (iii) true and complete copies of the Company's unaudited balance sheets dated December 31, 2016, and December 31, 2017, and the related unaudited statements of income and cash flows for the fiscal years then ended (together with the Interim Financial Statements and the financial statements described in clause (ii), the "Financial Statements"). Except as set forth in the notes to the Financial Statements, the Financial Statements have been prepared in accordance with GAAP, applied on a consistent basis throughout the periods involved, except that the Interim Financial Statements contain estimates of certain accruals, lack footnotes and other presentation items, and are subject to normal year-end adjustments required by GAAP (the effect of which will not be materially adverse). The Financial Statements are based on the books and records of the Company and present fairly the financial position of the Company as at and for the respective periods then ended Copies of all Financial Statements are attached as Section 4.6 of the Disclosure Schedule.

(b) The Company maintains and complies with a system of internal controls over financial reporting sufficient to provide reasonable assurances that: (i) its business is operated in accordance with management's general or specific authorization; (ii) transactions are recorded as necessary to permit preparation of the financial statements of the Company in conformity with GAAP, applied on a consistent basis throughout the periods involved, or any other criteria applicable to such financial statements, and to maintain accountability for items therein; (iii) access to properties and assets is permitted only in accordance with management's general or specific authorization; and (iv) the recorded accountability for items is compared with the actual levels at regular intervals and appropriate actions are taken with respect to any differences.

Section 4.7. No Undisclosed Liabilities. Except as specified on Section 4.7 of the Disclosure Schedule, the Company does not have any Liabilities whatsoever except for: (a) Liabilities disclosed, reflected or reserved against on the Most Recent Balance Sheet, and (b) Liabilities incurred since the Most Recent Balance Sheet Date in the ordinary course of business, consistent with past practices, which are not material individually or in the aggregate. The Company is not a guarantor nor is it otherwise liable for, nor has the Company pledged any collateral for, any Liability (including indebtedness) of any other Person. Section 4.7 of the Disclosure Schedule sets forth a complete and accurate list of all Funded Indebtedness and all Closing Company Transaction Expenses, including the dollar amounts of each, as of the Closing Date.

Section 4.8. Operations Since December 31, 2018. Except as set forth in Section 4.8 of the Disclosure Schedule, the Company has conducted its business only in the ordinary course of business, consistent with past practices, and there has not been any event, fact, change, occurrence or circumstance which has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. Without limiting the generality of the foregoing, since December 31, 2018, the Company has not:

(a) experienced a Material Adverse Effect nor has there been any event, occurrence, or development that could reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect;

(b) entered into or approved any amendment of its articles of organization or operating agreement nor has there been any such amendment;

(c) effected any split, combination, reclassification or recapitalization of the units or other equity interests of the Company;

(d) granted, issued, sold, transferred or otherwise disposed of any of its units or other equity interests, or granted any options, warrants, calls or other rights to purchase or obtain (including upon conversion, exchange or exercise) any of its units or other equity interests;

(e) made, declared, set aside or paid any dividend on, or other distribution (whether in cash, stock or property) in respect of, any of its units or other equity interests;

(f) made any investment in, or any loan, advance or capital contribution to, any other Person;

(g) acquired by merger or consolidation with, or by purchase of a substantial portion of the assets or stock of, or by any other manner, any business or any Person;

(h) made any single capital expenditure, or series of related capital expenditures, or entered into any Contract or commitment therefor in excess of $50,000;

(i) entered into any Contract for the purchase or lease (as lessor or lessee) of real property;

(j) sold, leased (as lessor), transferred or otherwise disposed of, licensed, mortgaged or pledged, or imposed any Lien (except Permitted Liens) on, any of its assets valued in excess of $50,000, in whole or in part, other than sales of inventory in the ordinary course of business, consistent with past practices, and personal property sold or otherwise disposed of in the ordinary course of business, consistent with past practices;

(k) purchased, leased (as lessee), or otherwise acquired the right to own, use, or lease any property or assets for an amount in excess of $50,000, except for purchases of inventory or supplies in the ordinary course of business, consistent with past practices;

(l) created, incurred, assumed, or agreed to create, incur, or assume or guarantee, any Funded Indebtedness other than money borrowed or advanced under existing lines of credit;

(m) materially reevaluated its material assets, excluding writing-off or discounting of notes, accounts receivable or other assets in the ordinary course of business consistent with past practice;

(n) instituted any increase in, entered into, terminated or adopted any Benefit Plan;

(o) made any changes in the compensation (including severance or other benefits) of current or former employees, directors, independent contractors, or consultants that, individually or in the aggregate, are material;

(p) made any material change in its accounting principles, methods, practices or policies;

(q) made or changed any Tax election, changed any annual tax accounting period, adopted or changed any method of Tax accounting, filed any amended Tax Return, entered into any closing agreement, settled any Tax claim or assessment, surrendered any right to a Tax refund, or consented to any extension or waiver of the limitations period applicable to any Tax claim or assessment;

(r) settled any Legal Proceedings;

(s) accelerated, wrote off or discounted any accounts receivable of the Company other than in the ordinary course of business, consistent with past practice; delayed in paying any payables or other Liabilities when due or deferred expenses; or otherwise made any material change in the Company's cash management practices or its policies, practices, and procedures with respect to the collection of accounts receivable, establishment of reserves for uncollectible accounts, accrual of accounts receivable, inventory control, prepayment of expenses, payment of accounts payable, accrual of other expenses, deferral of revenue, or acceptance of customer deposits;

(t) entered into any Contract which would be included in the definition of Material Contract or made any modification to any existing Material Contract, nor has any event occurred that has resulted or is reasonably likely to result in any acceleration, termination, material modification to, or cancellation of any Contract to which the Company is a party or by which it is bound;

(u) suffered any material damage, destruction, or loss (whether or not covered by insurance) to any of its assets in an aggregate amount in excess of $25,000;

(v) made any change in the pricing of its products or services or in its processes or methods for customer order intake or acceptance;

(w) otherwise made or taken any action or omission outside the ordinary course of business, consistent with past practices; or

(x) authorized, approved or agreed to do any of the foregoing.

Section 4.9. Taxes. Except as set forth on Section 4.9 of the Disclosure Schedule:

(a) The Company has filed all material Tax Returns in connection with any federal, state or local Tax required to be filed by it, and the Company has timely paid all material Taxes that have become due and payable by it (whether or not shown on such Tax Returns) except as contested in good faith, and, where payment is not yet due and payable, and the Company has made an adequate provision for such Taxes in the Financial Statements. To the Knowledge of the Company, no unresolved issue has been raised in writing by any Governmental Authority in the course of any audit with respect to Taxes for which any the Company would be held liable.

(b) The Company is not party, to nor is the Company bound by any agreement the principal purpose of which is to allocate or share liability for Taxes between or among another Person.

(c) There are no Lien for Taxes (except Permitted Liens) upon any of the assets of the Company.

(d) No written claim has ever been made by any Governmental Authority with respect to the Company in a jurisdiction where the Company does not file a Tax Return that the Company is or may be subject to Taxes by that jurisdiction that would be covered by or the subject of such Tax Return.

(e) The Company will not be required to include any item of income in, or exclude any item of deduction from, taxable income for any taxable period (or portion thereof) beginning after the Closing Date as a result of: (i) any closing agreement described in Section 7121 of the Code (or similar provision of state, local or foreign Law), (ii) any installment sale or open sale transaction disposition made on or prior to the Closing Date; or (iii) any other action taken out of the ordinary course of business for the purpose of deferring a Tax from a period prior to the Closing Date to a period following the Closing Date.

(f) The Company has not: (i) received approval to make or agreed to a change in any accounting method or has any written application pending with any Governmental Authority requesting permission for any such change; (ii) agreed to, or is required to make, any adjustment under Section 481 of the Code (or similar provision of state, local or foreign Law); or (iii) received written notification that the Internal Revenue Service (or other Governmental Authority) is proposing any adjustment under Section 481 of the Code (or similar provision of state, local or foreign Law).

(g) The Company has not: (i) been a member of an Affiliated Group filing a combined, consolidated, or unitary Tax Return (other than an Affiliated Group of which the Company is the common parent) or (ii) had any Liability for the Taxes of any Person (other than the Company) under Treasury Regulation §1.1502-6 (or any similar provision of state, local, or foreign law), as a transferee or successor, by contract (including Tax sharing or Tax indemnity agreement), or otherwise, other than commercial contracts entered into in the ordinary course of business that do not primarily relate to Taxes.

(h) The Company has withheld and paid all material Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, creditor, stockholder or other Third Party.

(i) The Company is not, and has not been, a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code during the applicable period specified in Section 897(c)(1)(A)(ii) of the Code.

(j) The Company is not or has not been a party to any “reportable transaction” as defined in Section 6707A(c)(1) of the Code and Treasury Regulations §1.6011-4(b).

(k) At no time during the five-year period ending on the date hereof was the Company a “distributing corporation” or “controlled corporation” within the meaning of Section 355(a)(1)(A) of the Code in any distribution intended to qualify under Section 355 of the Code.

Section 4.10. Permits. All of the Permits held by the Company are listed on Section 4.10 of the Disclosure Schedule and are valid and in full force and effect. During the past five (5) years, no violations are or have been recorded in respect of any such Permits. No proceeding is pending or, to the Knowledge of the Company, threatened to revoke or limit any such Permit. Except as set forth on Section 4.10 of the Disclosure Schedule, the Company holds all Permits that are necessary to entitle it to own or lease, operate and/or use its assets and to carry on and conduct its business in the manner as has been and is currently conducted. During the past five (5) years, the Company has not received any written notice from any Governmental Authority regarding a violation of, conflict with, or failure to comply with, any term or requirement of any Permit. No event has occurred that, with or without notice or lapse of time or both, would reasonably be expected to result in the revocation, suspension, lapse, or limitation of any Permit set forth on Section 4.10 of the Disclosure Schedule.

Section 4.11. Real Property.

(a) Section 4.11(a) of the Disclosure Schedule contains a list of the following:

(i) All leases and subleases of real property (collectively, the "Leases") pursuant to which the Company is the lessee;

(ii) All Contracts (and all amendments, extensions and modifications thereto) held by the Company or contractual obligations (and all amendments, extensions and modifications thereto) on the part of the Company to acquire or dispose of any interest in real property; and

(iii) All title searches and surveys with respect to any of the Premises within the possession or control of the Company.

(b) Except for the Leases, there are no leases, subleases, licenses, occupancy agreements, options, rights, concessions or other Contracts or arrangements, written or oral, granting to any Person the right to purchase, use or occupy any Premises.

(c) The Company has the right under the Leases to occupy and use the Premises. The Premises have received all required approvals of Governmental Authorities required in connection with the operation thereof in substantially the same manner as currently conducted.

(d) The improvements constructed on the Premises, including, without limitation, all leasehold improvements, owned or leased by the Company at the Premises, are: (i) in good operating condition, subject to ordinary wear and tear, (ii) sufficient for the operation of the business of the Company in the same manner as currently conducted and (iii) in material conformity with Law. To the Knowledge of the Company, none of the improvements on the Premises encroach upon or otherwise violate the rights of any other Person. The use and operation of the Premises in the conduct of the Company's business do not violate in any material respect any Law, covenant, condition, restriction, easement, license, permit or Contract.

(e) No notice of default or termination under any Lease is outstanding or, to the Knowledge of the Company, threatened. During the past five (5) years, the Company has not received any written notice that it is in violation of any zoning, use, occupancy, building, wetlands or environmental regulation, ordinance or other Law relating to the Premises. During the past five (5) years, the Company has not received any written notice of, and, to the Knowledge of the Company, there is no, pending, threatened or contemplated condemnation proceeding affecting any of the Premises or of any sale or other disposition of any of the Premises in lieu of condemnation.

(f) The Company does not own and has never owned any real property.

Section 4.12. Intellectual Property.

(a) Section 4.12(a) of the Disclosure Schedule contains a complete and correct list of all active registrations of, and all pending applications to register, any Patents, Marks, Copyrights and other Intellectual Property owned by the Company (the Intellectual Property set forth on Section 4.12(a) of the Disclosure Schedule, collectively, the "Company Intellectual Property"), including the jurisdictions in which such Company Intellectual Property is registered. The Company Intellectual Property is duly registered in the name of the Company, and not subject to any pending cancellation, invalidation, interference, reissue, or reexamination proceeding. The Company Intellectual Property is exclusively owned by the Company, free and clear of all Liens (except Permitted Liens and non-exclusive licenses granted by the Company to any Person, including implied licenses granted by the Company in connection with the commercial sale of products or services).

(b) Except for shrink-wrap licenses, other licenses for off-the-shelf software or Publicly Available Software, Section 4.12(b) of the Disclosure Schedule sets forth a complete list of all licenses, sublicenses and other written agreements used in the conduct of the business of the Company under which the Company is a licensee or otherwise is authorized to use any Intellectual Property other than the Company Intellectual Property ("Licensed Intellectual Property"), true and complete copies of which have been delivered or made available to Buyer. The Company is not in material breach of or in material default under any agreements for Licensed Intellectual Property.

(c) Except as set forth on Section 4.12(c) of the Disclosure Schedule, no claim has been asserted or threatened against the Company: (i) alleging that any Company Intellectual Property, product, process and/or method infringes on, violates, and/or misappropriates the Intellectual Property of another Person; (ii) challenging the ownership, right to use or validity of the Company Intellectual Property; or (iii) opposing or attempting to cancel the Company's, as applicable, rights in the Company Intellectual Property. No Legal Proceeding is pending or, to the Knowledge of the Company, threatened with respect to any Company Intellectual Property. To the Knowledge of the Company, no Person is infringing upon or otherwise violating the rights of the Company in the Company Intellectual Property. The products of the Company, as currently provided by the Company, do not infringe or misappropriate any Intellectual Property right owned by any Person.

(d) Company owns the entire right, title and interest to and in, and has the right to use, free and clear of all licenses, restrictions and Liens, all of its Intellectual Property. Company is not in violation of the terms of any license relating to the use of any off-the-shelf or commercially available software. No third party has alleged or is presently alleging that Company is required to pay any royalty, license fee, charge or other amount with regard to any Intellectual Property. No third party has claimed or is presently claiming that any default exists under any Contract concerning Intellectual Property. To Company's Knowledge, there are no grounds for any of the foregoing types of allegations or claims.

(e) Except as specified in Section 4.12(e) of the Disclosure Schedule, all Persons who have contributed to the creation, invention or development of the Intellectual Property owned by Company have assigned to Company all of their rights therein. Company has used all measures necessary to maintain the secrecy of all trade secrets of Company.

(f) Upon and after the Closing, Buyer will own or otherwise have the valid right to exploit all Company Intellectual Property used by, in the possession of, or controlled by Company as of the Closing Date upon the same terms and subject to the same conditions as exploited by Company prior to the Closing. The Company Intellectual Property constitutes all of the Intellectual Property necessary to operate the Business as it is currently conducted.

Section 4.13. Compliance with Laws. Except as set forth on Section 4.13 of the Disclosure Schedule, the Company is, and has been, in compliance with all Laws. The Company has not received any written or, to the Knowledge of the Company, verbal notice during the past five (5) years alleging it is not in compliance with any Law.

Section 4.14. Material Contracts.

(a) Section 4.14 of the Disclosure Schedule sets forth a list of the following Contracts as of the date hereof to which the Company is a party and, in each case, where there are still remaining obligations on the part of any party thereto (collectively, the "Material Contracts"):

(i) all Contracts (other than purchase orders) with suppliers pursuant to which the Company has paid more than Ten Thousand Dollars ($10,000) in the last 12 months or has any future obligation to pay more than Ten Thousand Dollars ($10,000);

(ii) all Contracts (other than purchase orders) with customers pursuant to which the Company has received more than Ten Thousand Dollars ($10,000) in the last 12 months or expects to receive more than Ten Thousand Dollars ($10,000) in the future;

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

(iv) all Contracts providing for the Company to be the exclusive provider of any product or service to any Person;

(v) all Contracts that relate to the acquisition or disposition of any business, any stock or assets of any other Person or any real property (whether by merger, sale of stock, sale of assets or otherwise);

(vi) all Contracts with distributors, dealers, brokers, manufacturer's representatives, and/or sales representatives;

(vii) all Contracts with any Governmental Authority;

(viii) all Contracts that limit or purport to limit the ability of the Company to compete in any line of business or with any Person or in any geographic area or during any period of time, that restricts the ability of the Company to do business with any Person or hire or solicit any Person, or that restricts the right of the Company to sell to or purchase from any Person, or that grants the other party or any third person "most favored nation" status or any type of special discount rights;

(ix) all Contracts for any joint venture, partnership or similar arrangement by the Company;

(x) Contracts which relate to Funded Indebtedness;

(xi) mortgages, pledges or security agreements or similar Contracts or arrangements constituting a Lien upon the assets or properties of the Company;

(xii) Contracts for the sale or purchase of personal property having a value individually, with respect to all sales or purchases thereunder, in excess of Ten Thousand Dollars ($10,000);

(xiii) all Leases;

(xiv) all Contracts that could give rise to any Transaction Expenses;

(xv) all Contracts that provide for the indemnification by the Company of any Person or the assumption of any Tax, environmental or other Liability of any Person;

(xvi) all employment Contracts and Contracts with independent contractors or consultants (or similar arrangements) to which the Company is a party;

(xvii) all Contracts between or among the Company on the one hand and any Member or any Affiliate of any Member other than the Company on the other hand;

(xviii) all Contracts relating to any Licensed Intellectual Property or Company Intellectual Property; and

(xix) any other Contract that is material to the Company and not previously disclosed pursuant to this Section 4.14.

provided, however, that in no event shall any Contract entered into in connection with the prospective sale of the Company or its assets (such as a non-disclosure agreement or investment banking agreement) be deemed a Material Contract.

(b) All Material Contracts are in full force and effect against the Company and each other party thereto, in each case in accordance with the express terms thereof. There does not exist under any Material Contract any material violation, breach or event of default, or alleged material violation, breach or event of default, or event or condition that, after notice or lapse of time or both, would constitute a material violation, breach or event of default thereunder on the part of the Company or, to the Company's Knowledge, any other party to such Material Contract, or that would permit the acceleration or other changes of any right or obligation or the loss of any benefit thereunder. The Company has not, nor, to the Knowledge of the Company, has any party to any Material Contract repudiated any provision of any such Material Contract. The Company has not received written notice that any party to a Material Contract intends to cancel or terminate such Material Contract. The Company has provided complete and correct copies of all Material Contracts (including all modifications, amendments, and supplements thereto and waivers thereunder) to Buyer.

Section 4.15. Employees.

(a) Section 4.15(a) of the Disclosure Schedule sets forth a list of all Employees of the Company as of the date hereof and sets forth for each such individual the following as of the date hereof: (i) name; (ii) title or position (including whether full or part time); (iii) hire date; (iv) current annual base compensation rate for exempt employees and hourly rate for nonexempt employees; (v) commission, bonus or other incentive-based compensation; (vi) accrued and unused paid vacation and other paid leave; and (vii) a description of any other compensation or benefits provided to each such individual. All compensation, including wages, commissions, bonuses, fees and other compensation, payable to all employees, independent contractors or consultants of the Company for services performed on or prior to the Closing has been paid in full (or accrued in full in the Estimated Closing Working Capital) and there are no outstanding Contracts, understandings or commitments of the Company with respect to any compensation, commissions, bonuses, or fees.

(b) Section 4.15(b) of the Disclosure Schedule sets forth a list of: (i) all employment agreements to which the Company is a party as of the date hereof, and (ii) all other Contracts that entitle any Employee to compensation, severance, or other consideration as a result of the acquisition by any Person of control of the Company. To the Company's knowledge, no Employee intends to terminate employment with the Company. The Company does not have a present intention to terminate the employment of any of its Employees.

(c) The Company is not and has never been a party to any collective bargaining agreement, nor has it made any proposals regarding the terms of any collective bargaining agreement, nor has a union ever represented any of the Company’s employees or former employees. The Company is not subject to any: (i) unfair labor practice complaint pending before a Governmental Authority or, to the Knowledge of the Company, threatened before the applicable Governmental Authority; (ii) pending or, to the Knowledge of the Company, threatened labor strike, slowdown, work stoppage, lockout, or other organized labor disturbance, or (iii) to the Knowledge of the Company, union organization efforts or attempts by any union to represent Employees as a collective bargaining agent.

(d) Except as set forth on Schedule 4.15(d) of the Disclosure Schedule, there are no claims, disputes, grievances, Legal Proceedings, or controversies pending or, to the Knowledge of the Company, threatened involving any Employee or group of Employees. To the Knowledge of the Company, there are no threats, charges, investigations, Legal Proceedings, administrative proceedings or formal complaints of discrimination (including discrimination based upon sex, age, marital status, race, national origin, sexual orientation, disability or veteran status) pending before the Equal Employment Opportunity Commission, the National Labor Relations Board, the U.S. Department of Labor, the U.S. Occupational Health and Safety Administration, the Workers Compensation Appeals Board, or any other Governmental Authority against the Company pertaining to any Employee. There are no pending internal harassment investigations being conducted by or on behalf of the Company, nor is there any basis for any such investigation.

(e) The Company is not delinquent in payments to any of its employees, consultants, or independent contractors for any wages, salaries, commissions, bonuses, or other compensation for any service performed for it or amounts required to be reimbursed to such employees, consultants or independent contractors. The Company has been and is in compliance with Laws regarding employment and employment practices, including all applicable Laws relating to wages, hours, paid sick leave, overtime, collective bargaining, employment discrimination, civil rights, safety and health, workers' compensation, pay equity, classification of employees and independent contractors, and the collection and payment of withholding and/or social security Taxes. During the last six years, the Company has received no notice of any claim that it has not complied with any of the foregoing or that it is liable for any arrears, wages, Taxes, penalties, or interest for failure to comply with any of the foregoing.

(f) During the past two (2) years, the Company has not effectuated: (i) a "plant closing" (as defined in the Worker Adjustment and Retraining Notification Act (the "WARN Act") or any similar state or local Law) affecting any Premises or (ii) a "mass layoff" (as defined in the WARN Act, or any similar state or local Law) affecting any Premises.

(g) To the Company's Knowledge, no employee of the Company is subject to any non-compete, non-disclosure, confidentiality, employment, consulting, or similar Contract with any Person (other than the Company) that would adversely affect the ability of the Company to conduct its business or restricts the scope or type of work in which he or she may be engaged other than for the benefit of the Company. To the Company's knowledge, none of its employees are obligated under any Contract (including licenses, covenants or commitments of any nature) or other agreement, or subject to any judgment, decree or order of any court or administrative agency, that would materially interfere with such employee's ability to promote the interest of the Company or that would conflict with the Company's business.

Section 4.16. Employee Benefits.

(a) Each Benefit Plan is set forth on Section 4.16(a) of the Disclosure Schedule. The Company has made available to Buyer the following documents with respect to each Benefit Plan, as applicable: (i) correct and complete copies of the governing plan document, including all amendments thereto, and all related trust documents, (ii) a written description of any Benefit Plan that is not set forth in a written plan document, (iii) the most recent summary plan description together with any summary or summaries of material modifications thereto, and (iv) the most recent favorable determination or opinion letter issued by the Internal Revenue Service.

(b) Each Benefit Plan has been maintained and operated in all material respects in accordance with its terms, and each Benefit Plan, the Company, and all Persons that are or were considered a single employer with the Company under Code Section 414 ("ERISA Affiliates") have at all times complied with all applicable Laws, including, but not limited to, ERISA, the ACA, and the Code. The Company has not incurred, and will not incur, any Liability under Section 4980H of the Code with respect to any period ending on or prior to the Closing Date.

(c) No Legal Proceeding (excluding routine claims for benefits) has been brought or is pending or, to the Knowledge of the Company, threatened against or with respect to any Benefit Plan. Neither the Company, an ERISA Affiliate, nor any fiduciary or administrator of a Benefit Plan has taken any action with respect to such Benefit Plan which could reasonably be expected to subject the Company to any material tax or penalty under Code Section 4975 or ERISA Section 502(i), and there have been no prohibited transactions as defined under Code Section 4975 or ERISA Section 406 with respect to any Benefit Plan.

(d) Each Benefit Plan that is intended to be "qualified" under Section 401(a) of the Code has received a favorable determination or opinion letter from the IRS as to its qualified status, and the exempt status of its accompanying trust under Section 501(a) of the Code, and, to the Knowledge of the Company, nothing has occurred that could jeopardize the qualified status of any such Benefit Plan or the exempt status of any such trust.

(e) No Benefit Plan is currently under audit, administrative review, examination by, nor is any matter pending before, the IRS, EBSA, PBGC or any quasi-governmental agency.

(f) All benefits, contributions, premiums, and any other amounts required by and due under or in respect of the terms of each Benefit Plan or applicable Laws, or payable to any Benefit Plan insurer or service provider, have in each case been timely paid in all respects. The Company and each ERISA Affiliate's Liability with respect to each Benefit Plan has been fully funded based on reasonable and proper actuarial assumptions, has been fully insured, or has been fully reserved for on its financial statements.

(g) Each Benefit Plan that constitutes a "non-qualified deferred compensation plan" subject to Code Section 409A complies in all respects with Code Section 409A, no amount under any such Benefit Plan is or has been subject to the interest and additional tax set forth under Code Section 409A(a)(1)(B), and there is no obligation to reimburse or otherwise "gross-up" any Person for the interest or additional tax set forth under Code Section 409A(a)(1)(B).

(h) Except as provided in Section 4.16(a) of the Disclosure Schedule, (i) neither the Company nor any ERISA Affiliate has contributed to or been required to contribute to a "multi-employer plan" within the meaning of Section 3(37) of ERISA, (ii) no Benefit Plan is maintained in connection with any trust described in Section 501(c)(9) of the Code, is a multiemployer welfare arrangement under Section 3(40) of ERISA or a multiple employer plan under Code Section 413(c), (iii) no Benefit Plan is subject to minimum funding standards under Section 302 of ERISA or Section 412 of the Code, and neither the Company nor any ERISA Affiliate has or is expected to have any Liability for minimum funding requirements under Section 302 of ERISA or Section 412 of the Code, and (iv) no Benefit Plan is subject to Title IV of ERISA and neither the Company nor any ERISA Affiliate has or is expected to have Liability under Title IV of ERISA.

(i) No Benefit Plan provides for post-termination health or life insurance benefits to current or former employees, independent contractors, retirees or their respective spouses and other dependents, other than coverage required under Section 4980B of the Code, Part 6 of Subtitle B of Title I of ERISA, or similar state Law.

(j) Except as set forth on Section 4.16(g) of the Disclosure Schedule, neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement (either alone or in combination with any other event) will: (i) give rise to any Liability under any Benefit Plan, (ii) entitle any Person to any payment, forgiveness of indebtedness, vesting, distribution, or increase in benefits under or with respect to any Benefit Plan, (iii) otherwise trigger any acceleration of vesting or payment of benefits under or with respect to any Benefit Plan, (iv) trigger any obligation to fund any Benefit Plan, or (v) trigger any parachute payment under Code Section 280G.

Section 4.17. Environmental Compliance. Except as set forth on Section 4.17 of the Disclosure Schedule:

(a) The Company (i) possesses all material Governmental Authorizations required by applicable Laws relating to pollution or protection of the environment ("Environmental Laws"), and (ii) are in compliance in all material respects with all terms and conditions of such Governmental Authorizations and all Environmental Laws.

(b) The Company has not received any written notice regarding any actual or alleged material violation by the Company of Environmental Laws, or any investigatory, remedial or corrective obligations of the Company under Environmental Laws, relating to any of the Premises arising under Environmental Laws that is pending and unresolved.

(c) There are no pending or, to the Knowledge of the Company, threatened orders, writs, judgments, awards, injunctions or decrees of any Governmental Authority or Legal Proceedings involving Environmental Laws against the Company.

(d) The Company has not assumed, undertaken, or provided an indemnity with respect to any material or potentially material Liability of any other Person under Environmental Laws.

(e) The Company has provided to Buyer true and complete copies of any and all material documents, correspondence, pleadings, reports, assessments, analytical results, audits, or other documents concerning Environmental Laws in its possession or control relating to the Real Property.

(f) There has been no Release or threat of Release on, about, to or from the any real property that is or was owned, leased or operated by the Company (the "Real Property").

(g) Neither the Company nor any other party has generated, recycled, used, treated or stored on, transported to or from, or disposed on, the Real Property any substances regulated as hazardous waste pursuant to any applicable Environmental Laws.

(h) No Real Property is listed or proposed for listing on the National Priorities List under CERCLA or on any similar federal, state or foreign list of sites requiring investigation or clean-up, and Seller has not received any requests for information pursuant to 104(e) of CERCLA or any state counterpart or equivalent.

(i) There are no underground storage tanks or sumps located on the Real Property.

Section 4.18. Litigation. Except as set forth on Section 4.18 of the Disclosure Schedule, there is no Legal Proceeding (a) presently pending against or by the Company, or against or by any Affiliate of the Company involving the Company (or for which the Company could have an indemnification obligation), or (b) to the Knowledge of the Company, threatened against or by the Company or against or by any Affiliate of the Company involving the Company (or for which the Company could have an indemnification obligation). No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Legal Proceeding. The Company is not subject to any outstanding Order. During the past five (5) years, the Company has not received any written notice or other written communication from any Governmental Authority regarding any actual or alleged violation of, or failure to comply with, any term or requirement of any Order to which the Company is subject.

Section 4.19. Insurance. The Company has made available to Buyer all of the material insurance policies or binders for which the Company is a policyholder and which has a policy term that includes the date hereof ("Insurance Policies"), and all Insurance Policies are set forth on Section 4.19 of the Disclosure Schedule. All Insurance Policies are in full force and effect in accordance with their terms and all premiums with respect thereto covering all periods up to and including the Closing Date have been paid or will be paid when due. No material default exists with respect to the obligations of the Company under any such Insurance Policies. The Company has not received any written notice of cancellation, material change in premium or denial of renewal in respect of any of the Insurance Policies. The Insurance Policies do not provide for any retrospective premium adjustment or other experience-based Liability on the part of the Company. All Insurance Policies (a) are valid and binding in accordance with their terms; (b) are provided by carriers that are financially solvent; and (c) have not been subject to any lapse in coverage. Except as set forth on Section 4.19 of the Disclosure Schedule, there are no claims pending under any such Insurance Policies as to which coverage has been questioned, denied or disputed or in respect of which there is an outstanding reservation of rights. The Insurance Policies are sufficient for compliance with all applicable Laws and Contracts to which the Company is a party or by which it is bound. This Section 4.19 shall not apply to any Benefit Plans or other employee benefit arrangements.

Section 4.20. Properties. The Company has good and valid legal title to all of the properties and assets it purports to own, whether real, personal, tangible or intangible, free and clear of all Liens (except Permitted Liens). The Company owns, leases, licenses or otherwise has the valid right to use all of the assets, properties and rights necessary to conduct its business as presently being conducted. All material items of machinery, equipment, and other tangible assets of the Company are in good operational condition, normal wear and tear excepted, have been regularly and properly serviced and maintained in a manner that would not void or limit the coverage of any warranty thereon, and are adequate and fit to be used for the purposes for which they are currently used in the manner they are currently used. All inventory of the Company, whether or not reflected in the Most Recent Balance Sheet, consists of a quality and quantity usable and salable in the ordinary course of business consistent with past practice, except for obsolete, damaged, defective, or slow-moving items that have been written off or written down to fair market value or for which adequate reserves have been established. All such inventory is owned by the Company free and clear of all Liens, and no inventory is held on a consignment basis. The quantities of each item of inventory (whether raw materials, work-in-process or finished goods) are not excessive, but are reasonable in the present circumstances of the Company.

Section 4.21. Transactions with Affiliates. Except (a) for this Agreement and the Transaction Documents and the transactions contemplated hereby or thereby, (b) as contemplated by Section 6.10, (c) employment related compensation and benefits; and (d) as set forth on Section 4.21 of the Disclosure Schedule, no Member or Affiliate thereof (i) owns any direct or indirect interest of any kind in, or controls or has controlled, or is a manager, officer, director, Member, member or partner of, or consultant to, or lender to or borrower from or has the right to participate in the profits of, any Person which is a competitor, supplier, vendor, customer, landlord, tenant, creditor or debtor of the Company, (ii) owns or has an interest in, directly or indirectly, any property, asset or right, which is material to the Company, (iii) owes any money to or is owed any money by the Company (except for employment-related compensation received or payable in the ordinary course of business), or (iv) is a party to a Contract, or is involved in any business arrangement or other relationship, with the Company (whether written or oral), nor has the Company pledged any assets or guaranteed any obligations on behalf of any such Person.

Section 4.22. Bank Accounts. Section 4.22 of the Disclosure Schedule sets forth the names and locations of all banks, trust companies, savings and loan associations and other financial institutions at which the Company maintains accounts of any nature, the account numbers of all such accounts and the names of all persons authorized to draw thereon or make withdrawals therefrom.

Section 4.23. Suppliers and Customers.

(a) Section 4.23(a) of the Disclosure Schedule sets forth a list of the twenty (20) largest customers of the Company for each of the twelve (12) month periods ended December 31, 2018, December 31, 2017, and December 31, 2016 and for the six (6) month period ended June 30, 2019, in each case, as measured by the dollar amount of revenues recognized by the Company, in the aggregate, during each of such periods, and showing the amount of revenues recognized by the Company (as applicable) from such customer during each such period. The customers listed in Section 4.23(a) of the Disclosure Schedule are referred to as the "Material Customers." To the Knowledge of the Company, there are no bankruptcies filed by, on behalf of, or against any Material Customer. To the Knowledge of the Company, no Material Customer intends to cancel or materially change the terms of any Contract with the Company or its use or purchase of goods or services of the Company to the detriment of the Company in the future.

(b) Section 4.23(b) of the Disclosure Schedule sets forth a list of the ten (10) largest suppliers ("Material Suppliers") of the Company, as measured by the dollar volume of purchases from such suppliers by the Company, in the aggregate, during the twelve (12) month period ended December 31, 2018, showing the amount of payments made by the Company to each such supplier during such period. To the Knowledge of the Company, there are no bankruptcies filed by, on behalf of, or against any Material Supplier. To the Knowledge of the Company, no Material Supplier intends to cancel or materially change the terms of any Contract with the Company, or its provision of goods or services to the Company to the detriment of the Company in the future, including by way of a price increase or otherwise.

Section 4.24. Foreign Corrupt Practices Act. Neither the Company nor, to the Knowledge of the Company, any director, officer or employee of the Company, has directly or indirectly (a) made any contribution, gift, bribe, rebate, payoff, influence payment, kickback, or other payment to any Person, private or public, domestic or foreign, regardless of form, whether in money, property, or services (i) in violation of any Law, or (ii) to foreign or domestic government officials or employees or to foreign or domestic political parties or campaigns, (b) violated any applicable export control, money laundering or anti-terrorism Law, or otherwise taken any action that would be in violation of the Foreign Corrupt Practices Act of 1977, (c) established or maintained any fund or asset with respect to the Company that has not been recorded in its books and records or (d) made any illegal consideration to purchasing agents or other representatives of customers in respect of sales made or to be made by the Company.

Section 4.25. Product Warranty; Products Liability. Except as set forth on Section 4.25 of the Disclosure Schedule:

(a) Each product manufactured, sold or distributed or service provided by the Company has been in conformity with all product specifications, all express and implied warranties and all applicable Laws. The Company does not have Liability for replacement or repair of any such products or other damages in connection therewith or any other customer or product obligations not reserved against on the Most Recent Balance Sheet. The Company has not made any changes or alterations to any of its product designs since January 1, 2014. The Company has complied with all written information and documentation provided or made available to Buyer with respect to the analysis, validation, and testing of its products and product designs and its quality control policies and procedures.

(b) There exist no Legal Proceedings and, to the Knowledge of the Company, there are no threatened Legal Proceedings, against the Company for injury to any Person or property suffered as a result of any product manufactured, sold or distributed by the Company. The Company has not received any notice regarding any violation of Law, Contractual commitment or Liability for personal injury with respect to any product manufactured, sold or distributed by the Company. No product manufactured, sold, or distributed by the Company has been the subject of any recall or other similar action and no event has occurred that would (with or without notice or lapse of time) give rise to or serve as a basis for any such recall or other similar action relating to any such product.

Section 4.26. Accounts Receivable. The accounts receivable reflected on the Most Recent Balance Sheet and the accounts receivable arising after the Most Recent Balance Sheet Date (a) have arisen from bona fide transactions entered into by the Company involving the sale of goods or the rendering of services in the ordinary course of business consistent with past practice; (b) constitute only valid, undisputed claims of the Company not subject to claims of set-off or other defenses or counterclaims other than normal cash discounts accrued in the ordinary course of business consistent with past practice; and (c) subject to a reserve for bad debts shown on the Most Recent Balance Sheet or, with respect to accounts receivable arising after the Most Recent Balance Sheet Date, on the accounting records of the Company, are collectible in full within 90 days after billing. The reserve for bad debts shown on the Most Recent Balance Sheet or, with respect to accounts receivable arising after the Most Recent Balance Sheet Date, on the accounting records of the Company have been determined in accordance with GAAP, consistently applied, subject to normal year-end adjustments and the absence of disclosures normally made in footnotes.

Section 4.27. Brokers' Fees. Except as set forth on Section 4.27 of the Disclosure Schedule, the fees and commissions of which shall be a Transaction Expense, the Company is not obligated to pay any fee or commission to any broker, finder or intermediary, for or on account of the transactions contemplated by this Agreement.

Section 4.28. Full Disclosure. No representation or warranty by the Company in this Agreement and no statement contained in the Disclosure Schedule to this Agreement or any certificate or other document furnished or to be furnished to Buyer pursuant to this Agreement contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading.

ARTICLE 5
REPRESENTATIONS AND WARRANTIES OF BUYER

As an inducement to the Company and the Members to enter into this Agreement and to consummate the transactions contemplated hereby, Buyer hereby represents and warrants to the Company and the Members as follows:

Section 5.1. Organization and Power. Buyer is a corporation duly incorporated, validly existing and in good standing under the Laws of the State of South Dakota. Buyer has the corporate power and corporate authority to own or lease its assets and to carry on its business in substantially the same manner as currently conducted.

Section 5.2. Authority and Enforceability. Buyer has the corporate power and corporate authority to execute, deliver and perform this Agreement and the Transaction Documents. The execution, delivery and performance of this Agreement and the Transaction Documents by Buyer have been duly authorized and approved by its board of directors and do not require any further authorization or consent of its sole shareholder. This Agreement has been, and as of Closing the Transaction Documents will have been, duly authorized, executed and delivered by Buyer and (assuming the valid authorization, execution and delivery of this Agreement by the Company, the Members, and the Member Representative) is the legal, valid and binding agreement of Buyer, and is Enforceable against Buyer.

Section 5.3. Conflicts. The execution and delivery by Buyer of this Agreement and the Transaction Documents, and the performance by it of its obligations hereunder and thereunder, does not and will not:

(a) violate any provision of the organizational documents of Buyer;

(b) to the knowledge of Buyer, violate any provision of Law;

(c) require a registration, filing, application, notice, consent, approval, order, qualification, authorization, designation, declaration or waiver with, to or from any Governmental Authority; or

(d) (i) require a consent, approval or waiver from, or notice to, any party to any Contract to which Buyer is a party, or (ii) result in a breach of, constitute a default under, or result in the acceleration of material obligations, loss of material benefit or increase in any material liabilities or fees under, or create in any party the right to terminate, cancel or modify, any Contract to which Buyer is a party.

Section 5.4. No Litigation. There is no Legal Proceeding pending or, to the knowledge of Buyer, threatened, against Buyer or its Affiliates which would reasonably be expected to prevent, hinder or delay the consummation of any of the transactions contemplated hereby. There is no Legal Proceeding pending or, to the knowledge of Buyer, threatened, that questions the legality or propriety of the transactions contemplated by this Agreement.

Section 5.5. Financial Capability. Buyer has sufficient funds and adequate financial resources to satisfy its monetary and other obligations (including to consummate the purchase and sale of the Shares) under this Agreement. Buyer acknowledges that the obligations of Buyer under this Agreement are not contingent upon or subject to any conditions regarding Buyer's, its Affiliates', or any other Person's ability to obtain financing for the consummation of the transactions contemplated hereby.

Section 5.6. Investment Representations.

(a) Buyer is acquiring the Units solely for investment purposes and not with a view to, or for sale in connection with, any distribution thereof in violation of any Law (including the Securities Act of 1933 (the "Securities Act")), and Buyer is an "accredited investor" as defined in Rule 501(a) promulgated under the Securities Act.

(b) Buyer acknowledges the Units are not registered under the Securities Act or any other applicable securities or "blue-sky" Laws, and that the Units may not be transferred or sold except pursuant to the registration provisions of such Securities Act or pursuant to an applicable exemption therefrom and pursuant to any other applicable securities or "blue-sky" Laws.

(c) There are no existing Contracts pursuant to which Buyer will divest or otherwise dispose of the Units or the assets of or equity in, or by any other manner, the Company.

Section 5.7. R&W Insurance Policy. Buyer has obtained, at Buyer's sole expense, third-party insurance in respect of certain inaccuracies or breaches of the representations and warranties made by the Members and the Company in this Agreement and in respect of the Members' indemnification obligations with respect to Taxes (the "R&W Insurance Policy"), which R&W Insurance Policy is in full force and effect. A true and complete copy of the R&W Insurance Policy is attached hereto as Exhibit B. Buyer has reviewed the R&W Insurance Policy and fully understands the effect of the R&W Insurance Policy, including the exclusions described in such policy. The waiver of subrogation rights contained in Section 12 of such R&W Insurance Policy shall not be amended without the prior written consent of the Member Representative.

Section 5.8. Brokers' Fees. Except for such fees and commissions as will be paid by Buyer or its Affiliates, neither Buyer nor any Affiliate thereof has become obligated to pay any fee or commission to any broker, finder or intermediary, for or on account of the transactions contemplated by this Agreement.

ARTICLE 6
COVENANTS

Section 6.1. Public Disclosure. Notwithstanding anything to the contrary contained in this Agreement, except as may be required to comply with the requirements of any applicable Law, from and after the date hereof, no party shall make any press release or similar public announcement or public communication relating to this Agreement unless specifically approved in advance by Buyer and the Member Representative, which approval shall not be unreasonably withheld, conditioned or delayed. Nothing contained in this Agreement will prohibit any advisor to the Company from issuing or causing publication following the Closing of any tombstone or similar advertisement in customary form, provided that no such tombstone or similar advertisement shall contain information regarding the Purchase Price and provided further that Buyer shall have the right to approve any such tombstone or advertisement prior to publication, which approval shall not be unreasonably withheld or delayed.

Section 6.2. Restrictive Covenants. DeZonia and each Member agrees that, during the Period beginning on the Closing Date and ending on the fifth (5th) anniversary of the Closing Date (the "Restrictive Period):

(a) Non-Competition. Neither DeZonia nor any Member shall, directly or indirectly (including through any Affiliate or Representative), whether as a sole proprietor, owner, officer, director, employee, consultant, agent, representative, or otherwise, (a) engage anywhere in North America in the business of designing, manufacturing, marketing, distributing, and/or selling vehicle bodies, work trucks, and/or any accessories for vehicle bodies or work trucks (the "Restricted Business"), or (b) own, manage, control, or participate in the ownership, management, or control of, lend money or capital to or invest capital in, any business or Person that engages in a Restricted Business anywhere in North America; provided, however, neither DeZonia nor such Member shall be prohibited from owning up to two percent (2%) of the outstanding stock of a corporation that is publicly traded on a national securities exchange or in the over-the-counter market so long as DeZonia or such Member has no participation in such corporation other than purely passive ownership of such stock.

(b) Non-Solicitation of Customers. Neither DeZonia nor any Member shall, directly or indirectly (including through any Affiliate or Representative) solicit or entice, or attempt to solicit or entice, any clients or customers of the Company or any of its Affiliates or potential clients or customers of the Company or any of its Affiliates for purposes of diverting their business or services from the Company, or otherwise interfere in any material respect with the business relationships (whether formed prior to or after the date of this Agreement) between the Company or any of its Affiliates and their respective customers or suppliers.

(c) Non-Solicitation of Employees. Neither DeZonia nor any Member shall, directly or indirectly (including through any Affiliate or Representative), (a) induce or attempt to induce any employee of the Company or any of its Affiliates to leave the employ of the Company or such Affiliate, or (b) hire any person who was an employee of the Company or any of its Affiliates at any time from the date hereof through the end of the Restrictive Period.

(d) From and after the Closing, DeZonia and each Member shall hold in confidence and shall not disclose or use for his or her own benefit any and all information, whether written or oral, concerning the Company, including this Agreement and the other Transaction Documents, except to the extent that DeZonia or a Member can show that such information (a) is generally available to and known by the public through no fault of DeZonia, any Member, any Affiliates of a Member, or their respective Representatives; or (b) is lawfully acquired by DeZonia, such Member, any of his or her Affiliates or their respective Representatives from and after the Closing from sources that are not prohibited from disclosing such information by a legal, contractual, or fiduciary obligation. If DeZonia, any Member, any of his or her Affiliates, or their respective Representatives are compelled to disclose any information by judicial or administrative process or by other requirements of Law, DeZonia or such Member, as the case may be, shall promptly notify Buyer in writing and shall disclose only that portion of such information DeZonia or such Member is advised by its counsel in writing is legally required to be disclosed, provided that DeZonia and such Member shall use reasonable best efforts to obtain an appropriate protective order or other reasonable assurance that confidential treatment will be accorded such information.

(e) DeZonia and each Member agrees that the covenants and undertakings contained in this Section 6.2 are reasonable and necessary to protect the legitimate interests of Buyer (including the significant goodwill of the Company being acquired by Buyer), constitute a material inducement to Buyer to enter into this Agreement and consummate the transactions described in this Agreement, relate to matters which are of a special, unique and extraordinary character, and a violation of any of the terms of this Section 6.2 could cause irreparable injury to Buyer, the amount of which will be impossible to estimate or determine and which cannot be adequately compensated. Accordingly, the remedy at law for any breach of this Section 6.2 will be inadequate. Therefore, Buyer will be entitled to a temporary and permanent injunction, restraining order or other equitable relief from any court of competent jurisdiction in the event of any breach or threatened breach of this Section 6.2, without the need to post bond. The parties agree that, if any court of competent jurisdiction determines that a specified time period, a specified geographical area, a specified business limitation or any other relevant feature of this Section 6.2 is unreasonable, arbitrary or against public policy, then any court is expressly empowered to reform such covenant, and such covenant shall be deemed reformed, in such jurisdiction to the maximum time, geographic, product, or service, or other limitations permitted by applicable Law. The covenants contained in this Section 6.2 and each provision hereof are severable and distinct covenants and provisions. The invalidity or unenforceability of any such covenant or provision as written shall not invalidate or render unenforceable the remaining covenants or provisions hereof, and any such invalidity or unenforceability in any jurisdiction shall not invalidate or render unenforceable such covenant or provision in any other jurisdiction.

Section 6.3. Release.

(a) Buyer agrees that, effective as of the Closing Date, the Company shall be deemed to have released and discharged each Member and such Member's successors and assigns from any and all claims, demands, liabilities, damages, debts, obligations, assessments, liens, penalties, costs, fees and causes of action, whether known or unknown, liquidated or contingent, relating to, arising out of or in any way connected with the dealings of the Company and such Person from the beginning of time through the Closing Date, it being understood, however, that such release shall not operate to release such Person from any indemnity obligations, if any, under Article 8 or any other obligations of such Person pursuant to this Agreement or any Transaction Document. Buyer acknowledges that the Laws of many states (including Section 1542 of the California Civil Code) provide substantially the following: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." Buyer acknowledges that such provisions are designed to protect a party from waiving claims which it does not know exist or may exist. Nonetheless, Buyer agrees that, effective as of the Closing Date, the Company and Buyer shall be deemed to waive any such provision. Buyer further agrees that neither Buyer nor the Company shall, nor permit any Affiliate thereof to, (a) institute a lawsuit or other legal proceeding based upon, arising out of, or relating to any of the released claims, (b) participate, assist, or cooperate in any such proceeding or (c) encourage, assist and/or solicit any third party to institute any such proceeding.

(b) DeZonia and each Member agrees that, effective as of the Closing Date, DeZonia and all Members shall be deemed to have released and discharged the Company, Buyer, and their respective Affiliates, successors, and assigns from any and all claims, demands, liabilities, damages, debts, obligations, assessments, liens, penalties, costs, fees and causes of action, whether known or unknown, liquidated or contingent, relating to, arising out of or in any way connected with the dealings of DeZonia or a Member, on one hand, and any such Person, on the other hand, from the beginning of time through the Closing Date, it being understood, however, that such release shall not operate to release Buyer from any indemnity obligations, if any, under Article 8 or any other obligations of Buyer pursuant to this Agreement or any Transaction Document. DeZonia and each Member acknowledges that the Laws of many states (including Section 1542 of the California Civil Code) provide substantially the following: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY." DeZonia and each Member acknowledges that such provisions are designed to protect a party from waiving claims which it does not know exist or may exist. Nonetheless, DeZonia and each Member agrees that, effective as of the Closing Date, DeZonia and such Member shall be deemed to waive any such provision. DeZonia and each Member further agrees that neither he, she, nor any Person acting or purporting to act on behalf of him or her (including any heirs or beneficiaries) shall, (a) institute a lawsuit or other legal proceeding based upon, arising out of, or relating to any of the released claims, (b) participate, assist, or cooperate in any such proceeding or (c) encourage, assist and/or solicit any third party to institute any such proceeding.

Section 6.4. Access to Records after Closing.

(a) For a period of ten (10) years after the Closing Date, each Member and its Representatives shall have reasonable access to all of the books and records of the Company, to the extent that such access may reasonably be required in connection with matters relating to or affected by the operations of the Company prior to the Closing Date, including the preparation of the Member's financial reports or Tax Returns, any Tax audits, the defense or prosecution of Legal Proceedings, and any other reasonable need of the Member to consult such books and records. Such access shall be afforded by Buyer upon receipt of reasonable advance notice and during normal business hours and at the Members' sole cost and expense. In addition, if Buyer or the Company, or any of their respective Affiliates, shall desire to dispose of any of such books or records prior to the expiration of such ten (10) year period, Buyer shall, prior to such disposition, give the Members a reasonable opportunity to segregate and remove such books and records as the Members may select, at such Members' sole cost and expense.

(b) Any Member may retain copies of any Contracts, documents or records of the Company: (i) which are required to be retained by such Member pursuant to applicable Law, or (ii) which are necessary for such Member's Tax purposes.

Section 6.5. Directors' and Officers' Indemnification and Exculpation.

(a) Buyer agrees that all rights to indemnification and exculpation for acts or omissions occurring prior to the Closing now existing in favor of the current or former directors or officers (or persons holding similar positions) of the Company who have the right to indemnification or exculpation by the Company (collectively, the "Covered Persons") as provided in its Organizational, indemnity or indemnification agreements disclosed in the Disclosure Schedule, or as provided under Law shall survive the transactions contemplated hereby and shall continue in full force and effect in accordance with their terms for a period of not less than six (6) years from the Closing.

(b) The provisions of this Section 6.5 are (i) intended to be for the benefit of, and shall be enforceable by, each Covered Person and each other Person entitled to indemnification or coverage under a policy referenced in this Section 6.5, and each such Person's heirs, legatees, representatives, successors and assigns, it being expressly agreed that such Persons shall be third party beneficiaries of this Section 6.5, and (ii) in addition to, and not in substitution for, any other rights to indemnification or contribution that any such Person may have by Contract or otherwise.

(c) If Buyer or its successors or assigns (i) shall consolidate with or merge into any other Person and shall not be the continuing or surviving corporation or entity of such consolidation or merger or (ii) shall transfer all or substantially all of its properties and assets to any Person, then, and in each such case, proper provisions shall be made so that the successors and assigns of Buyer shall assume all of the obligations of Buyer set forth in this Section 6.5.

Section 6.6. Claims Made Insurance. At or prior to the Closing, the Company shall purchase tail insurance for each policy set forth on Section 6.6 of the Disclosure Schedule, on the terms set forth in such Schedule. Buyer shall, and shall cause the Company to, (i) upon the request of the Member Representative, make any claim for coverage under any such policy and take any action reasonably requested by the Member Representative to obtain reimbursement for covered losses under any such policy or to otherwise enforce any such policy or any provision thereof, (ii) promptly inform the Member Representative of any communication received by Buyer or the Company from, or given by Buyer or the Company to, any Person issuing any such insurance policy, (iii) permit the Member Representative to review any written communication from any such insurance provider and permit the Member Representative to review, before submission, any written communication to such insurance provider, (iv) consult with the Member Representative in advance of any meeting or conference with such insurance provider and, to the extent permitted by such insurance provider, give the Member Representative the opportunity to attend and participate, (v) upon the Member Representative's request, promptly furnish to the Member Representative certificates of insurance evidencing such policy and (vi) not agree to settle or compromise any claim under such policy without the Member Representative's prior written consent.

Section 6.7. Employment Matters.

(a) For a period of no less than one year following the Closing Date (the "Continuation Period"), Buyer shall, or shall cause its Affiliates (including the Company following the Closing) to, maintain the terms and conditions of employment of each of the Employees on terms and conditions that are no less favorable to each Employee than the terms and conditions of employment of such Employee provided by the Company immediately prior to the Closing, including terms relating to salary, incentive compensation opportunities, medical benefits, fringe benefits, work location and position. In addition, and without limiting the immediately preceding sentence, during the Continuation Period, Buyer shall offer, or shall cause its Affiliates (including the Company following the Closing) to offer, each Employee participation in either the Benefit Plans, or employee benefit plans, agreements, programs, policies and arrangements of Buyer or any of its Affiliates (the "Buyer Plans"), in either case, that shall be no less favorable in the aggregate than the Benefit Plans and other employee benefit plans, programs and arrangements in effect immediately prior to the Closing with respect to such Employee. From and after the Closing, Buyer shall, or shall cause its Affiliates or the Company to, (i) provide coverage for Employees and their eligible dependents under its or their medical, dental and health plans without interruption of coverage; (ii) cause there to be waived any pre-existing condition, actively at work requirements, waiting periods and any other similar restriction; and (iii) cause the Buyer Plans to honor any expenses incurred by the Employees and their eligible dependents under similar plans of the Company prior to the Closing in the plan year in which the Closing occurs for purposes of satisfying applicable deductible, co-insurance and maximum out-of-pocket expenses, and with respect to any lifetime maximums, as if there had been a single continuous employer. Nothing herein shall prevent Buyer, its Affiliates or the Company from terminating the employment of any Employee during the Continuation Period, provided that Buyer complies with the provisions of this Section 6.7.

(b) For purposes of eligibility, level of benefits, vesting and benefit accruals (other than benefit accruals under a defined benefit pension plan) under each Buyer Plan in which Employees are eligible to participate following the Closing, Buyer shall, and shall cause its Affiliates or the Company to, give each Employee full credit under each such Buyer Plan for all service with the Company, their Affiliates and any predecessor employer prior to the Closing to the same extent as such service was recognized for such purpose by the Company and/or its Affiliates prior to the Closing; provided, however, that such service shall not be credited to the extent that it would result in a duplication of benefits.

(c) Notwithstanding any other provision of this Agreement, nothing contained in this Section 6.7(c) shall (i) be deemed to be the adoption of, or an amendment to, any employee benefit plan, program, arrangement, contract or practice, or otherwise limit the right of the Company, Buyer or their respective Affiliates, to amend, modify or terminate any employee benefit plan, program, arrangement, contract or practice or (ii) give any third party any right to enforce the provisions of this Section 6.7.

Section 6.8. Tax Matters.

(a) Buyer shall prepare or cause to be prepared all income Tax Returns required or permitted to be filed by the Company for taxable periods ending prior to or on the Closing Date which are to be filed after the Closing Date (the "Member Returns") in a manner consistent with the Company's past practice, except as otherwise required by applicable Law, and in accordance with the provisions of this Agreement. For the avoidance of doubt, the Member Returns shall not include any personal tax return of the Members. The Company shall pay for the costs and expenses of preparing and filing all Member Returns and, subject to the provisions of Article 8, the Company shall pay all Taxes reflected as due and payable on all Member Returns. The parties shall make available to each other (and to their respective accountants and attorneys) any and all books and records and other documents and information in its possession or control relating to the Company reasonably requested by such Persons in order to prepare or review such Member Returns. The Member Representative shall be permitted to file amended Tax Returns of the Company for taxable periods ending prior to or on the Closing Date, provided that no amendment of any such Tax Return shall be made without prior written consent of Buyer, which consent may not be unreasonably withheld, conditioned or delayed.

(b) Except for Member Returns, Buyer shall prepare or cause to be prepared and shall cause the Company to file all Tax Returns of the Company for periods ending prior to or on the Closing Date which are to be filed after the Closing Date (provided that no amendment of any such Tax Return shall be made without prior written consent of the Member Representative, which consent may not be unreasonably withheld, conditioned or delayed) in a manner consistent with the Company's past practice, except as otherwise required by applicable Law, and in accordance with the provisions of this Agreement; and, subject to the provisions of Article 8, the Company shall pay all Taxes reflected as due and payable on all such Tax Returns. Buyer shall permit the Member Representative to review and comment on each Tax Return described in the preceding sentence prior to filing, and each such Tax Return shall be subject to review and approval by the Member Representative (which approval shall not be unreasonably withheld) prior to filing.

(c) Buyer shall prepare and file or cause to be prepared and filed when due all Tax Returns for the Company required to be filed for all periods beginning on or after the Closing Date. Buyer shall pay and be liable for (or shall cause the Company to pay) all Taxes of the Company with respect to such periods or which arise in respect of any event, action, or transaction which occurred during such periods.

(d) Buyer shall prepare and file or cause to be prepared and filed when due any Tax Returns of the Company for Tax periods which begin before the Closing Date and end after the Closing Date (each such period, a "Straddle Period") in a manner consistent with the Company's past practice, except as otherwise required by applicable Law, and in accordance with the provisions of this Agreement; and, subject to the provisions of Article 8, the Company shall pay all Taxes reflected as due and payable on all such Tax Returns. Buyer shall permit the Member Representative to review and comment on each Tax Return described in the preceding sentence prior to filing, and each such Tax Return shall be subject to review and approval by the Member Representative (which approval shall not be unreasonably withheld) prior to filing. For purposes of this Section 6.8(d), in the case of any Taxes that are imposed on a periodic basis and are payable for a Straddle Period, the portion of such Tax which relates to the portion of such taxable period ending on the Closing Date (the "Pre-Closing Straddle Period Taxes") shall (i) in the case of any Taxes other than Taxes based upon or related to income or receipts, be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in the entire taxable period, and (ii) in the case of any Tax based upon or related to income or receipts be deemed equal to the amount which would be payable if the relevant taxable period ended on the Closing Date.

(e) Any credits, refunds and other recoveries of Pre-Closing Straddle Period Taxes, or any Taxes with respect to periods ending prior to or on the Closing Date, shall belong to the Members and be paid to them promptly upon any credit thereof to, or receipt or recovery thereof by, Buyer, the Company or any of their Affiliates. Any credits, refunds or recoveries of Company Taxes for a Straddle Period (other than Pre-Closing Straddle Period Taxes) shall belong to the Company. All determinations necessary to give effect to the foregoing allocations shall be made in a manner consistent with prior practice of the Company.

(f) Buyer shall promptly notify the Member Representative following receipt of any notice of audit or other proceeding relating to any Member Return or any other federal or state Tax Return filed on or before the Closing Date (together with all Member Returns, the "Prior Period Returns"). The Member Representative shall control any and all audits or other proceedings and litigation relating to any Prior Period Return, including the filing of an amended Tax Return, and Buyer and the Member Representative shall have joint control of any and all audits or other proceedings and litigation relating to a Tax Return for a Straddle Period, including the filing of an amended Tax Return. Neither the Member Representative nor Buyer shall settle or compromise an audit or other proceeding or litigation relating to a Tax Return for a Straddle Period without the prior written consent of the other party, which consent shall not be unreasonably withheld, conditioned or delayed. If Buyer receives a notice of final partnership adjustment (as described in Code Section 6231(a)) for the Company with respect to any Tax period ending on or before the Closing Date, Buyer shall make the election under Code Section 6226 (the "Push-Out Election"). Buyer shall make such Push-Out Election no later than thirty (30) days after receiving the notice of final partnership adjustment and shall provide to the Member Representative each Member's share of any adjustment to a partnership-related item as determined in the notice of final partnership adjustment.

(g) The parties shall cooperate (and cause their respective Affiliates to cooperate) fully, as and to the extent reasonably requested by the other parties, in connection with the preparation and filing of Tax Returns pursuant to this Section 6.8 and any Tax audit, litigation or other proceeding with respect to Taxes and payments in respect thereof. Such cooperation shall include the retention and (upon the other parties' request) the provision of records and information which are reasonably relevant to any such Tax audit, litigation or other proceeding and making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder. Buyer and the Company shall retain all books and records with respect to Tax matters pertinent to the Company relating to any taxable period beginning before the Closing Date until the expiration of the statute of limitations (and, to the extent notified by Buyer, any extensions thereof) of the respective taxable periods, and to abide by all record retention agreements entered into with any Governmental Authority. Each of the parties shall furnish the other parties with copies of all relevant correspondence received from any Governmental Authority in connection with any Tax audit or information request with respect to any Taxes for which any other party may have an indemnification obligation under this Agreement. Buyer and the Member Representative agree, upon request, to provide the other party with all information that either party may be required to report pursuant to Sections 6043 and 6043A of the Code and all Treasury Regulations promulgated thereunder.

Section 6.9. [Intentionally omitted.]

Section 6.10. R&W Insurance Policy. From and after the Closing, Buyer (a) shall provide Member Representative with prompt written notice of any claim made against the R&W Insurance Policy and (b) shall not amend, modify, supplement or otherwise change, terminate or waive any provision of the R&W Insurance Policy, including, but not limited to the waiver of subrogation rights, in a manner materially adverse to the Members without the prior written consent of Member Representative. The Members shall use commercially reasonable efforts to cooperate with Buyer in connection with any claim made by Buyer under the R&W Insurance Policy, to the extent that their cooperation would assist Buyer in pursuing and obtaining the maximum recovery available in respect of such claim.

Section 6.11. Post-Closing Company Obligations. Buyer shall cause the Company to comply with all post-Closing Company obligations set forth herein.

ARTICLE 7
[INTENTIONALLY OMITTED]

ARTICLE 8
INDEMNIFICATION

Section 8.1. Survival.

(a) General Representations and Warranties. Except as set forth in Sections 8.1(b) and 8.1(c) below, the representations and warranties contained herein or in any certificate delivered by a party at the Closing pursuant hereto shall survive the Closing and will continue in full force and effect for a period from the date hereof until the first (1st) anniversary of the Closing (the "General Survival Date").

(b) Fundamental Representations and Warranties. The representations and warranties contained in Section 3.1 (Authority and Enforceability), Section 3.4 (Ownership of Units), Section 3.5 (Brokers' Fees), Section 4.1(a) and 4.1(b) (Organization and Power), Section 4.2 (Authority and Enforceability), Section 4.4 (Capitalization), Section 4.9 (Taxes), Section 4.27 (Brokers' Fees), Section 5.1 (Organization and Power), Section 5.2 (Authority and Enforceability) and Section 5.8 (Brokers' Fees) (collectively, the "Fundamental Representations") shall survive the Closing and will continue in full force and effect for a period from the date hereof until the date that is 90 days after the expiration of the applicable statute of limitations, after giving effect to any waiver, mitigation, or extension thereof (all of the foregoing the "Fundamental Survival Date").

(c) Environmental Representations and Warranties. The representations and warranties contained in Section 4.17 (Environmental Compliance) (the "Environmental Representations") shall survive the Closing and will continue in full force and effect for a period from the date hereof until the second (2nd) anniversary of the Closing (the "Environmental Survival Date").

(d) Replacement of Statute of Limitations. The parties specifically and unambiguously intend that the survival periods that are set forth in this Section 8.1 shall replace any statute of limitations that would otherwise be applicable.

(e) Covenants and Obligations. None of the covenants or other agreements contained in this Agreement shall survive the Closing other than those which by their terms contemplate performance after the Closing, and each such surviving covenant and agreement shall survive the Closing for the period contemplated by its terms.

(f) Expiration of Survival Periods. The parties hereby agree and acknowledge that the survival periods set forth in this Section 8.1 constitute a contractual statute of limitations, and no Indemnified Person shall be entitled to make any claim in respect of any representation, warranty, covenant or agreement after the expiration of its applicable Survival Date, except that (1) this limitation shall not apply to any claim alleging Fraud by any Member or the Company, and (2) any bona fide claim initiated by an Indemnified Person prior to the expiration of the applicable Survival Date in accordance with the provisions hereof with respect to Losses incurred prior thereto shall survive until it is settled or resolved pursuant to this Agreement to the extent that an Indemnified Person provides written notice of such breach or inaccuracy (which notice shall describe the applicable breach or inaccuracy in reasonable detail and indicate the estimated amount, if reasonably practicable, of Losses that have been or may be sustained by the applicable Indemnified Person in connection therewith) to the party to provide indemnity prior to the applicable Survival Date.

Section 8.2. Indemnification by the Member Indemnifying Persons. Subject to the terms of this Article 8, from and after the Closing, each Member Indemnifying Person shall, jointly and severally, indemnify Buyer and its Affiliates (which, for the sake of clarity, includes the Company) and their respective officers, directors, members, employees, agents, representatives, successors and permitted assigns (collectively, the "Buyer Indemnified Persons") and hold them harmless from and against any and all Losses incurred or suffered by a Buyer Indemnified Person resulting from or arising out of:

(a) any inaccuracy in or breach of any representation or warranty made by any Member in Article 3 or in any certificate or instrument delivered by any Member at the Closing pursuant hereto;

(b) any inaccuracy in or breach of any representation or warranty made by the Company in Article 4 or in any certificate delivered by the Company at the Closing pursuant hereto;

(c) any breach of or failure by any Member Indemnifying Person to perform any covenant or obligation of such Member Indemnifying Person to be performed after the Closing, as set out in this Agreement;

(d) any Company Transaction Expenses or Funded Indebtedness outstanding as of the Closing to the extent not taken into account in calculating the final Purchase Price pursuant to Article 2 above;

(e) Section 4980H of the Code with respect to any action or omission by the Company or any Member for any period ended on or prior to the Closing Date;

(f) any inaccuracy in or breach of any representation or warranty made by the Company in Article 4 with respect to the Real Property operated by the Company in Weatherford, Texas or Dallas, Texas;

(g) either (1) the Company's failure to comply with applicable Environmental Laws relating to wastewater discharge and/or failure to comply with the terms of any Permits for the discharge of wastewater at or from the Carson Facility to the extent that such non-compliance originated prior to Closing, and/or (2) the Company's failure to comply with applicable Environmental Laws relating to air quality and/or failure to comply with the terms of any Permits for the discharge of air contaminants or otherwise relating to air quality at or from the Carson Facility to the extent such non-compliance originated prior to Closing. For the sake of clarity, the Losses covered by this Section 8.2(g) include any fines or penalties incurred by the Company for any alleged non-compliance with Environmental Laws relating to its operation of the Carson Facility and any capital expenditures or other costs (including engineering or consulting fees, costs, and/or expenses) incurred by the Company to achieve compliance with such Laws; and/or

(h) either (1) any disputes between or among the owners and/or former owners of Lyons Main Carson LLC, the sublandlord of the Carson Facility, including in connection with any purchase by DeZonia and/or any of his Affiliates of membership interests in such entity on or about the date of this Agreement, (2) any breach or default by Lyons Main Carson LLC or any of its members pursuant to any such Person's obligations to any lender or to the owner of the Carson Facility pursuant to the Master Lease for such Carson Facility, and/or (3) any claim that the Second Amendment to Sublease for the Carson Facility, dated on or about the date of this Agreement, is not valid and enforceable against Lyons Main Carson LLC, as the sublandord of the Carson Facility.

Section 8.3. Indemnification by Buyer. Subject to the terms of this Article 8, from and after the Closing, Buyer shall indemnify the Members and their respective successors and permitted assigns (collectively, the "Member Indemnified Persons") and hold them harmless from and against any and all Losses incurred or suffered by a Member Indemnified Person resulting from or arising out of:

(a) any breach of any representation or warranty made by Buyer in this Agreement or in any certificate delivered by Buyer at the Closing pursuant hereto; or

(b) any breach of any covenant or agreement of Buyer or (if to be performed following the Closing) the Company contained in this Agreement.

Section 8.4. Limitations on Liability.

(a) Representations and Warranties Indemnity – Basket and Cap.

(i) The Member Indemnifying Persons shall have no liability pursuant to Section 8.2(a) or (b) except to the extent that the aggregate amount of Losses indemnifiable pursuant to such Sections exceeds an amount equal to one-half percent (0.5%) of the Base Purchase Price (the "Basket"), and then only in respect of such excess and subject to the other limitations herein provided; provided, however, that such limitation shall not apply to any breach or inaccuracy of any Fundamental Representation or of any representation and warranty based on Fraud by any Member or the Company. For the sake of clarity, the limitation set forth in this Section 8.4(a)(i) shall not apply to any claim by a Buyer Indemnified Person pursuant to Sections 8.2(c) through 8.2(h).

(ii) The Member Indemnifying Persons shall have no liability pursuant to Section 8.2(a) and (b) in an aggregate amount greater than one-half percent (0.5%) of the Base Purchase Price; provided, however, that such limitation shall not apply to any breach or inaccuracy of any Fundamental Representation, Environmental Representation or of any representation and warranty based on Fraud by any Member or the Company. For the sake of clarity, the limitation set forth in this Section 8.4(a)(ii) shall not apply to any claim by a Buyer Indemnified Person pursuant to Sections 8.2(c) through 8.2(h). Notwithstanding the foregoing, the Member Indemnifying Persons shall have no liability pursuant to Section 8.2(a) and 8.2(b) in an aggregate amount greater than one percent (1.0%) of the Base Purchase Price for any breach or inaccuracy of any Environmental Representation.

(iii) The Member Indemnifying Persons shall not have liability under this Agreement in an aggregate amount greater than the portion of the Purchase Price the Member Indemnifying Persons collectively receive.

(iv) Buyer shall have no liability pursuant to Section 8.3(a) except to the extent that the aggregate amount of Losses indemnifiable pursuant to such Section exceeds the Basket, and then only in respect of such excess and subject to the other limitations herein provided; provided, however, that such limitation shall not apply to any breach or inaccuracy of any Fundamental Representation or of any representation and warranty based on Fraud by Buyer.

(v) For purposes of this Article 8, any inaccuracy in or breach of any representation or warranty shall be determined without regard to any materiality, Material Adverse Effect or other similar qualification contained in or otherwise applicable to such representation or warranty.

(b) No Member Indemnifying Person shall have any liability pursuant to Section 8.2 with respect to a Loss to the extent such Loss relates to any item included on, or is a liability or loss reserved or accrued for (whether in whole or in part) in, the Closing Statement or that is otherwise taken into account in the calculation of any adjustment to the Purchase Price pursuant to Article 2.

Section 8.5. Other Limitations.

(a) Insurance Proceeds. For all purposes of this Article 8, "Losses" shall be net of any amounts actually received by an Indemnified Person under any insurance policy or Contract in connection with the facts giving rise to the right of indemnification hereunder; provided, however, that the amount deemed to be paid under such insurance policies shall be net of the deductible for such policies and all related costs and expenses, including the aggregate cost of pursuing the claims and any related increases in insurance premiums or other chargebacks. No Indemnified Person shall have any obligation to seek to recover any insurance proceeds in connection with making a claim under this Article 8.

(b) Deduction of Tax Benefits. In calculating any Loss, there shall be deducted any Tax benefit, credit or refund to which the applicable Indemnified Person actually realizes or receives as a result of such Loss.

(c) If the amount to be netted hereunder from any indemnification payment required hereunder is determined after payment by an Indemnifying Person to an Indemnified Person of any amount otherwise required to be paid as indemnification pursuant hereto, the Indemnified Person shall repay, promptly after such determination, any amount that the Indemnifying Person would not have had to pay pursuant hereto had such determination been made at the time of such payment.

(d) Subrogation. Upon making any payment to an Indemnified Person for any indemnification claim relating to a breach or inaccuracy of an Environmental Representation or pursuant to Section 8.2(g), the Indemnifying Person shall be subrogated, to the extent of such payment, to all rights of the Indemnified Person (and its Affiliates) against any third party other than a Governmental Authority in respect of the Losses to which such payment relates. Such Indemnified Person (and its Affiliates) and Indemnifying Person shall execute upon request all instruments reasonably necessary to evidence or further perfect such subrogation rights.

(e) Duplication. Notwithstanding the fact that any Indemnified Person may have the right to assert claims for indemnification under or in respect of more than one provision of this Agreement in respect of any fact, event, condition or circumstance, no Indemnified Person shall be entitled to recover the amount of any Loss suffered by such Indemnified Person more than once, regardless of whether such Loss may be as a result of a breach of more than one representation, warranty, obligation or covenant or otherwise; provided, however, that an Indemnified Person shall have the right to assert a claim for indemnification pursuant to such provision(s) of this Agreement as determined by such Indemnified Person in its discretion. In addition, any liability for indemnification hereunder shall be determined without duplication of recovery by reason of the state of facts giving rise to such liability, or a breach of more than one representation, warranty, covenant or agreement, as applicable.

(f) Environmental Losses. Notwithstanding anything to the contrary in this Agreement, if the Member Indemnifying Persons have an indemnification obligation under this Agreement with respect to a Loss arising out of or relating to Environmental Laws, other than a claim pursuant to Section 8.2(g) (an "Environmental Loss"), then:

(i) the Member Representative shall have the right to enter into the applicable premises and to observe any environmental investigation, monitoring, remediation, abatement, excavation or other response or removal action relating to such Environmental Loss;

(ii) the Member Indemnifying Persons shall indemnify the Buyer Indemnified Persons for the reasonable costs of any environmental response costs or remediation required pursuant to applicable Environmental Law with respect to such Loss; and

(iii) the Member Indemnifying Persons' indemnification obligation shall be limited to the cost of the least restrictive standard acceptable under Environmental Laws (including engineering or institutional controls or any lesser standards resulting from any site-specific risk assessments) in effect as of the date the activity or response action is implemented, based on the current use of the relevant facility or property. For the sake of clarity, the purpose of this Section 8.5(f)(iii) is to establish the standard for remediation activities and shall not limit the types of Losses a Buyer Indemnified Person is otherwise entitled to recover pursuant to this Article 8.

For the sake of clarity, the provisions of this Section 8.5(f) shall not apply to a claim made by a Buyer Indemnified Person pursuant to Section 8.2 (g).

(g) Tax Losses. Notwithstanding any other provision of this Agreement to the contrary, the Buyer Indemnified Persons shall have no right to indemnification under this Agreement with respect to, or based on, Taxes to the extent such Taxes (i) are attributable to any Tax period other than a Tax period (or portion of a Straddle Period) ending on or before the Closing Date, (ii) are due to the unavailability in any Tax periods (or portions thereof) beginning after the Closing Date of any net operating losses, credits or other Tax attributes from a Tax period (or portion thereof) ending on or before the Closing Date, or (iii) were already taken into account in the calculation of the Closing Working Capital.

Section 8.6. Source of Recovery Limitation. Notwithstanding any provision in this Agreement to the contrary, the Buyer hereby acknowledges and agrees that: (i) the Member Indemnifying Persons shall not be required to pay the Buyer Indemnified Persons any amounts with respect to Losses in excess of the Indemnity Escrow Funds by reason of any indemnification claim pursuant to Section 8.2(a) and 8.2(b), other than for claims with respect to the Fundamental Representations or the Environmental Representations or claims based on Fraud by the Company or any Member, and (ii) accordingly once the Indemnity Escrow Funds are exhausted, the sole recourse and remedy of the Buyer Indemnified Persons for indemnification pursuant to Section 8.2(a) and 8.2(b), other than for claims with respect to the Fundamental Representations, Environmental Representations or claims based on Fraud by the Company or any Member, shall be made against and, to the extent of, the R&W Insurance Policy. NOTWITHSTANDING ANY PROVISION IN THIS AGREEMENT TO THE CONTRARY, BUYER, ON BEHALF OF ITSELF AND THE OTHER BUYER INDEMNIFIED PERSONS, ACKNOWLEDGES AND AGREES THAT THE FOREGOING SHALL CONTINUE TO APPLY EVEN IF (i) THE R&W INSURANCE POLICY IS REVOKED, CANCELLED OR MODIFIED, OR EXPIRES, IN ANY MANNER (AND EVEN IF THE R&W INSURANCE POLICY IS NOT ISSUED); (ii) ANY CLAIM MADE AGAINST THE R&W INSURANCE POLICY IS DENIED BY THE INSURER; OR (iii) ALL AMOUNTS PERMITTED TO BE RECOVERED AGAINST THE R&W INSURANCE POLICY HAVE BEEN RECOVERED.

Section 8.7. Indemnification Procedures.

(a) Non-Third-Party Claims. Each Indemnified Person shall assert any claim on account of any Losses as to which an Indemnifying Person may have liability hereunder (assuming, only for the purposes of this Section 8.7, that the Basket was zero), and which do not result from a Third-Party Claim (a "Direct Claim") by giving the Indemnifying Person written notice thereof reasonably promptly following the Indemnified Person's discovery of the applicable Losses reasonably likely to give rise to a claim under this Article 8. Such notice by the Indemnified Person shall describe the Direct Claim in reasonable detail and indicate the estimated amount, if reasonably practicable, of Losses that have been or may be sustained by the Indemnified Person; provided, however, that the failure to timely give such notice shall not affect the rights of an Indemnified Person hereunder (i) unless such failure has an actual and material prejudicial effect on the defenses or other rights available to the Indemnifying Person with respect to such Direct Claim or on the Indemnifying Person's ability to mitigate such Direct Claim, (ii) unless the indemnification obligations are materially increased as a result of such failure; or (iii) as provided in Section 8.1.

(b) Third-Party Claim Indemnification Procedures.

(i) In the event that any written claim or demand for which a party (in such capacity, an "Indemnifying Person") may have liability to any Indemnified Person hereunder (assuming, only for the purposes of this Section 8.7, that the Basket was zero), other than those relating to Taxes (which are the subject of Section 6.8), is asserted against or sought to be collected from any Indemnified Person by a third party (a "Third-Party Claim"), such Indemnified Person shall promptly, but in no event more than thirty (30) days following such Indemnified Person's receipt of a Third-Party Claim notify the Indemnifying Person of such Third-Party Claim, the amount or the estimated amount of damages sought thereunder to the extent then ascertainable, any other remedy sought thereunder, any relevant time constraints relating thereto, a reasonably detailed explanation of the events giving rise to such Third-Party Claim and any other material details pertaining thereto (a "Claim Notice"); provided, however, that the failure to timely give a Claim Notice shall not relieve the Indemnifying Person of its obligations hereunder, except to the extent that the Indemnifying Person shall have been actually and materially prejudiced by such failure or as provided in Section 8.1.

(ii) In the event that the Indemnifying Person notifies the Indemnified Person that it elects to defend the Indemnified Person against a Third-Party Claim, the Indemnifying Person shall have the right to defend the Indemnified Person by appropriate proceedings and shall have the sole power to direct and control such defense at its expense; provided, that if the Indemnifying Party is any Member Indemnifying Person, such Indemnifying Party shall not have the right to defend or direct the defense of any such Third-Party Claim that (x) is asserted directly by or on behalf of a Person that is a supplier or customer of the Company, or (y) seeks an injunction or other equitable relief against the Indemnified Party. Once the Indemnifying Person has made such election, the Indemnified Person shall have the right to participate in (but not control) any such defense and to employ separate counsel of its choosing at such Indemnified Person's expense; provided, that if in the reasonable opinion of counsel to the Indemnified Person, (A) there are legal defenses available to an Indemnified Person that are different from or additional to those available to the Indemnifying Person; or (B) there exists a conflict of interest between the Indemnifying Person and the Indemnified Person that cannot be waived, the Indemnifying Person shall be liable for the reasonable fees and expenses of counsel to the Indemnified Person in each jurisdiction for which the Indemnified Person determines counsel is required. If the Indemnifying Person elects not to compromise or defend such Third Party Claim, fails to promptly notify the Indemnified Person in writing of its election to defend as provided in this Agreement, or fails to diligently prosecute the defense of such Third Party Claim, the Indemnified Party may pay, compromise, and defend such Third-Party Claim and seek indemnification for any and all Losses based upon, arising from or relating to such Third-Party Claim. If the Indemnifying Person assumes the defense of a Third-Party Claim and is in good faith contesting such Third-Party Claim, the Indemnified Person shall agree to any settlement, compromise or discharge of a Third-Party Claim that the Indemnifying Person may reasonably recommend and that by its terms (i) obligates the Indemnifying Person to pay the full amount of Losses in connection with such Third-Party Claim (other than with respect to any Losses (or portion thereof) that are not required to be paid as a result of such Losses being (or portion thereof) within the Basket or in excess of the applicable limitations set forth in in this Article 8) and (ii) contains a full and unconditional release of all Indemnified Persons in connection with such Third-Party Claim.

(iii) The Indemnified Person and the Indemnifying Person shall cooperate in order to ensure the proper and adequate defense of a Third-Party Claim, including by providing reasonable access to each other's relevant books and records, by preserving such books and records and by making employees and representatives available on a mutually convenient basis during normal business hours to provide additional information and explanation of any material provided hereunder. The Indemnified Person and the Indemnifying Person shall use reasonable commercial efforts to avoid production of confidential information (consistent with applicable Law), and to cause all communications among employees, counsel and others representing any party to a Third-Party Claim to be made so as to preserve any applicable attorney-client or work-product privileges.

Section 8.8. Characterization of Indemnification Payments. All payments made (or deemed to be made, in accordance with this Agreement) by any Indemnifying Person to an Indemnified Person with respect to any claim pursuant to Section 8.2 or Section 8.3 shall be treated, to the fullest extent possible under applicable Law, as adjustments to the Purchase Price for Tax purposes.

Section 8.9. Exclusive Remedy. Notwithstanding anything to the contrary herein, except as provided in Section 2.3 (Post-Closing Determination) and Section 6.2 (Restrictive Covenants) and except for claims alleging Fraud, from and after the Closing the rights and remedies of Buyer, the Company and the Members, and any Buyer Indemnified Person and any Member Indemnified Person (each Buyer Indemnified Person and Member Indemnified Person is referred to herein as an "Indemnified Person"), under this Article 8 are exclusive and in lieu of any and all other rights and remedies which Buyer, the Company or the Members, or any Indemnified Person, may have under this Agreement against each other with respect to this Agreement and the transactions contemplated hereby. IN FURTHERANCE OF THE FOREGOING, EACH PARTY HEREBY WAIVES, WITH RESPECT TO THIS AGREEMENT AND THE CONTEMPLATED TRANSACTIONS, ALL OTHER RIGHTS AND REMEDIES ARISING UNDER OR BASED UPON ANY STATUTORY OR COMMON LAW OR OTHERWISE, AND AGREES NOT TO BRING ANY ACTIONS OR PROCEEDINGS AT LAW, IN EQUITY, IN TORT OR OTHERWISE, INCLUDING RESCINDING THE AGREEMENT, IN RESPECT OF ANY BREACHES OF REPRESENTATIONS, WARRANTIES OR OTHER PROVISIONS OF THIS AGREEMENT OR IN CONNECTION WITH THE CONTEMPLATED TRANSACTIONS.

Section 8.10. Non-Recourse. Except as may otherwise be expressly set forth in this Article 8, no party shall have recourse whatsoever under this Agreement against any of the Representatives of the other parties (including for such purposes, the Representatives of any Affiliate of a party). Without limiting the generality of the foregoing, except as expressly set forth in this Article 8, Buyer, on behalf of itself and its Affiliates, and the Members, on behalf of themselves and their Affiliates, each hereby fully and irrevocably waives any right, claim or entitlement whatsoever against such Representatives relating to any and all Losses suffered or incurred by any of them arising from, based upon, related to, or associated with this Agreement or the transactions contemplated hereby (including any breach, termination or failure to consummate such transactions) in each case whether based on contract, tort, strict liability other laws or otherwise and whether by piercing of the corporate veil, by claim on behalf of or by a party hereto or other Person or otherwise.

Section 8.11 Environmental Indemnity Escrow Funds. The parties agree that the purpose of the Environmental Indemnity Escrow Funds is to reimburse the Buyer Indemnified Parties for costs, expenses, fines, penalties, and other Losses incurred by any Buyer Indemnified Party relating to the matters described in Section 8.2(g). Notwithstanding anything to the contrary in this Agreement, the procedures set forth in this Section 8.11 shall apply to claims by Buyer Indemnified Parties pursuant to Section 8.2(g), in lieu of the procedures and other provisions set forth in Section 8.7.

(a) From and after Closing, Buyer shall cause Company to use commercially reasonable efforts to take actions to: (1) comply with applicable Environmental Laws relating to wastewater discharge, and the terms of any Permits for the discharge of wastewater, at or from the Carson Facility, (2) comply with applicable Environmental Laws relating to air quality, and the terms of any Permits for the discharge of air contaminants or otherwise relating to air quality, at or from the Carson Facility. For purposes of clarification, compliance with applicable Environmental Laws may require the Company to obtain new Permits and/or modify existing Permits. Buyer shall have the right to receive disbursements from the Environmental Indemnity Escrow Funds for all costs, expenses, and other Losses (including capital expenditures and engineering, consulting, or other professional fees) by making a claim with the Escrow Agent in accordance with the provisions of the Escrow Agreement. Member Representative shall not be entitled to dispute any such claim unless the Loss for which the Buyer Indemnified Person is claiming reimbursement does not relate to the matters described in Section 8.2(g).

(b) Within thirty (30) days after both (1) the Company has operated the Carson Facility in compliance with all applicable Environmental Laws relating to wastewater discharge, and the terms of any Permits for the discharge of wastewater, at or from the Carson Facility for a period of six (6) continuous months, and (2) the Company has received all Permits necessary for the Company to operate its business at the Carson Facility in accordance with applicable Environmental Laws relating to air quality, and successfully completed any and all emissions tests required to establish or demonstrate compliance with such Permits, then Buyer shall direct the Escrow Agent, pursuant to the provisions of the Escrow Agreement, to disburse to the Member Representative a portion of the Environmental Indemnity Escrow Funds equal to (x) the then-current remaining balance of the Environmental Indemnity Escrow Funds, *less* (y) One Million Dollars ($1,000,000).

(c) Buyer shall cause the Company to notify the Member Representative of any third-party sampling or testing to be performed with respect to the matters described in this Section 8.11 and shall permit the Member Representative, upon request, to be present at the Carson Facility for the purpose of observing any such testing. In addition, Buyer shall provide the Member Representative with copies of (1) all testing data and third-party reports relating to such testing data with respect to the matters described in this Section 8.11, as long as any such information is not subject to any privilege in favor of any Buyer Indemnified Person, and (2) all written communications to or from any Governmental Authority with respect to the matters described in this Section 8.11. All information provided to the Member Representative pursuant to this Section 8.11, or to which the Member Representative otherwise has access pursuant to this Section 8.11, shall be subject to the confidentiality obligations set forth in Section 6.2(d).

ARTICLE 9
[INTENTIONALLY OMITTED]

ARTICLE 10
MISCELLANEOUS

Section 10.1. Member Representative.

(a) For purposes of this Agreement, the Members hereby designate Dudley DeZonia to serve as the sole and exclusive representative of the Members (the "Member Representative") with respect to those provisions of this Agreement that contemplate action by the Member Representative and with respect to the Escrow Agreement.

(b) The Member Representative is hereby constituted and appointed as agent and attorney-in-fact for and on behalf of the other Members with respect to the performance of his or her duties as the Member Representative. This power of attorney and all authority hereby conferred is coupled with an interest and is irrevocable and shall not terminate or otherwise be affected by the death, disability, incompetence, bankruptcy or insolvency of any Member. The Member Representative shall promptly deliver to each Member any notice received by the Member Representative concerning this Agreement. Without limiting the generality of the foregoing, the Member Representative has full power and authority, on behalf of each Member and such Member's successors and assigns, to: (i) interpret the terms and provisions of this Agreement and the documents to be executed and delivered by the Members in connection herewith, including the Escrow Agreement, (ii) execute and deliver and receive deliveries of all agreements, certificates, statements, notices, approvals, extensions, waivers, undertakings, amendments, and other documents required or permitted to be given in connection with the consummation of the transactions contemplated by this Agreement and the Escrow Agreement, (iii) receive service of process in connection with any claims under this Agreement or the Escrow Agreement, (iv) agree to, negotiate, enter into settlements and compromises of, assume the defense of claims, and demand arbitration and comply with orders of courts and awards of arbitrators with respect to such claims, and to take all actions necessary or appropriate in the judgment of the Member Representative for the accomplishment of the foregoing, (v) give and receive notices and communications, (vi) authorize delivery to Buyer of the Indemnity Escrow Funds or any portion thereof in satisfaction of claims brought by Buyer for Losses, (vii) object to such deliveries, (viii) distribute the Indemnity Escrow Funds and any earnings and proceeds thereon, (ix) assert the attorney-client privilege on behalf of the Members with respect to any communications that relate in any way to the transactions contemplated hereby, (x) deliver to Buyer any and all Transaction Documents executed by the Members and deposited with the Member Representative, upon the Member Representative's determination that the conditions to Closing have been satisfied or waived and (xi) take all actions necessary or appropriate in the judgment of the Member Representative on behalf of the Members in connection with this Agreement and the Escrow Agreement. Notwithstanding anything to the contrary herein, in the event of a claim hereunder against a single Member, and not all Members, such affected Member shall be entitled to control the defense of such claim.

(c) Service by the Member Representative shall be without compensation except for the reimbursement by the Members of out-of-pocket expenses and indemnification specifically provided herein.

(d) The Member Representative shall have no duties or responsibilities except those expressly set forth herein, and no implied covenants, functions, responsibilities, duties, obligations or liabilities on behalf of any Member shall otherwise exist against the Member Representative. The Member Representative shall not be liable to any Member relating to the performance of the Member Representative's duties or exercise of any rights under this Agreement for any errors in judgment, negligence, oversight, breach of duty or otherwise except to the extent it is finally determined in a court of competent jurisdiction by clear and convincing evidence that the actions taken or not taken by the Member Representative constituted actual fraud or were taken or not taken in bad faith. The Member Representative shall be indemnified and held harmless by the Members against all losses, including costs of defense, paid or incurred in connection with any action, suit, proceeding or claim to which the Member Representative is made a party by reason of the fact that the Member Representative was acting as the Member Representative pursuant to this Agreement; provided, however, that the Member Representative shall not be entitled to indemnification hereunder to the extent it is finally determined in a court of competent jurisdiction by clear and convincing evidence that the actions taken or not taken by the Member Representative constituted actual fraud or were taken or not taken in bad faith. The Member Representative shall be protected in acting upon any notice, statement or certificate believed by the Member Representative to be genuine and to have been furnished by the appropriate Person and in acting or refusing to act in good faith on any matter. The Member Representative shall not be liable to Buyer or any Affiliate of Buyer by reason of this Agreement or the performance of the Member Representative's duties hereunder or otherwise; provided that the Members shall be jointly and severally liable to Buyer for any breach of this Agreement by the Member Representative.

(e) Buyer shall be entitled to rely upon any actions taken by the Member Representative as the duly authorized action of the Member Representative on behalf of each Member with respect to any matters set forth in this Agreement or the Escrow Agreement.

Section 10.2. Notices. All notices, requests, consents, claims, demands, waivers and other communications hereunder shall be in writing and shall be deemed to have been given (a) when delivered by hand (with written confirmation of receipt); (b) one Business Day after being sent by a nationally recognized overnight courier (receipt requested); (c) on the date sent by facsimile or e-mail of a PDF document (with confirmation of transmission) if sent during normal business hours of the recipient, and on the next Business Day if sent after normal business hours of the recipient or (d) on the third (3rd) day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 10.2):

To Buyer:

Spartan Motors USA, Inc.
1541 Reynolds Rd.
Charlotte, MI 48813
Attention: Chief Counsel
Email: ryan.roney@spartanmotors.com
Facsimile No.: (517) 543-5403

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

Varnum LLP
333 Bridge St. NW, Suite 1700
Grand Rapids, MI 49504
Attention: Kimberly Baber
Email: kababer@varnumlaw.com
Facsimile No.: (616) 336-7000

To the Member Representative, DeZonia, or any Member:

Dudley DeZonia
2471 Hollyridge Dr.
Los Angeles, CA 90068
Attention: Dudley DeZonia
Email: dudleydezonia@gmail.com

With copies (which shall not constitute notice) to:

Heath Steinbeck, LLP
5777 W. Century Blvd., Ste. 765
Los Angeles, CA 90045
Attention: Roger R. Steinbeck, Esq.
Email: rsteinbeck@heathsteinbeck.com
Facsimile No.: (213) 335-6246

Section 10.3. Entire Agreement. This Agreement (including all Schedules, Exhibits and Appendices hereto) and the Transaction Documents contain the entire agreement among the parties with respect to the subject matter hereof and thereof, and supersede all prior and contemporaneous agreements and understandings, oral or written, with respect to such matters. All representations and warranties set forth in this Agreement are contractual in nature only and subject to the sole and exclusive remedies set forth herein. No Person is asserting the truth of any factual statements contained in any representation and warranty set forth in this Agreement; rather, the parties have agreed that should any representations and warranties of any party prove inaccurate, the other party shall have the specific remedies herein specified as the exclusive remedy therefor.

Section 10.4. Amendment; Waiver. Any provision of this Agreement may be amended or waived if, and only if, such amendment or waiver is in writing and signed, in the case of an amendment, by Buyer and the Member Representative, or in the case of a waiver, by the party against whom such waiver is intended to be effective. No failure or delay by any party in exercising any right, power or privilege hereunder shall operate as a waiver thereof nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

Section 10.5. No Assignment or Benefit to Third Parties. This Agreement shall be binding upon and inure to the benefit of the parties and their respective successors, legal representatives and permitted assigns. No party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other parties and any purported assignment in violation of the foregoing shall be null and void *ab initio;* provided, however, that Buyer shall be entitled to assign or delegate this Agreement or all or any part of its rights or obligations hereunder (a) to any one or more Affiliates of Buyer or (b) for collateral security purposes to any lender providing financing to Buyer; and provided further that any Member may assign any of his rights to payment and collection, effective upon his death or incapacity to his successors or legal representatives. No assignment or delegation shall relieve the assigning or delegating party of any of its obligations hereunder. Except as expressly set forth herein in Section 6.5 or Article 8, nothing in this Agreement, express or implied, is intended to confer upon any Person other than Buyer, the Company and the Members, and their respective successors, legal representatives and permitted assigns, any rights, benefits or remedies under or by reason of this Agreement.

Section 10.6. Expenses. Except as otherwise expressly provided in this Agreement, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be borne by the party incurring such costs and expenses. Notwithstanding the foregoing or anything to the contrary herein, (a) Buyer shall pay fifty percent (50%) of all fees and expenses relating to the Escrow Agent, and the Member Representative shall be responsible for the other fifty percent (50%) of such fees and expenses; and (b) Buyer shall pay all costs associated with the R&W Insurance Policy, including the premiums together with all taxes and application, underwriting or similar or other fees or expenses in connection with the R&W Insurance Policy.

Section 10.7. Disclosure Schedule.

(a) The "Disclosure Schedule" means that certain document identified as the Disclosure Schedule, dated as of the date hereof, delivered by the Members to Buyer in connection with this Agreement and which: (i) sets forth the information specifically described in certain of the representations and warranties contained in Article 3 and Article 4 and (b) sets forth exceptions or qualifications to the representations and warranties contained in Article 3 and Article 4. It is specifically acknowledged that the Disclosure Schedule may expressly provide exceptions to a particular Section of Article 3 or Article 4 notwithstanding that the Section does not state "except as set forth in Section '__' of the Disclosure Schedule" or words of similar effect.

(b) Neither the specification of any dollar amount in any representation or warranty contained in this Agreement nor the inclusion of any specific item in the Disclosure Schedule is intended to vary the definition of "Material Adverse Effect" or to imply that such amount, or higher or lower amounts, or the item so included or other items, are or are not material, and no party shall use the fact of the setting forth of any such amount or the inclusion of any such item in any dispute or controversy between the parties as to whether any obligation, item or matter not described herein or included in the Disclosure Schedule is or is not material for purposes of this Agreement. Unless this Agreement specifically provides otherwise, neither the specification of any item or matter in any representation or warranty contained in this Agreement nor the inclusion of any specific item in the Disclosure Schedule is intended to imply that such item or matter, or other items or matters, are or are not in the ordinary course of business, and no party shall use the fact of the setting forth or the inclusion of any such item or matter in any dispute or controversy between the parties as to whether any obligation, item or matter not described herein or included in the Disclosure Schedule is or is not in the ordinary course of business for purposes of this Agreement.

Section 10.8. Governing Law; Arbitration; Submission to Jurisdiction; Waiver of Jury Trial.

(a) This Agreement and all Legal Proceedings arising out of or relating to this Agreement ("Agreement Proceedings") shall be governed by, and construed in accordance with, the internal laws of the State of Michigan, without regard to the laws of any other jurisdiction that might be applied because of the conflicts of laws principles of such state.

(b) Except for injunctive or other equitable relief or as otherwise provided in this Agreement, any and all Agreement Proceedings shall be resolved by binding arbitration in Grand Rapids, Michigan, before three (3) arbitrators independent of the parties and selected in accordance with, and the arbitration shall be administered by JAMS pursuant to, JAMS' Comprehensive Arbitration Rules and Procedures excluding its optional Arbitration Appeal procedures; provided, however, that if the amount involved in the dispute is less than $1,000,000, there shall be only be (1) arbitrator; and provided further that any arbitrator designated pursuant to this Section 10.8(b) shall be a lawyer experienced in commercial and business affairs.

(c) All arbitration proceedings will be closed to the public and confidential, and all records relating thereto will be permanently sealed, except as necessary to obtain court confirmation of the judgment of the arbitrator, and except as necessary to give effect to res judicata and collateral estoppel. Nothing in this Section 10.8(c) is intended to, or shall, preclude a party to the arbitration from communicating with, or making disclosures to his or its lawyers, tax advisors, auditors and insurers, as necessary and appropriate or from making such other disclosures as may be required by any applicable law.

(d) To the maximum extent permitted by Law, the decision of the arbitrator shall be final and binding and not be subject to appeal. If a party against whom the arbitrator renders an award fails to abide by such award, the other party may seek to enforce such award in any court of competent jurisdiction.

(e) Except as otherwise provided in this Agreement, each party hereby (i) irrevocably and unconditionally submits to the exclusive jurisdiction of the applicable state or federal courts sitting in Kent County, Michigan, for purposes of all Agreement Proceedings, (ii) agrees not to commence any proceeding except in such courts and (iii) irrevocably waives, to the fullest extent permitted by Law, any objection which such party may now or hereafter have to the laying of the venue of any such court or that such proceeding has been brought in an inconvenient forum.

(f) To the extent permitted by Law, each party hereby knowingly, voluntarily and intentionally waives the right to a trial by jury in respect of any Agreement Proceedings.

Section 10.9. Construction. Unless the express context otherwise requires: (a) the words "hereof", "herein", and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement; (b) the terms defined in the singular have a comparable meaning when used in the plural, and vice versa; (c) the terms "Dollars" and "$" mean United States Dollars; (d) references herein to a specific Article, Section, clause, Schedule or Exhibit shall refer, respectively, to the Articles, Sections and clauses of, and Schedules and Exhibits to, this Agreement; (e) wherever the word "include," "includes," or "including" is used in this Agreement, it shall be deemed to be followed by the words "without limitation"; (f) any reference to the masculine, feminine or neuter gender shall include each other gender; (g) when reference is made herein to "the business of" a Person, such reference shall be deemed to include the business of all direct and indirect Subsidiaries of such Person, (h) all accounting and financial terms shall be deemed to have the meanings assigned thereto under GAAP unless expressly stated otherwise, (i) in the computation of periods of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each mean "to but excluding" and if the last day of any such period is not a Business Day, such period will end on the next Business Day, (j) when calculating the period of time "within" which or "following" which any act or event is required or permitted to be done, notice given or steps taken, the date which is the reference date in calculating such period is to be excluded from the calculation and if the last day of any such period is not a Business Day, such period will end on the next Business Day, (k) the provision of a table of contents and the insertion of headings are for convenience of reference only and shall not affect or be utilized in construing or interpreting this Agreement, (l) references to "day" means calendar days unless Business Days are expressly specified and (m) references to any Person includes such Person's predecessors, successors and assigns to the extent, in the case of successors and assigns, such successors and assigns are permitted by the terms of any applicable agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually. When this Agreement states that the Company has "made available," "delivered" or "provided" (or terms of similar import) a particular document or information to Buyer, it shall mean such document or information was made available by the Company or its Representatives via the posting of such items or information to the Electronic Data Room prior to Closing. All Exhibits and Schedules and Appendices annexed hereto or referred to herein are incorporated in and made a part of this Agreement as if set forth in full herein. The parties agree that they have been represented by counsel during the negotiation and execution of this Agreement and, therefore, waive the application of any applicable Law or rule of construction providing that ambiguities in an agreement or other document will be construed against the party or parties drafting such agreement or document.

Section 10.10. Counterparts; Effectiveness. This Agreement may be executed in several counterparts (any of which counterparts may be delivered by facsimile, portable document format (pdf) or any electronic signature complying with the U.S. federal ESIGN Act of 2000 (including DocuSign)), each of which shall be deemed an original and all of which shall together constitute one and the same instrument. This Agreement shall become effective when each party shall have received a counterpart hereof signed by all of the other parties; provided, however, that the Representative shall be deemed agent of the Members for purpose of receipt of signatures otherwise deliverable to them. Until and unless each party has received a counterpart hereof signed by the other parties, this Agreement shall have no effect and no party shall have any right or obligation hereunder (whether by virtue of any other oral or written agreement or other communication). Minor variations in the form of the signature page, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining a party's intent or the effectiveness of such signature.

Section 10.11. Severability. The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision hereof shall not affect the validity or enforceability of the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 10.12. Time of Essence. Time is of the essence for each and every provision of this Agreement.

Section 10.13. Specific Performance. The parties agree that irreparable harm would occur and that the parties would not have an adequate remedy at law if any of the provisions of this Agreement were not performed in accordance with their specific terms on a timely basis or were otherwise breached. It is accordingly agreed that, without posting bond or other undertaking, the parties shall be entitled to injunctive or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in any court of competent jurisdiction, this being in addition to any other remedy to which they are entitled at law or in equity. In the event that any such action is brought in equity to enforce the provisions of this Agreement, no party hereto will allege, and each party hereto hereby waives the defense or counterclaim, that there is an adequate remedy at law. The parties further agree that (a) by seeking any remedy provided for in this Section 10.13, a party hereto shall not in any respect waive its right to seek any other form of relief that may be available to such party hereto under this Agreement and (b) nothing contained in this Section 10.13 shall require any party hereto to institute any action for (or limit such party's right to institute any action for) specific performance under this Section 10.13 before exercising any other right under this Agreement.

Section 10.14. No Rescission. No party shall be entitled to rescind the transactions contemplated hereby by virtue of any failure of any party's representations and warranties herein to have been true or any failure by any party to perform its obligations hereunder.

Section 10.15. Legal Representation. Heath Steinbeck, LLP ("HSLLP") has acted as counsel for the Members and the Company in connection with this Agreement and the other Transaction Documents and the transactions contemplated hereby and thereby (the "Acquisition Engagement").

(a) Acquisition Engagement. All communications between Members or the Company and HSLLP in the course of the Acquisition Engagement shall be deemed to be attorney-client confidences that belong solely to the Members and not the Company. Accordingly, Buyer shall not have access to any such communications, or to the files of HSLLP relating to the Acquisition Engagement, whether or not the Closing occurs. Without limiting the generality of the foregoing, upon and after the Closing, (i) the Members and HSLLP shall be the sole holders of the attorney-client privilege with respect to the Acquisition Engagement, and neither the Company nor Buyer shall be a holder thereof, (ii) to the extent that files of HSLLP in respect of the Acquisition Engagement constitute property of the client, only the Members shall hold such property rights, and (iii) HSLLP shall have no duty whatsoever to reveal or disclose any such attorney-client communications or files to the Company or Buyer by reason of any attorney-client relationship between HSLLP and the Company or otherwise.

(b) Company Engagements. The parties acknowledge the community of interest between the Company and the Members in view of the fact that the Members hold all the equity of the Company. Accordingly, Buyer agrees that the principles that apply to the Acquisition Engagement regarding client confidences, attorney-client communications, attorney-client privilege, client files and disclosures shall also apply to Company Engagements. Thus, notwithstanding that the Company is or was a client in the Company Engagements, from and after the Closing, (i) all communications between Members or the Company and HSLLP in the course of all Company Engagements shall be deemed to be attorney-client confidences that belong solely to the Members and not the Company, (ii) Buyer shall not have access to any such communications, or to the files of HSLLP relating to any Company Engagement, (iii) the Members and HSLLP shall be the sole holders of the attorney-client privilege with respect to each Company Engagement, and neither the Company nor Buyer shall be a holder thereof, (iv) to the extent that files of HSLLP in respect of any Company Engagement constitute property of the client, only the Members shall hold such property rights, and (v) HSLLP shall have no duty whatsoever to reveal or disclose any such attorney-client communications or files to the Company or Buyer by reason of any attorney-client relationship between HSLLP and the Company or otherwise.

(c) Post-Closing Representation of the Members Including Matters Relating to the Acquisition. If the Members so desire, and without the need for any consent or waiver by the Company or Buyer, HSLLP shall be permitted to represent the Members after the Closing in connection with any matter, including without limitation anything related to the transactions contemplated by this Agreement or any disagreement or dispute relating thereto. Without limiting the generality of the foregoing, after the Closing, HSLLP shall be permitted to represent the Members, any of their agents and Affiliates, or any one or more of them, in connection with any matter whatsoever, including, without limitation, any negotiation, transaction or dispute ("dispute" includes litigation, arbitration, mediation, negotiation or other adversary proceeding) with Buyer, the Company or any of their agents or Affiliates under or relating to this Agreement, any transaction contemplated by this Agreement, and any related matter (such as claims for indemnification and disputes involving employment or noncompetition or other agreements entered into in connection with this Agreement), whether or not such matter is related to the Acquisition Engagement or any Company Engagement.

(d) Cessation of Attorney-Client Relationship With Company. Upon and after the Closing, the Company shall cease to have any attorney-client relationship with HSLLP, including with respect to any Company Engagements, unless after the Closing HSLLP is subsequently engaged in writing by the Company to represent the Company and either such engagement involves no conflict of interest with respect to the Members or the Members consent in writing to such engagement**.** Any representation of the Company or Buyer, or any of their respective Affiliates, by HSLLP after Closing shall not affect the provisions of this Section 10.15. For example, and not by way of limitation, even if HSLLP is representing the Company after the Closing, HSLLP shall be permitted simultaneously to represent the Members in any matter, including, without limitation, any disagreement or dispute relating to the transactions contemplated hereby. Furthermore, HSLLP shall be permitted to withdraw from any engagement by the Company or Buyer, or any of their respective Affiliates, in order to be able to represent or continue so representing the Members even if such withdrawal causes the Company or any Affiliate thereof additional legal expense (such as to bring new counsel "up to speed"), delay or other prejudice.

(e) Consent and Waiver of Conflicts of Interest. The Members, the Company and Buyer consent to the arrangements in this Section 10.15 and waive any actual or potential conflict of interest that may be involved in connection with any representation by HSLLP permitted hereunder.

Section 10.16. Further Assurances. Each of the parties shall execute and deliver such additional documents, instruments, conveyances and assurances and take such further actions as may be reasonably required to carry out the provisions hereof and give effect to the transactions contemplated hereby.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, the parties have executed and delivered or caused this Agreement to be executed and delivered as of the date first written above.

"Buyer"

Spartan Motors USA, Inc., a South Dakota corporation

By: /s/ Daryl L. Adams
Name: Daryl L. Adams
Title: President & CEO

Signature Page to Unit Purchase Agreement

IN WITNESS WHEREOF, the parties have executed and delivered or caused this Agreement to be executed and delivered as of the date first written above.

"Company"

Fortress Resources, LLC, d/b/a Royal Truck Body a California limited liability company

By: /s/ Dudley D. DeZonia, Jr.
Name: Dudley D. DeZonia, Jr.
Title: President & CEO

"Members"

/s/ Dudley D. DeZonia, Jr.
Dudley D. DeZonia, Jr., as Trustee of The Dudley and Anne DeZonia Family Trust, dated September 14, 2016

/s/ Anne Crawford DeZonia
Anne Crawford DeZonia, as Trustee of The Dudley and Anne DeZonia Family Trust, dated September 14, 2016

/s/ Dudley D. DeZonia, Jr.
Dudley D. DeZonia, Jr., as Trustee of The DeZonia 2019 Charitable Remainder Trust

/s/ Anne Crawford DeZonia
Anne Crawford DeZonia, as Trustee of The DeZonia 2019 Charitable Remainder Trust

/s/ Philip H. DeZonia
Philip H. DeZonia

/s/ Yulu Zhou
Yulu Zhou

/s/ Kevin (Blake) Montero
Kevin (Blake) Montero

/s/ Marc San Paolo
Marc San Paolo

“DeZonia”

/s/ Dudley D. DeZonia, Jr.

Dudley D. DeZonia, Jr.

“Member Representative”

/s/ Dudley D. DeZonia, Jr.

Dudley D. DeZonia, Jr.

Signature Page to Unit Purchase Agreement

ANNEX A

DEFINITIONS

In this Annex, and in the Agreement and the other Appendices and Schedules thereto, unless the context otherwise requires, the following terms shall have the meanings assigned below and the terms listed in the chart below shall have the meanings assigned to them in the Section set forth opposite to such term (unless otherwise specified, section references in this Annex are to Sections of this Agreement):

Term:	**Section**:
Accounting Expert	Section 2.3(d)
Accounting Principles	Section 2.1(a)
Acquisition Engagement	Section 10.15
Agreement	Preamble
Agreement Proceedings	Section 10.8(a)
Base Purchase Price	Section 1.2
Basket	Section 8.4(a)
Buyer	Preamble
Buyer Indemnified Persons	Section 8.2
Buyer Plans	Section 6.7(a)
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"ACA" means, collectively, the Patient Protection and Affordable Care Act, as amended.

“Affiliate” means, with respect to any subject Person, any other Person directly or indirectly controlling, controlled by, or under common control with, such subject Person as of the date on which, or at any time during the period for which, the determination of affiliation is being made. For purposes of this definition, the term “control” (including the correlative meanings of the terms “controlled by” and “under common control with”), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management policies of such Person, whether through the ownership of voting securities or by contract or otherwise.

“Affiliated Group” means any affiliated group within the meaning of Code Section 1504, any group of corporations filing a combined report for purposes of California corporate franchise or corporate income tax, and any similar group defined under a similar provision of state, local or foreign Law.

“Axalta Liability” means the aggregate amount of the Company’s contingent liability to Axalta Coating Systems, LLC with respect to the potential repayment of prebates, incentives, and/or other consideration previously provided to the Company by Axalta Coating Systems, LLC.

“Benefit Plan” means any of the following that the Company has adopted, sponsors, administers, implemented, maintains, or contributes to for any of its current or former directors, executives, officers, Employees, consultants, or independent contractors: (i) any “employee benefit plan” within the meaning of Section 3(3) of ERISA, including any employee pension benefit plan within the meaning of Section 3(2) of ERISA and any employee welfare benefit plan within the meaning of Section 3(1) of ERISA (ii) any bonus, stock option, equity or incentive compensation, phantom equity, deferred compensation, expense reimbursement, retention, change of control, or severance contracts or agreements, (iii) any cafeteria, vacation, paid time off, sick pay, and fringe benefit programs, and (iv) other arrangements, whether or not subject to ERISA, but excluding governmental programs and statutory benefits.

“Business Day” means a day other than any day on which banks are authorized or obligated by Law or executive order to close in Los Angeles, California. Any action required hereunder to be taken within a certain number of Business Days shall, except as may otherwise be expressly provided herein, be taken within that number of Business Days excluding the Business Day on which the counting is initiated and including the final Business Day of the period.

“Carson Facility” means the Real Property operated by the Company in Carson, California.

“Code” means the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

“Consulting Agreements” means the Consulting Agreements to be entered into at Closing by and between Buyer (or its Affiliate) and each of DeZonia and Bob Gawlik.

“Contracts” means all agreements, contracts, leases and binding commitments, whether or not reduced to writing.

"Copyrights" means all unregistered and/or registered U.S. and unregistered and/or registered foreign works of authorship and all applications to register and renewals of any of the foregoing.

"Dollars" or "$" means the lawful currency of the United States of America.

"Electronic Data Room" means the electronic data room established by the Company in connection with the transactions contemplated hereby.

"Employees" means (a) each person who as of immediately prior to the Closing is an active employee of the Company, including employees on vacation or on a regularly scheduled day off from work (including for jury service or military service duty); and (b) each employee of the Company who is on short-term disability, long-term disability or leave of absence as of immediately prior to the Closing.

"Employment Agreements" means the Employment Agreements to be entered into at Closing by and between Buyer (or its Affiliate) and each of Marc San Paolo, Kevin (Blake) Montero, and Yulu Zhou.

"Enforceable" means, with respect to a Contract, that such Contract is the legal, valid and binding obligation of the applicable Person, enforceable against such Person in accordance with its terms, except as such enforceability may be subject to the effects of bankruptcy, insolvency, reorganization, moratorium or other similar Laws relating to or affecting the rights of creditors, and general principles of equity regardless of whether such enforceability is considered in a proceeding in equity or at law.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended, and the regulations promulgated thereunder.

"Fraud" means, with respect to any party, such party's actual and intentional fraud with respect to the making of representations and warranties herein; *provided, however,* such actual and intentional fraud of such party shall only be deemed to exist if such party makes a knowing and intentional misrepresentation of a material fact with the intent that the other party rely on such fact, coupled with such other party's detrimental reliance on such fact under circumstances that constitute common law fraud under applicable Law.

"GAAP" means United States generally accepted accounting principles, consistently applied during the periods involved.

"Governmental Authority" means any United States or foreign federal, state, provincial or local government or other political subdivision thereof, any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of any such government or political subdivision, and any supranational organization of sovereign states exercising such functions for such sovereign states.

"Governmental Authorizations" means all licenses, permits, certificates, grants, franchises, waivers, consents and other similar authorizations or approvals issued by or obtained from a Governmental Authority.

"Intellectual Property" means any and all of the following: Patents, copyrightable works, Copyrights, technology, know-how, processes, Trade Secrets, patent disclosures, inventions and designs (including patent disclosures, inventions and/or designs whether or not patentable and whether or not reduced to practice and/or conceived prior to the Closing Date but not documented as of the Closing Date), and all improvements to any of the foregoing, proprietary data, drawings, descriptions, formulae, research and development data, Marks, Internet domain names, Internet addresses and other computer identifiers, websites or web pages, brand names or corporate names (including, in each case, the goodwill associated therewith).

"IRS" means the U.S. Internal Revenue Service.

"Knowledge of the Company" or any variant thereof means the actual knowledge as of the date hereof of any of the following individuals: Dudley DeZonia, Marc San Paolo, Blake Montero, Yulu Zhou, Jack Kitterman, Randall Haydon, Mark Calhoun, and Bob Gawlik, or the knowledge that such individuals would be expected to become aware of in the course of conducting a reasonable internal investigation regarding the accuracy of any representation or warranty of the Company contained in this Agreement.

"Law" means any statute, law, ordinance, rule or regulation of any Governmental Authority.

"Legal Proceeding" means any civil, criminal or administrative actions, proceedings, suits, demands or claims filed by or before any Governmental Authority or arbitrator.

"Liability" means any liability, obligation, or commitment of any nature whatsoever, asserted or unasserted, known or unknown, absolute or contingent, accrued or unaccrued, matured or unmatured, or otherwise.

"Lien" means any charge, mortgage, pledge, security interest, lien, option, adverse claim, or encumbrance.

"Losses" means any damages, losses, charges, liabilities, judgments, settlements, awards, interest, penalties, fees, costs and expenses actually incurred or paid.

"Marks" means all unregistered and/or registered U.S. and foreign trade names, trademarks, trade dress, logos, and service marks, together with any applications related thereto.

"Material Adverse Effect" means a material adverse effect on the financial condition, results of operations, business, operations, assets, liabilities, value, prospects, cash flow, or net worth of the Company (taken as a whole); provided, however, that none of the following shall constitute or be deemed to contribute to a Material Adverse Effect, or shall otherwise be taken into account in determining whether a Material Adverse Effect has occurred or would reasonably be likely to occur: any adverse effect arising out of, resulting from or attributable to (a) changes or proposed changes in applicable Laws, GAAP or in the interpretation or enforcement thereof, (b) changes in general economic, business or regulatory conditions in the United States, as long as those changes do not disproportionately affect the Company, (c) changes in the industries in which the Company participates (including fluctuating conditions resulting from cyclicality or seasonality affecting the Company), as long as those changes do not disproportionately affect the Company, (d) changes in United States or global financial or securities markets or conditions, including changes in prevailing interest rates, currency exchange rates or price levels or trading volumes in the United States or foreign securities markets, (e) changes in global or national political conditions (including the outbreak or escalation of war, military action, sabotage or acts of terrorism) or changes due to natural disasters, (f) the effects of the actions or omissions under this Agreement of the Company or any Member under this Agreement that are taken with the prior written consent of Buyer, or not taken because Buyer did not give its consent if required pursuant to this Agreement, in connection with the transactions contemplated hereby, (g) the effects of any breach, violation or non-performance of any provision of this Agreement by Buyer or any of its Affiliates, or (h) the negotiation, announcement, pendency or consummation of this Agreement and the transactions contemplated hereby, including the identity of, or the effect of any fact or circumstance relating to, Buyer or any of its Affiliates or any communication by Buyer or any of its Affiliates regarding plans, proposals or projections with respect to the Company.

"<u>Member Indemnifying Persons</u>" means each of (1) Dudley D. DeZonia, Jr. and Anne Crawford DeZonia, as Trustees of The Dudley and Anne DeZonia Family Trust, dated September 14, 2016, (2) Dudley D. DeZonia, Jr. and Anne Crawford DeZonia, as Trustees of The DeZonia 2019 Charitable Remainder Trust, and (3) DeZonia.

"<u>Order</u>" means any judgment, order, writ, decision, injunction, award or decree of any foreign, federal, state, local or other court or tribunal and any ruling or award in any binding arbitration proceeding.

"<u>Organizational Documents</u>" of a Person means its articles of incorporation, articles of organization, by-laws and/or other organizational documents, as applicable.

"<u>Patents</u>" means all issued U.S. and foreign patents and pending patent applications, including design patents and industrial designs.

"<u>Permits</u>" means all licenses, permits, franchises, approvals, authorizations, consents or orders of, or filings with, any Governmental Authority that are necessary for the operation of the Company.

"<u>Permitted Liens</u>" means (a) landlords', lessors', mechanics', materialmen's, warehousemen's, carriers', workers', manufacturer's or repairmen's Liens or other similar Liens arising or incurred in the ordinary course of business consistent with past practice, (b) Liens for Taxes, assessments and other governmental charges not yet due and payable or due but not delinquent or being contested in good faith by appropriate Legal Proceedings for which adequate reserves have been established in accordance with GAAP, (c) with respect to real property, (i) easements, quasi-easements, licenses, covenants, rights-of-way, rights of re-entry or other similar restrictions, including any other agreements, conditions or restrictions that would be shown by a current title report or other similar report or listing, which do not, individually or in the aggregate, materially impair the occupancy or use of the real property for the purposes for which it is currently used in connection with the Company's business, and (ii) zoning, building, subdivision or other similar requirements or restrictions which are not violated by the current use and operation of the applicable real property and which do not, individually or in the aggregate, materially impair the occupancy or use of the real property for the purposes for which it is currently used in connection with the Company's business, and (d) Liens created by this Agreement or any of the Transaction Documents.

“Person” means an individual, a corporation, a partnership, an association, a limited liability company, a Governmental Authority, a trust or other entity or organization.

“Premises” means the premises that are leased by the Company pursuant to a Lease.

“Pro Rata Share” of each Member means the percentage of the Units owned by such Member immediately prior to the Closing.

“Publicly Available Software” means: (a) any software that contains, or is derived in any manner in whole or in part from, any software that is distributed as free software, open source software (e.g. Linux) or under similar licensing or distribution models; (b) any software that may require as a condition of use, modification or distribution that such software or other software incorporated into, derived from or distributed with such software: (i) be disclosed or distributed in source code form; (ii) be licensed for the purpose of making derivative works; or (iii) be redistributable at no charge; and (c) software licensed or distributed under any of the following licenses or distribution models, or licenses or distribution models similar to any of the following: (A) GNU’s General Public License (GPL) or Lesser/Library GPL (LGPL); (B) the Artistic License (e.g., PERL); (C) the Mozilla Public License; (D) the Netscape Public License; (E) the Sun Community Source License (SCSL); (F) the Sun Industry Source License (SISL); and (G) the Apache Software License.

“Representative” or “Representatives” means, with respect to a particular Person, any director, member, limited or general partner, equityholder, officer, employee, agent, consultant, advisor or other representative of such Person, including outside legal counsel, accountants and financial advisors.

“Survival Date” means the General Survival Date, the Fundamental Survival Date, or the Environmental Survival Date, as applicable.

“Tax Returns” means any report, return, computation, declaration, claim, claim for refund, or information return or statement with respect to Taxes.

“Taxes” means (a) any federal, state, local, or foreign tax, duty, fee, levy, or other assessment, including income, gross receipts, payroll, stamp, occupation, premium, environmental, customs duties, capital stock, profits, social security (or similar), unemployment, disability, real property, personal property, unclaimed property, escheat, transfer, registration, alternative or add-on minimum, windfall profits, value added, severance, property, production, sales, use, duty, license, excise, franchise, employment, withholding or similar taxes, estimated or other tax of any kind whatsoever, imposed by any Governmental Authority, together with any interest, additions or penalties with respect thereto and any interest with respect to such additions or penalties, and (b) any Liability for or in respect of any amounts described in clause (a) as a transferee, successor, by operation of applicable Law, by Contract, or otherwise.

“Third Party” means a Person that is not a party to this Agreement, but excluding any Affiliate of a party hereto.

“Trade Secrets” mean trade secrets, confidential business information and other proprietary information including, without limitation, designs, research and development information, technical information, specifications, operating and maintenance manuals, methods, engineering drawings, know-how, data, discoveries, inventions, industrial designs and other proprietary rights (whether or not patentable or subject to copyright, mask work, or trade secret protection); in each of the foregoing cases which (i) has economic value to the Company by virtue of its secrecy; and (ii) that such the Company elects to maintain as a trade secret under applicable law.

“Transaction Documents” means, with respect to a party, all agreements, certificates and other instruments to be delivered by such party at Closing pursuant to this Agreement.

Exhibit 10.2

EXECUTION VERSION

SECOND AMENDMENT TO CREDIT AGREEMENT

This SECOND AMENDMENT TO CREDIT AGREEMENT (this "Amendment") is dated as of September 9, 2019, and effective in accordance with Section 5 below, by and among SPARTAN MOTORS, INC. (the "Company"), SPARTAN MOTORS USA, INC., SPARTAN MOTORS GLOBAL, INC., UTILIMASTER SERVICES, LLC, SMEAL HOLDING, LLC, SMEAL SFA, LLC and SMEAL LTC, LLC (collectively, with the Company, the "Existing Borrowers"), FORTRESS RESOURCES, LLC, a California limited liability company (the "New Borrower" and together with the Existing Borrowers, the "Borrowers"), the Guarantors (as defined in the Credit Agreement referred to below) party hereto, the Lenders referred to below and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as administrative agent for the Lenders ("Administrative Agent").

STATEMENT OF PURPOSE:

WHEREAS, the Existing Borrowers, certain financial institutions party thereto (the "Lenders") and the Administrative Agent have entered into that certain Credit Agreement dated as of August 8, 2018 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement", and as amended by this Amendment, the "Credit Agreement");

WHEREAS, the Existing Borrowers have requested, and subject to the terms and conditions set forth herein, the Administrative Agent and the Lenders party hereto have agreed, to amend the Credit Agreement as more specifically set forth herein;

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

Section 1. Capitalized Terms. All capitalized undefined terms used in this Amendment (including, without limitation, in the introductory paragraph and the statement of purpose hereto) shall have the meanings assigned thereto in the Credit Agreement (as amended by this Amendment).

Section 2. Consent; Additional Revolving Credit Commitments; Reallocation.

(a) Subject to the terms and conditions set forth herein, (i) each of the Lenders hereby consent to the amendments set forth herein, including any modification to the Revolving Credit Commitments as set forth herein, and (ii) each Lender party hereto severally agrees that its Revolving Credit Commitment, as of the Second Amendment Effective Date (as defined below), is the principal amount set forth opposite such Lender's name on Schedule 2.01, as amended pursuant to this Amendment.

(b) The parties hereto agree that the Administrative Agent shall reallocate the Loans and other Revolving Credit Exposure in accordance with the updated Revolving Credit Commitment Percentages as of the Second Amendment Effective Date and the Lenders agree to make all payments and adjustments necessary to effect such reallocation. The Lenders party hereto agree to waive any costs required to be paid by the Borrowers pursuant to Section 2.16 of the Credit Agreement in connection with such reallocation.

Section 3. Amendments to Existing Credit Agreement. Effective as of the Second Amendment Effective Date (as defined below) and subject to and in accordance with the terms and conditions set forth herein, the parties hereto agree that (a) the body of the Existing Credit Agreement is hereby amended to delete the stricken text (indicated textually in the same manner as the following example: ~~stricken text~~) and to add the double-underlined text (indicated textually in the same manner as the following example: double-underlined text) as set forth in the Credit Agreement attached hereto as Annex A, (b) a new Schedule 1.01 (Existing Floorplan Swingline Loans) is added to the Existing Credit Agreement to read in its entirety as set forth on Annex B attached hereto, and (c) Schedule 2.01 (Commitments) to the Existing Credit Agreement is hereby amended and restated such that, after giving effect to this Amendment, it shall read in its entirety as set forth on Annex C attached hereto.

Section 4. Joinder of New Borrower to Credit Agreement and Collateral Agreement.

(a) Credit Agreement Joinder. The Existing Borrowers and the New Borrower hereby request that the New Borrower be entitled to receive Loans under the Credit Agreement on and after the Second Amendment Effective Date, and the parties hereto hereby confirm that, with effect from the Second Amendment Effective Date, (i) the New Borrower shall have obligations, duties and liabilities toward each of the other parties to the Credit Agreement identical to those which the New Borrower would have had if the New Borrower had been an original party to the Credit Agreement as a Borrower, (ii) the New Borrower may receive Loans and request Letters of Credit for its account on the terms and conditions set forth in the Credit Agreement, and (iii) the New Borrower will be deemed a party to the Credit Agreement as a Borrower thereunder and each reference to a "Borrower" or the "Borrowers" in the Credit Agreement and each other Loan Document shall include the New Borrower.

(b) Collateral Agreement Joinder.

(i) The New Borrower hereby joins and agrees to be bound by each and all of the provisions of that certain Collateral Agreement, dated as of August 8, 2018 executed by the Existing Borrowers and joined by the Guarantors in favor of the Administrative Agent (as amended, restated, supplemented or otherwise modified from time to time, the "Collateral Agreement") as a Grantor thereunder with the same force and effect as if originally named therein as a Grantor. In furtherance (and without limitation) of the foregoing, pursuant to Section 2.1 of the Collateral Agreement, and as security for all of the Secured Obligations, the New Borrower hereby pledges, assigns and delivers to the Administrative Agent, for the benefit of itself and the other Secured Parties, and grants to the Administrative Agent, for the benefit of itself and the other Secured Parties, a Lien upon and security interest in, all of its right, title and interest in and to the Collateral as set forth in Section 2.1 of the Collateral Agreement, all on the terms and subject to the conditions set forth in the Collateral Agreement. Each reference to a "Grantor" in the Collateral Agreement hereafter shall be deemed to include the New Borrower.

(ii) The New Borrower hereby represents and warrants that (A) Annex D hereto sets forth all information required to be listed on the Schedules to the Collateral Agreement in order to make each representation and warranty contained in Article III of the Collateral Agreement true and correct with respect to the New Borrower as of the date hereof (and, with respect to this Amendment and the New Borrower, all references to the Effective Date in Article III shall mean the date hereof) and after giving effect to this Amendment and (B) after giving effect to this Amendment and to the incorporation into such Schedules, as applicable, of the information set forth on Annex D, each representation and warranty contained in Article III of the Collateral Agreement is true and correct with respect to the New Borrower as of the date hereof (with all references to the Effective Date in Article III of the Collateral Agreement meaning the date hereof with respect to such New Borrower), as if such representations and warranties were set forth at length herein.

Section 5. Conditions to Effectiveness. The effectiveness of this Amendment shall be subject to the satisfaction of each of the following conditions precedent (the date on which such conditions have been satisfied, the "Second Amendment Effective Date"):

(a) the Administrative Agent's receipt of the following, each properly executed by an authorized officer of the signing Loan Party and each in form and substance reasonably satisfactory to the Administrative Agent:

(i) this Amendment, duly executed by each of the Existing Borrowers, the Guarantors, the New Borrower, the Administrative Agent, and each Lender;

(ii) such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Borrowers, the authorization of the transactions contemplated by this Amendment and any other legal matters relating to the Borrowers or this Amendment, all in form and substance satisfactory to the Administrative Agent and its counsel;

(iii) a legal opinion from counsel to the Borrowers with respect to the transactions contemplated by this Amendment, including the joinder of the New Borrower to the Credit Agreement and Collateral Agreement; and

(iv) such other documents and certificates referred to in Section 4.01 of the Credit Agreement as may be reasonably requested by the Administrative Agent with respect to the joinder of the New Borrower, including, any Equity Interests in the New Borrower or owned by the New Borrower that are certificated and related transfer powers; provided that if any such documents or certificates cannot be delivered by the Borrowers on the Second Amendment Effective Date after use of commercially reasonable efforts, the Borrowers shall have such longer period as agreed to by the Administrative Agent to deliver such documents or certificates;

(b) no Unmatured Default or Event of Default shall have occurred and be continuing immediately prior to or after giving effect to this Amendment;

(c) the Administrative Agent shall have received an officer's certificate in form and substance reasonably satisfactory to the Administrative Agent, dated as of the Second Amendment Effective Date and signed by the chief financial officer of the Company, (i) confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02 of the Credit Agreement, (ii) certifying that after giving pro forma effect to each element of the transactions contemplated by this Amendment and the acquisition of the Equity Interests of the New Borrower by Spartan Motors USA, Inc., pursuant to that certain Unit Purchase Agreement dated as of the Second Amendment Effective Date, by and between Spartan Motors USA, Inc., the New Borrower, the members of the New Borrower identified therein and Dudley De Zonia, as the member representative thereunder (the "RTB Acquisition"), (A) the Company and its Subsidiaries (on a consolidated basis) are Solvent, and (B) attached thereto are calculations evidencing that the Leverage Ratio is no more than 3.25 to 1.00, and (iii) certifying that all requirements set forth in Section 6.04(e) of the Credit Agreement have been satisfied or will be satisfied prior to the consummation of the RTB Acquisition;

(d) evidence in form and substance reasonably satisfactory to the Administrative Agent that the RTB Acquisition has (or will be) consummated on the Second Amendment Effective Date;

(e) (i) the Administrative Agent and the Lenders shall have received all documentation and other information requested by the Administrative Agent or any Lender or required by regulatory authorities in order for the Administrative Agent and the Lenders to comply with requirements of any Anti-Money Laundering Laws, including the PATRIOT Act and any applicable "know your customer" rules and regulations, and (ii) the New Borrower shall have delivered to the Administrative Agent, and directly to any Lender requesting the same, a Beneficial Ownership Certification in relation to it (or a certification that such Borrower qualifies for an express exclusion from the "legal entity customer" definition under the Beneficial Ownership Regulations); and

(f) the Borrowers shall have paid all fees and expenses as separately agreed to in connection with this Amendment, including without limitation, (i) those set forth in the Fee Letter dated as of the date hereof between the Company and Wells Fargo, and (ii) all reasonable fees, charges and disbursements of counsel to the Administrative Agent (directly to such counsel if requested by the Administrative Agent).

For purposes of determining compliance with the conditions specified in this Section 5, each Lender that has signed this Amendment shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the Second Amendment Effective Date specifying its objection thereto.

Section 6. Representations and Warranties. By its execution hereof, each Borrower hereby represents and warrants to the Administrative Agent and the Lenders that, as of the date hereof after giving effect to this Amendment:

(a) each of the representations and warranties made by the Borrowers in or pursuant to the Loan Documents is true and correct in all material respects (except to the extent that such representation and warranty is subject to a materiality or Material Adverse Effect qualifier, in which case it shall be true and correct in all respects), in each case, on and as of the date hereof as if made on and as of the date hereof, except to the extent that such representations and warranties relate to an earlier date, in which case such representations and warranties are true and correct in all material respects as of such earlier date;

(b) it has the right and power and is duly authorized and empowered to enter into, execute and deliver this Amendment and to perform and observe the provisions of this Amendment;

(c) this Amendment has been duly authorized and approved by such Borrower's board of directors or other governing body, as applicable, and constitutes a legal, valid and binding obligation of such Borrower, enforceable against such Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law; and

(d) the execution, delivery and performance of this Amendment do not conflict with, result in a breach in any of the provisions of, constitute a default under, or result in the creation of a Lien upon any assets or property of any of the Borrowers, or any of their respective Subsidiaries, under the provisions of, such Borrower's or such Subsidiary's organizational documents or any material agreement to which such Borrower or Subsidiary is a party.

Section 7. Effect of this Amendment. On and after the Second Amendment Effective Date, references in the Credit Agreement to "this Agreement" (and indirect references such as "hereunder", "hereby", "herein", and "hereof") and in any Loan Document to the "Credit Agreement" shall be deemed to be references to the Credit Agreement as modified hereby. Except as expressly provided herein, the Credit Agreement and the other Loan Documents shall remain unmodified and in full force and effect. Except as expressly set forth herein, this Amendment shall not be deemed (a) to be a waiver of, or consent to, a modification or amendment of, any other term or condition of the Credit Agreement or any other Loan Document, (b) to prejudice any other right or rights which the Administrative Agent or the Lenders may now have or may have in the future under or in connection with the Credit Agreement or the other Loan Documents or any of the instruments or agreements referred to therein, as the same may be amended, restated, supplemented or otherwise modified from time to time, (c) to be a commitment or any other undertaking or expression of any willingness to engage in any further discussion with the Borrowers or any other Person with respect to any waiver, amendment, modification or any other change to the Credit Agreement or the Loan Documents or any rights or remedies arising in favor of the Lenders or the Administrative Agent, or any of them, under or with respect to any such documents or (d) to be a waiver of, or consent to or a modification or amendment of, any other term or condition of any other agreement by and among the Loan Parties, on the one hand, and the Administrative Agent or any other Lender, on the other hand.

Section 8. Costs and Expenses. The Borrowers hereby reconfirm their obligations pursuant to Section 9.03 of the Credit Agreement to pay and reimburse the Administrative Agent and its Affiliates in accordance with the terms thereof.

Section 9. Acknowledgments and Reaffirmations. Each Loan Party (a) consents to this Amendment and agrees that the transactions contemplated by this Amendment shall not limit or diminish the obligations of such Person under, or release such Person from any obligations under, any of the Loan Documents to which it is a party, (b) confirms and reaffirms its obligations under each of the Loan Documents to which it is a party and (c) agrees that each of the Loan Documents to which it is a party remains in full force and effect and is hereby ratified and confirmed.

Section 10. Governing Law. This Amendment shall be governed by, and construed in accordance with, the law of the State of New York.

Section 11. Counterparts. This Amendment may be executed in any number of counterparts, and by different parties hereto in separate counterparts and by facsimile signature, each of which counterparts when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

Section 12. Electronic Transmission. Delivery of this Amendment by facsimile or pdf shall be effective as delivery of a manually executed counterpart hereof; provided that, upon the request of any party hereto, such facsimile or pdf shall be promptly followed by the original thereof.

Section 13. Election of Leverage Ratio Increase. The Borrowers hereby give notice to the Administrative Agent and the Lenders of their election to increase the required Leverage Ratio pursuant to Section 6.13(a) of the Credit Agreement to 3.50 to 1.00 in connection with the consummation of the RTB Acquisition.

Section 14. Entire Agreement. This Amendment is the entire agreement, and supercedes any prior agreements and contemporaneous oral agreements, of the parties concerning its subject matter. This Amendment is a Loan Document and is subject to the terms and conditions of the Credit Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date and year first above written.

EXISTING BORROWERS:

SPARTAN MOTORS, INC.

By: ______________________________
Name: Frederick J. Sohm
Title: Treasurer

SPARTAN MOTORS USA, INC.

By: ______________________________
Name: Frederick J. Sohm
Title: Treasurer

SPARTAN MOTORS GLOBAL, INC.

By: ______________________________
Name: Frederick J. Sohm
Title: Treasurer

UTILIMASTER SERVICES, LLC

By: ______________________________
Name: Frederick J. Sohm
Title: Treasurer

SMEAL SFA, LLC

By: ______________________________
Name: Frederick J. Sohm
Title: Treasurer

SMEAL LTC, LLC

By: ______________________________
Name: Frederick J. Sohm
Title: Treasurer

SMEAL HOLDING, LLC

By: ______________________________
Name: Frederick J. Sohm
Title: Treasurer

NEW BORROWER:

FORTRESS RESOURCES, LLC

By: ______________________________
Name: Frederick J. Sohm
Title: Treasurer

GUARANTORS:

SPARTAN UPFIT SERVICES, INC.

By: ______________________________
Name: Frederick J. Sohm
Title: Treasurer

SPARTAN MOTORS GTB, LLC

By: ______________________________
Name: Frederick J. Sohm
Title: Treasurer

ADMINISTRATIVE AGENT AND LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, a Swingline Lender, an Issuing Bank and
Lender

By: ____
Name: Dustin Sentz
Title: Vice Presiden

JPMORGAN CHASE BANK, N.A., as Lender

By: ______________________________
Name:
Title:

PNC BANK, NATIONAL ASSOCIATION, as Lender

By: ______________________________

Name:

Title:

Annex A

Amended Credit Agreement

See attached.

~~Conformed Copy, including:~~**EXECUTION VERSION**

-

Annex A

~~First~~to Second Amendment to Credit Agreement ~~dated as of May 13, 2019~~

Published CUSIP Number: 84681XAC1

Revolver CUSIP Number: 84681XAD9

CREDIT AGREEMENT

dated as of

August 8, 2018

among

SPARTAN MOTORS, INC.,
SPARTAN MOTORS USA, INC.,
SPARTAN MOTORS GLOBAL, INC.,
UTILIMASTER SERVICES, LLC,
SMEAL HOLDING, LLC,
SMEAL SFA, LLC,
~~and~~
SMEAL LTC, LLC,
and
FORTRESS RESOURCES, LLC,
as the Borrowers,

The Lenders Party Hereto

and

WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Administrative Agent

WELLS FARGO SECURITIES, LLC,
as Sole Lead Arranger and Sole Bookrunner

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EXHIBITS:

Exhibit A – Form of Assignment and Assumption
Exhibit B – Form of Loan Party Guaranty
Exhibit C – Form of Tax Certificates

This CREDIT AGREEMENT dated as of August 8, 2018, among SPARTAN MOTORS, INC., SPARTAN MOTORS USA, INC., SPARTAN MOTORS GLOBAL, INC., UTILIMASTER SERVICES, LLC, SMEAL HOLDING, LLC, SMEAL SFA, LLC, ~~and~~ SMEAL LTC, LLC, and FORTRESS RESOURCES, LLC, the LENDERS party hereto, and WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent.

RECITALS

The Borrowers have requested, and subject to the terms and conditions set forth in this Agreement, the Administrative Agent and the Lenders have agreed to extend, certain credit facilities to the Borrowers.

NOW, THEREFORE, in consideration of the premises and of the mutual agreements made herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

ARTICLE I
DEFINITIONS

SECTION 1.01. Defined Terms. As used in this Agreement, the following terms have the meanings specified below:

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

"Acquisition" means any transaction, or any series of related transactions, consummated on or after the date of this Agreement, by which a Borrower or any of its Subsidiaries (a) acquires any going business or all or substantially all of the assets of any firm, corporation or limited liability company, or division thereof, whether through purchase of assets, merger or otherwise or (b) directly or indirectly acquires (in one transaction or as the most recent transaction in a series of transactions) at least a majority (in number of votes) of the Equity Interests of a Person.

"Adjusted LIBO Rate" means, with respect to any Eurodollar Borrowing for any Interest Period, an interest rate per annum (rounded upwards, if necessary, to the next 1/16 of 1%) equal to (a) ~~the LIBO Rate~~LIBOR for such Interest Period multiplied by (b) the Statutory Reserve Rate.

"Administrative Agent" means Well Fargo, in its capacity as administrative agent for the Lenders hereunder.

"Administrative Questionnaire" means an Administrative Questionnaire in a form supplied by the Administrative Agent.

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

"Agreement" means this Credit Agreement.

“Alternate Base Rate” means, for any day, a rate per annum equal to the greatest of (a) the Prime Rate in effect on such day, (b) the Federal Funds Rate in effect on such day plus ½ of 1% and (c) the Adjusted LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) plus 1%; provided that, for the avoidance of doubt, the Adjusted LIBO Rate for any day shall be based on the rate as published by the ICE Benchmark Administrative Limited, a United Kingdom company (or on any other commercially available source providing such quotations as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m. London time on such day (without any rounding). Any change in the Alternate Base Rate due to a change in the Prime Rate, the Federal Funds Rate or the Adjusted LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the Federal Funds Rate or the Adjusted LIBO Rate, respectively.

“Anti-Corruption Laws” means all laws, rules, and regulations of any jurisdiction applicable to the Borrowers or any Subsidiary from time to time concerning or relating to bribery or corruption, including, without limitation, the United States Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act 2010, as amended, and the rules and regulations thereunder.

“Anti-Money Laundering Law” means any and all laws, statutes, regulations or obligatory government orders, decrees, ordinances or rules applicable to the parties hereto, their respective subsidiaries or Affiliates related to terrorism financing or money laundering, including any applicable provision of the PATRIOT Act and The Currency and Foreign Transactions Reporting Act (also known as the “Bank Secrecy Act,” 31 U.S.C. §§ 5311-5330 and 12U.S.C. §§ 1818(s), 1820(b) and 1951-1959).

“Applicable Law” means all applicable provisions of constitutions, laws, statutes, ordinances, rules, treaties, regulations, permits, licenses, approvals, interpretations and orders of Governmental Authorities and all orders and decrees of all courts and arbitrators.

“Applicable Rate” means, for any day, with respect to any Eurodollar Loan or ABR Loan with respect to the commitment fees payable hereunder, as the case may be, the applicable rate per annum set forth below under the caption “Eurodollar Spread”, “Alternate Base Rate Spread” or “Commitment Fee Rate”, as the case may be, based upon the Leverage Ratio as of the most recent determination date:

Level	**Leverage Ratio**	**Eurodollar Spread**	**Alternate Base Rate Spread**	**Commitment Fee Rate**
I	< 1.00:1.00	125.0 bps	25.0 bps	17.5 bps
II	< 1.50:1.00 but ≥ 1.00:1.00	150.0 bps	50.0 bps	22.5 bps
III	< 2.00:1.00 but ≥ 1.50:1.00	175.0 bps	75.0 bps	25.0 bps
IV	< 2.50:1.00 but ≥ 2.00:1.00	200.0 bps	100.0 bps	25.0 bps
V	≥ 2.50:1.00	225.0 bps	125.0 bps	30.0 bps

The Applicable Rate shall be determined in accordance with the foregoing table based on the Leverage Ratio as of the end of each Fiscal Quarter, as calculated for the four most recently ended consecutive Fiscal Quarters of the Company. Adjustments, if any, to the Applicable Rate shall be effective on the date which is five (5) Business Days after the Administrative Agent’s receipt of the applicable financials under Section 5.01(a) or (b) and certificate under Section 5.01(c). During all times any Event of Default exists, in addition to any increase in rates under Section 2.13(c), the Applicable Rate shall be automatically set at Level V. Notwithstanding anything herein to the contrary, the Applicable Rate shall be set at Level I as of the Effective Date, and shall be adjusted for the first time based on receipt of the financials for the Fiscal Quarter ending September 30, 2018 and the certificate under Section 5.01(c).

“Approved Fund” has the meaning assigned to such term in Section 9.04.

“Arranger” means Wells Fargo Securities, LLC, in its capacity as sole lead arranger and sole bookrunner.

"Asset Disposition" means the sale, transfer, license, lease or other disposition of any property (including any division, merger or disposition of Equity Interests and any material portion of its business, assets, rights revenues or property, real, personal or mixed, tangible or intangible, whether in one or a series of transactions) by any Loan Party or any Subsidiary thereof, and any issuance of Equity Interests by any Subsidiary of the Company to any Person that is not a Loan Party or any Subsidiary thereof.

"Assignment and Assumption" means an assignment and assumption entered into by a Lender and an assignee (with the consent of any party whose consent is required by Section 9.04), and accepted by the Administrative Agent, in the form of Exhibit A or any other form approved by the Administrative Agent.

"Availability Period" means the period from and including the Effective Date to but excluding the Maturity Date.

"Available Revolving Commitment" means, at any time, the Revolving Credit Commitments then in effect minus the Revolving Credit Exposure of all Revolving Credit Lenders at such time; it being understood and agreed that any Revolving Credit Lender's Swingline Exposure (including deemed Swingline Exposure related to the Floorplan Swingline Loans as set forth in the definition of "Revolving Credit Exposure") shall not be deemed to be a component of the Revolving Credit Exposure for purposes of calculating the commitment fee under Section 2.12(a).

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

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

"Benchmark Replacement" means the sum of: (a) the alternate benchmark rate (which may include Term SOFR) that has been selected by the Administrative Agent and the Borrowers giving due consideration to (i) any selection or recommendation of a replacement rate or the mechanism for determining such a rate by the Relevant Governmental Body or (ii) any evolving or then-prevailing market convention for determining a rate of interest as a replacement to LIBOR for U.S. dollar-denominated syndicated credit facilities and (b) the Benchmark Replacement Adjustment; provided that, if the Benchmark Replacement as so determined would be less than zero, the Benchmark Replacement will be deemed to be zero for the purposes of this Agreement.

"Benchmark Replacement Adjustment" means, with respect to any replacement of LIBOR with an Unadjusted Benchmark Replacement for each applicable Interest Period, the spread adjustment, or method for calculating or determining such spread adjustment, (which may be a positive or negative value or zero) that has been selected by the Administrative Agent and the Borrowers giving due consideration to (a) any selection or recommendation of a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement by the Relevant Governmental Body or (b) any evolving or then-prevailing market convention for determining a spread adjustment, or method for calculating or determining such spread adjustment, for the replacement of LIBOR with the applicable Unadjusted Benchmark Replacement for U.S. dollar-denominated syndicated credit facilities at such time.

"Benchmark Replacement Conforming Changes" means, with respect to any Benchmark Replacement, any technical, administrative or operational changes (including changes to the definition of "Alternate Base Rate," the definition of "Interest Period," timing and frequency of determining rates and making payments of interest and other administrative matters) that the Administrative Agent decides may be appropriate to reflect the adoption and implementation of such Benchmark Replacement and to permit the administration thereof by the Administrative Agent in a manner substantially consistent with market practice (or, if the Administrative Agent decides that adoption of any portion of such market practice is not administratively feasible or if the Administrative Agent determines that no market practice for the administration of the Benchmark Replacement exists, in such other manner of administration as the Administrative Agent decides is reasonably necessary in connection with the administration of this Agreement).

"Benchmark Replacement Date" means the earlier to occur of the following events with respect to LIBOR:

(a) in the case of clause (a) or (b) of the definition of "Benchmark Transition Event," the later of (i) the date of the public statement or publication of information referenced therein and (ii) the date on which the administrator of LIBOR permanently or indefinitely ceases to provide LIBOR; and

(b) in the case of clause (c) of the definition of "Benchmark Transition Event," the date of the public statement or publication of information referenced therein.

"Benchmark Transition Event" means the occurrence of one or more of the following events with respect to LIBOR:

(a) a public statement or publication of information by or on behalf of the administrator of LIBOR announcing that such administrator has ceased or will cease to provide LIBOR, permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR;

(b) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR, the U.S. Federal Reserve System, an insolvency official with jurisdiction over the administrator for LIBOR, a resolution authority with jurisdiction over the administrator for LIBOR or a court or an entity with similar insolvency or resolution authority over the administrator for LIBOR, which states that the administrator of LIBOR has ceased or will cease to provide LIBOR permanently or indefinitely; provided that, at the time of such statement or publication, there is no successor administrator that will continue to provide LIBOR; or

(c) a public statement or publication of information by the regulatory supervisor for the administrator of LIBOR announcing that LIBOR is no longer representative.

"Benchmark Transition Start Date" means (a) in the case of a Benchmark Transition Event, the earlier of (i) the applicable Benchmark Replacement Date and (ii) if such Benchmark Transition Event is a public statement or publication of information of a prospective event, the 90th day prior to the expected date of such event as of such public statement or publication of information (or if the expected date of such prospective event is fewer than 90 days after such statement or publication, the date of such statement or publication) and (b) in the case of an Early Opt-in Election, the date specified by the Administrative Agent or the Required Lenders, as applicable, by notice to the Borrowers, the Administrative Agent (in the case of such notice by the Required Lenders) and the Lenders.

"Benchmark Unavailability Period" means, if a Benchmark Transition Event and its related Benchmark Replacement Date have occurred with respect to LIBOR and solely to the extent that LIBOR has not been replaced with a Benchmark Replacement, the period (a) beginning at the time that such Benchmark Replacement Date has occurred if, at such time, no Benchmark Replacement has replaced LIBOR for all purposes hereunder in accordance with Section 2.14(b) and (b) ending at the time that a Benchmark Replacement has replaced LIBOR for all purposes hereunder pursuant to Section 2.14(b).

"Beneficial Ownership Certification" means a certification regarding beneficial ownership as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" means 31 CFR § 1010.230.

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

"Board" means the Board of Governors of the Federal Reserve System of the United States of America.

"Borrower" means each of the Company, Spartan Motors USA, Inc., a South Dakota corporation, Spartan Motors Global, Inc., a Michigan corporation, Utilimaster Services, LLC, an Indiana limited liability company, Smeal Holding, LLC, a Michigan limited liability company, Smeal SFA, LLC, a Michigan limited liability company, and Smeal LTC, LLC, a Michigan limited liability company, and Fortress Resources, LLC, a California limited liability company, and "Borrowers" shall refer to the entities collectively.

"Borrowing" means (a) Revolving Loans of the same Type, made, converted or continued on the same date and, in the case of Eurodollar Loans, as to which a single Interest Period is in effect, and/or (b) a Swingline Loan.

"Borrowing Request" means a request by a Borrower for a Borrowing in accordance with the terms of this Agreement (including Section 2.03).

"Business Day" means any day that is not a Saturday, Sunday or other day on which commercial banks in New York City are authorized or required by law to remain closed; provided that, (i) when used in connection with a Eurodollar Loan, the term "Business Day" shall also exclude any day on which banks are not open for dealings in dollar deposits in the London interbank market, and (ii) when used in connection with a Letter of Credit denominated in a Foreign Currency, the term "Business Day" shall also exclude a day on which the applicable Issuing Bank is not open to the public for carrying on substantially all of its banking functions in its primary office used to issue such Letter of Credit.

"Capital Lease Obligations" of any Person means, subject to Section 1.04, the obligations of such Person to pay rent or other amounts under any lease of (or other arrangement conveying the right to use) real or personal property, or a combination thereof, which obligations are required to be classified and accounted for as capital leases or finance leases on a balance sheet of such Person under GAAP, and the amount of such obligations shall be the capitalized amount thereof determined in accordance with GAAP.

"Cash Collateralize" means, to pledge and deposit with or deliver to the Administrative Agent, for the benefit of the applicable Issuing Bank or the Lenders, as collateral for LC Exposure or obligations of Lenders to fund participations in respect of LC Exposure, cash or deposit account balances or, if the Administrative Agent and each applicable Issuing Bank shall agree in their sole discretion, other credit support, in each case pursuant to documentation in form and substance satisfactory to the Administrative Agent and each such Issuing Bank. "Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Management Agreement" means any agreement to provide cash management services, including treasury, depository, overdraft, credit or debit card (including non-card electronic payables and purchasing cards), electronic funds transfer and other cash management arrangements.

"Cash Management Bank" means any Person that, (a) at the time it enters into a Cash Management Agreement with a Loan Party, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent, or (b) at the time it (or its Affiliate) becomes a Lender or the Administrative Agent (including on the Effective Date), is a party to a Cash Management Agreement with a Loan Party, in each case in its capacity as a party to such Cash Management Agreement.

"Change in Control" means (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Securities and Exchange Commission thereunder as in effect on the date hereof), of Equity Interests representing more than 49% of the aggregate ordinary voting power represented by the issued and outstanding Equity Interests of the Company; (b) occupation of a majority of the seats (other than vacant seats) on the board of directors of the Company by Persons who were neither (i) nominated by the board of directors of the Company nor (ii) appointed by directors so nominated; or (c) the acquisition of direct or indirect Control of the Company by any Person or group.

"Change in Law" means (a) the adoption of any law, rule or regulation after the date of this Agreement, (b) any change in any law, rule or regulation or in the interpretation or application thereof by any Governmental Authority after the date of this Agreement or (c) compliance by any Lender or the Issuing Bank (or, for purposes of Section 2.15(b), by any lending office of such Lender or by such Lender's or the Issuing Bank's holding company, if any) with any request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the date of this Agreement; provided however, that notwithstanding anything herein to the contrary, (i) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in implementation thereof, and (ii) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a "Change in Law" regardless of the date enacted, adopted, issued or implemented.

"Class", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are Revolving Loans or Swingline Loans.

"Code" means the Internal Revenue Code of 1986, as amended from time to time.

"Collateral" means the collateral security for the Secured Obligations pledged or granted pursuant to the Collateral Documents.

"Collateral Agreement" means the collateral agreement of even date herewith executed by the Loan Parties in favor of the Administrative Agent, for the ratable benefit of the Secured Parties, which shall be in form and substance acceptable to the Administrative Agent.

"Collateral Documents" means the collective reference to the Collateral Agreement, and each other agreement or writing pursuant to which any Loan Party pledges or grants or perfects a security interest in any property or assets securing the Secured Obligations.

"Commitment Letter" means that certain Commitment Letter among the Company, the Administrative Agent and the Arranger, dated as of June 14, 2018, as amended.

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

"Company" means Spartan Motors, Inc., a Michigan corporation.

"Consolidated EBIT" means, for any period, Consolidated EBITDA minus the depreciation and amortization expense added back pursuant to clause (b)(iii) of the definition of Consolidated EBITDA.

"Consolidated EBITDA" means, for any period, for the Company and its Subsidiaries on a consolidated basis, an amount equal to:

(a) Consolidated Net Income for such period; plus

(b) without duplication, the sum of following to the extent deducted in calculating such Consolidated Net Income (other than as set forth in clause (vii)(E)) in accordance with GAAP for such period:

(i) Consolidated Interest Expense for such period;

(ii) the provision for Federal, state, local and foreign income taxes payable by the Company and its Subsidiaries;

(iii) depreciation and amortization expense;

(iv) other non-cash expenses, excluding any non-cash expense that represents an accrual for a cash expense to be taken in a future period and any non-cash expense that relates to the write-down or write-off of accounts receivable or inventory;

(v) all transaction fees, charges and other amounts related to the Transactions and any amendment or other modification to the Loan Documents, in each case to the extent paid within one (1) year of the Effective Date or the effectiveness of such amendment or other modification;

(vi) in respect of such period (A) severance costs, (B) non-recurring restructuring, integration and transition services costs, (C) non-recurring expenses related to the vesting of employee benefits in connection with employee departures, (D) costs and expenses associated with relocation of people, hardware, records and data, (E) consulting expenses, and (F) litigation and settlement costs and expenses; provided that the aggregate amount added back to Consolidated EBITDA pursuant to this clause (vi) and clause (vii) below for any four Fiscal Quarter period shall not exceed 10% of Consolidated EBITDA for such period (calculated prior to giving effect to any adjustment pursuant to this clause (vi) or clause (vii) below),

(vii) (A) costs and expenses in connection with any Permitted Acquisitions (including, without limitation, any financing fees, merger and acquisition fees, legal fees and expenses, due diligence fees or any other fees and expenses in connection therewith), whether or not consummated, (B) other unusual and non-recurring cash expenses or charges, (C) to the extent incurred in connection with a Permitted Acquisition, one-time non-recurring severance charges incurred within twelve (12) months of such Permitted Acquisition, (D) cash restructuring charges with respect to Permitted Acquisitions or otherwise, and (E) synergies, operating expense reductions and other net cost savings and integration costs projected by the Company in connection with Permitted Acquisitions that have been consummated during the applicable four Fiscal Quarter period (calculated on a pro forma basis as though such synergies, expense reductions and cost savings had been realized on the first day of the period for which Consolidated EBITDA is being determined), net of the amount of actual benefits realized during such period from such actions; provided that (i) such synergies, expense reductions and cost savings are reasonably identifiable, factually supportable, expected to have a continuing impact on the operations of the Company and its Subsidiaries and have been determined by the Company in good faith to be reasonably anticipated to be realizable within 12 months following any such Permitted Acquisition as set forth in reasonable detail on a certificate of a Financial Officer of the Company delivered to the Administrative Agent and (ii) no such amounts shall be added pursuant to this clause to the extent duplicative of any expenses or charges otherwise added to Consolidated EBITDA, whether through a pro forma adjustment or otherwise; provided that the aggregate amount added back to Consolidated EBITDA pursuant to this clause (vii) and clause (vi) above for any four Fiscal Quarter period shall not exceed 10% of Consolidated EBITDA for such period (calculated prior to giving effect to any adjustment pursuant to this clause (vii) or clause (vi) above);

(viii) to the extent covered by insurance and actually reimbursed, expenses with respect to liability or casualty events or business interruption; and

(ix) any net after-tax effect of loss for such period attributable to the early extinguishment of any Hedge Agreement; minus

(c) without duplication, the following to the extent included in calculating such Consolidated Net Income:

(i) Federal, state, local and foreign income tax credits of the Company and its Subsidiaries for such period;

(ii) all non-cash items increasing Consolidated Net Income for such period;

(iii) any net after-tax effect of income for such period attributable to the early extinguishment of any Hedge Agreement; and

(iv) any cash expense made during such period which represents the reversal of any non-cash expense that was added in a prior period pursuant to clause (b)(iv) above.

Notwithstanding the foregoing to the contrary, (x) there shall be included in determining Consolidated EBITDA for any period, without duplication, the acquired EBITDA of any Person or business, or attributable to any property or asset, acquired by the Company or any Subsidiary during such period (but not the acquired EBITDA of any related Person or business or any acquired EBITDA attributable to any assets or property, in each case to the extent not so acquired) in connection with a Permitted Acquisition if the consideration for such Permitted Acquisition (or series of related Permitted Acquisitions) exceeds $10,000,000 and to the extent not subsequently sold, transferred, abandoned or otherwise disposed by the Company or such Subsidiary, based on the actual acquired EBITDA of such acquired entity or business for such period (including the portion thereof occurring prior to such acquisition or conversion) and (y) there shall be excluded in determining Consolidated EBITDA for any period, without duplication, the disposed EBITDA of any Person or business, or attributable to any property or asset, disposed of by the Company or any Subsidiary during such period in connection with a disposition or discontinuation of operations having gross sales proceeds in excess of $10,000,000, based on the disposed EBITDA of such disposed entity or business or discontinued operations for such period (including the portion thereof occurring prior to such disposition or discontinuation).

"Consolidated Interest Expense" means, with reference to any period, the cash Interest Expense of the Company and its Subsidiaries calculated on a consolidated basis for such period in accordance with GAAP.

"Consolidated Net Income" means, with reference to any period, the net income (or loss) of the Company and its Subsidiaries calculated on a consolidated basis for such period in accordance with GAAP; provided that in calculating Consolidated Net Income of the Company and its Subsidiaries for any period, there shall be excluded (a) the net income (or loss) of any Person (other than a Subsidiary which shall be subject to clause (c) below), in which the Company or any of its Subsidiaries has a joint interest with a third party, except to the extent such net income is actually paid in cash to the Company or any of its Subsidiaries by dividend or other distribution during such period, (b) the net income (or loss) of any Person accrued prior to the date it becomes a Subsidiary of the Company or any of its Subsidiaries or is merged into or consolidated with the Company or any of its Subsidiaries or that Person's assets are acquired by the Company or any of its Subsidiaries except to the extent included pursuant to the foregoing clause (a), (c) the net income (if positive), of any Subsidiary to the extent that the declaration or payment of dividends or similar distributions by such Subsidiary to the Company or any of its Subsidiaries of such net income (i) is not at the time permitted by operation of the terms of its charter or any agreement, instrument, judgment, decree, order, statute, rule or governmental regulation applicable to such Subsidiary or (ii) would be subject to any taxes payable on such dividends or distributions, but in each case only to the extent of such prohibition or taxes, and (d) any gain or loss from Asset Dispositions during such period.

"Consolidated Total Debt" means at any time the sum of all of the following for the Company and its Subsidiaries calculated on a consolidated basis: (a) obligations for borrowed money and similar obligations, (b) obligations representing the deferred purchase price of property or services (other than accounts payable arising in the ordinary course of business payable on terms customary in the trade), (c) obligations, whether or not assumed, secured by liens or payable out of the proceeds or production from property now or hereafter owned or acquired, (d) obligations which are evidenced by notes, acceptances, or other instruments, (e) Capital Lease Obligations, (f) obligations under asset securitizations, sale/leasebacks, "synthetic lease" transaction or similar obligations which are the functional equivalent of or take the place of borrowing, based on the amount that would be outstanding thereunder if it were structured as borrowing, (g) contingent obligations under letters of credit, bankers acceptances and similar instruments, (h) the amount of any earn-out obligation related to any Acquisition, calculated in accordance with GAAP, and (i) any Guaranty Obligations.

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

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

"Defaulting Lender" means, subject to Section 2.20(f), any Lender that (a) has failed to (i) fund all or any portion of its Loans within two Business Days of the date such Loans were required to be funded hereunder, unless such Lender notifies the Administrative Agent and the Borrowers in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Bank, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two Business Days of the date when due, (b) has notified the Borrowers, the Administrative Agent, the applicable Issuing Bank or the Swingline Lender in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such Lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three Business Days after written request by the Administrative Agent or the Borrowers, to confirm in writing to the Administrative Agent and the Borrowers that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Borrowers), or (d) has, or has a direct or indirect parent company that has, (i) become the subject of a proceeding under any Debtor Relief Law, including, but not limited to, any Bail-In Action, or (ii) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any equity interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States of America or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under clauses (a) through (d) above shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Section 2.20(f)) upon delivery of written notice of such determination to the Borrowers, each Issuing Bank, the Swingline Lender and each Lender.

"Disclosed Matters" means the actions, suits and proceedings and the environmental matters disclosed in Schedule 3.06.

"dollars", "Dollars" or "$" refers to the lawful money of the United States of America.

"Dollar Equivalent" means, on any date of determination (a) with respect to any amount in Dollars, such amount, and (b) with respect to any amount in any Foreign Currency, the equivalent in Dollars of such amount, determined by the Administrative Agent pursuant to Section 1.05 using the Exchange Rate with respect to such Foreign Currency at the time in effect under the provisions of such Section.

"Domestic Subsidiary" means any Subsidiary organized under the laws of the United States of America, any State thereof, or the District of Columbia.

"Early Opt-in Election" means the occurrence of:

(a) (i) a determination by the Administrative Agent or (ii) a notification by the Required Lenders to the Administrative Agent (with a copy to the Borrowers) that the Required Lenders have determined that U.S. dollar-denominated syndicated credit facilities being executed at such time, or that include language similar to that contained in Section 2.14(b) are being executed or amended, as applicable, to incorporate or adopt a new benchmark interest rate to replace LIBOR, and

(i) the election by the Administrative Agent or (ii) the election by the Required Lenders to declare that an Early Opt-in Election has occurred and the provision, as applicable, by the Administrative Agent of written notice of such election to the Borrowers and the Lenders or by the Required Lenders of written notice of such election to the Administrative Agent.

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

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

"EEA Resolution Authority" means any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any credit institution or investment firm established in any EEA Member Country.

"Effective Date" means the date on which the conditions specified in Section 4.01 are satisfied (or waived in accordance with Section 9.02).

"Environmental Laws" means all laws, rules, regulations, codes, ordinances, orders, decrees, judgments, injunctions, notices or binding agreements issued, promulgated or entered into by any Governmental Authority, relating in any way to the environment, preservation or reclamation of natural resources, the management, release or threatened release of any Hazardous Material or to health and safety matters.

"Environmental Liability" means any liability, contingent or otherwise (including any liability for damages, costs of environmental remediation, fines, penalties or indemnities), of the Company or any Subsidiary directly or indirectly resulting from or based upon (a) violation of any Environmental Law, (b) the generation, use, handling, transportation, storage, treatment or disposal of any Hazardous Materials, (c) exposure to any Hazardous Materials, (d) the release or threatened release of any Hazardous Materials into the environment or (e) any contract, agreement or other consensual arrangement pursuant to which liability is assumed or imposed with respect to any of the foregoing.

"Equity Interests" means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with a Borrower, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means (a) any "reportable event", as defined in Section 4043 of ERISA or the regulations issued thereunder with respect to a Plan (other than an event for which the 30-day notice period is waived); (b) the existence with respect to any Plan of an "accumulated funding deficiency" (as defined in Section 412 of the Code or Section 302 of ERISA), whether or not waived; (c) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan; (d) the incurrence by any Borrower or any of its ERISA Affiliates of any liability under Title IV of ERISA with respect to the termination of any Plan; (e) the receipt by any Borrower or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or Plans or to appoint a trustee to administer any Plan; (f) the incurrence by any Borrower or any of its ERISA Affiliates of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; or (g) the receipt by any Borrower or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from any Borrower or any ERISA Affiliate of any notice, concerning the imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA.

"EU Bail-In Legislation Schedule" means the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor thereto), as in effect from time to time.

"Eurodollar", when used in reference to any Loan or Borrowing, refers to whether such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Adjusted LIBO Rate.

"Event of Default" has the meaning assigned to such term in Section 7.01.

"Exchange Rate" means on any day, for purposes of determining the Dollar Equivalent of any currency other than Dollars, the rate at which such currency may be exchanged into Dollars at the time of determination on such day on the Reuters Currency pages, if available, for such currency. In the event that such rate does not appear on any Reuters Currency pages, the Exchange Rate shall be determined by reference to such other publicly available service for displaying exchange rates as may be agreed upon by the Administrative Agent and the applicable Borrower, or, in the absence of such an agreement, such Exchange Rate shall instead be the arithmetic average of the spot rates of exchange of the Administrative Agent in the market where its foreign currency exchange operations in respect of such currency are then being conducted, at or about such time as the Administrative Agent shall elect after determining that such rates shall be the basis for determining the Exchange Rate, on such date for the purchase of Dollars for delivery two Business Days later; provided that if at the time of any such determination, for any reason, no such spot rate is being quoted, the Administrative Agent may use any reasonable method it deems appropriate to determine such rate, and such determination shall be conclusive absent manifest error.

"Exchange Rate Date" means, if on such date any outstanding Letter of Credit is (or any Letter of Credit that has been requested at such time would be) denominated in a currency other than Dollars, each of:

(a) the last Business Day of each calendar month,

(b) if an Event of Default has occurred and is continuing, any Business Day designated as an Exchange Rate Date by the Administrative Agent in its sole discretion, and

(c) each date (with such date to be reasonably determined by the Administrative Agent) that is on or about the date of (i) a Borrowing Request or an Interest Election Request with respect to any Revolving Borrowing or (ii) each request for the issuance, amendment, renewal or extension of any Letter of Credit or Swingline Loan.

"Excluded Swap Obligation" means, with respect to any Loan Party, any Swap Obligation if, and to the extent that, all or a portion of the liability of such Loan Party for or the guarantee of such Loan Party of, or the grant by such Loan Party of a security interest to secure, such Swap Obligation (or any liability or guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) (i) by virtue of such Loan Party's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder at the time the liability for or the guarantee of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation (such determination being made after giving effect to any applicable keepwell, support or other agreement for the benefit of the applicable Loan Party, including any such provision contained in the Loan Party Guaranty) or (ii) in the case of a Swap Obligation subject to a clearing requirement pursuant to Section 2(h) of the Commodity Exchange Act (or any successor provision thereto), because such Loan Party is a "financial entity," as defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act (or any successor provision thereto) at the time the liability for or the guarantee of such Loan Party or the grant of such security interest becomes effective with respect to such Swap Obligation. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such guarantee or security interest is or becomes illegal for the reasons identified in the immediately preceding sentence of this definition.

"Excluded Taxes" means, with respect to the Administrative Agent, any Lender, the Issuing Bank or any other recipient of any payment to be made by or on account of any obligation of any Borrower hereunder, (a) income or franchise taxes imposed on (or measured by) its net income by the United States of America, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of any Lender, in which its applicable lending office is located, (b) any branch profits taxes imposed by the United States of America or any similar tax imposed by any other jurisdiction in which any Borrower is located and (c) in the case of a Foreign Lender (other than an assignee pursuant to a request by any Borrower under Section 2.19(b)), any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure to comply with Section 2.17(e), except to the extent that such Foreign Lender (or its assignor, if any) was entitled, at the time of designation of a new lending office (or assignment), to receive additional amounts from any Borrower with respect to such withholding tax pursuant to Section 2.17(a).

"Existing Credit Agreement" means that certain Second Amended and Restated Credit Agreement, dated as of October 31, 2016, among certain of the Borrowers, the lenders party thereto, and Wells Fargo Bank, National Association, as administrative agent thereunder, as amended prior to the date hereof.

"Existing Floorplan Swingline Loan" means a floorplan loan issued and outstanding by JPMorgan Chase Bank, N.A., as the applicable Swingline Lender on the Second Amendment Effective Date and set forth on Schedule 1.01.

"Existing Letter of Credit" means a letter of credit issued and outstanding under the Existing Credit Agreement and listed on Schedule 2.06 hereto.

"FATCA" means Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official interpretations thereof, and any agreements entered into pursuant to Section 1471(b)(1) of the Code.

"Federal Funds Rate" means, for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day, provided that if such rate is not so published for any day which is a Business Day, the Federal Funds Rate for such day shall be the average of the quotation for such day on such transactions received by the Administrative Agent from three federal funds brokers of recognized standing selected by the Administrative Agent. Notwithstanding the foregoing, if the Federal Funds Rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Federal Reserve Bank of New York's Website" means the website of the Federal Reserve Bank of New York at http://www.newyorkfed.org, or any successor source.

"Financial Officer" means the chief executive officer, chief financial officer, principal accounting officer, treasurer or controller of the Company.

"First-Tier Foreign Subsidiary" means any Subsidiary that is a "controlled foreign corporation" within the meaning of Section 957 of the Code and the Equity Interests of which are owned directly by any Loan Party.

"Fiscal Quarter" means each of the quarterly accounting periods of the Company, ending March 31, June 30, September 30 and December 31 of each year.

"Fiscal Year" means each annual accounting period of the Company ending on December 31 of each year. As an example, reference to the 2017 Fiscal Year shall mean the Fiscal Year ending December 31, 2017.

"Floored Item" means any Vehicle for which a Floorplan Swingline Loan has been made to a Borrower to acquire the same and for which a Borrower remains indebted hereunder.

"Floorplan Swingline Commitment" has the meaning set forth in Section 2.05(a).

"Floorplan Swingline Loan" means a Loan pursuant to Section 2.05 for the purpose of financing the acquisition by a Borrower of Vehicles, including, on and after the Second Amendment Effective Date, each Existing Floorplan Swingline Loan, which shall be deemed to have been issued as a Floorplan Swingline Loan hereunder and shall for all purposes hereof be treated as a Floorplan Swingline Loan under this Agreement.

"Foreign Currency" means, with respect to any Letter of Credit, any currency other than Dollars acceptable to the Administrative Agent that is freely available, freely transferable and freely convertible into Dollars, and agreed to by the Issuing Bank issuing such Letter of Credit.

"Foreign Holding Company" means any Subsidiary all or substantially all of the assets of which are comprised of Equity Interests in one or more Subsidiaries that are "controlled foreign corporations" within the meaning of Section 957 of the Code.

"Foreign Lender" means any Lender that is organized under the laws of a jurisdiction other than that in which a Borrower is located. For purposes of this definition, the United States of America, each State thereof and the District of Columbia shall be deemed to constitute a single jurisdiction.

"Fronting Exposure" means, at any time there is a Defaulting Lender, (a) with respect to the Issuing Banks, such Defaulting Lender's Revolving Credit Commitment Percentage of the outstanding LC Exposure other than LC Exposure as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Credit Lenders or Cash Collateralized in accordance with the terms hereof, and (b) with respect to the Swingline Lender, such Defaulting Lender's Revolving Credit Commitment Percentage of outstanding Swingline Exposure other than Swingline Exposure as to which such Defaulting Lender's participation obligation has been reallocated to other Revolving Credit Lenders.

"GAAP" means generally accepted accounting principles in the United States of America.

"Governmental Authority" means 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.

"Guarantor" means each existing and future Domestic Subsidiary, provided, that no Inactive Subsidiary or Foreign Holding Company shall be required to be a Guarantor.

"Guaranty Obligations" means, with respect to any Person, without duplication, any obligations of such Person (other than endorsements in the ordinary course of business of negotiable instruments for deposit or collection) guaranteeing or intended to guarantee any Indebtedness of any other Person in any manner, whether direct or indirect, and including without limitation any obligation, whether or not contingent, (a) to purchase any such Indebtedness or any property constituting security therefor, (b) to advance or provide funds or other support for the payment or purchase of any such Indebtedness or to maintain working capital, solvency or other balance sheet condition of such other Person (including without limitation keep well agreements, maintenance agreements or similar agreements or arrangements) for the benefit of any holder of Indebtedness of such other Person, (c) to lease or purchase assets, securities or services primarily for the purpose of assuring the holder of such Indebtedness against loss in respect thereof, or (d) to otherwise assure or hold harmless the holder of such Indebtedness against loss in respect thereof. The amount of any Guaranty Obligation hereunder shall (subject to any limitations set forth therein) be deemed to be an amount equal to the outstanding principal amount (or maximum principal amount, if larger) of the Indebtedness in respect of which such Guaranty Obligation is made.

"Hazardous Materials" means all explosive or radioactive substances or wastes and all hazardous or toxic substances, wastes or other pollutants, including petroleum or petroleum distillates, asbestos or asbestos containing materials, polychlorinated biphenyls, radon gas, infectious or medical wastes and all other substances or wastes of any nature regulated pursuant to any Environmental Law.

"Hedge Agreement" means (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Company or the Subsidiaries shall be a Hedge Agreement

"Hedge Bank" means any Person that, (a) at the time it enters into a Hedge Agreement with a Loan Party permitted under Article VI, is a Lender, an Affiliate of a Lender, the Administrative Agent or an Affiliate of the Administrative Agent or (b) at the time it (or its Affiliate) becomes a Lender or the Administrative Agent (including on the Effective Date), is a party to a Hedge Agreement with a Loan Party, in each case in its capacity as a party to such Hedge Agreement.

"Inactive Subsidiary" means, collectively, (a) each Subsidiary which has no assets and conducts no business and (b) each Subsidiary in existence on the Effective Date which conducts business so long as such Subsidiary (i) has no more than five percent (5%) of the total assets of the Company and its Subsidiaries on a consolidated basis as reflected in the most recent financial statements delivered pursuant to Section 5.01 prior to such date, and (ii) has contributed no more than five percent (5%) of the total revenue of the Company and its Subsidiaries on a consolidated basis for the period of four (4) consecutive Fiscal Quarters ending on the last day of the most recent Fiscal Quarter for which financial statements have been delivered pursuant to Section 5.01.

"Increase Effective Date" has the meaning assigned thereto in Section 2.04(c).

"Incremental Amendment" has the meaning assigned thereto in Section 2.04(e).

"Incremental Increase" has the meaning assigned thereto in Section 2.04(a).

"Incremental Lender" has the meaning assigned thereto in Section 2.04(b).

"Incremental Term Loan" has the meaning assigned thereto in Section 2.04(a).

"Indebtedness" of any Person means, without duplication, (a) all obligations of such Person for borrowed money or with respect to deposits or advances of any kind, (b) all obligations of such Person evidenced by bonds, debentures, notes or similar instruments, (c) all obligations of such Person upon which interest charges are customarily paid, (d) all obligations of such Person under conditional sale or other title retention agreements relating to property acquired by such Person, (e) all obligations of such Person in respect of the deferred purchase price of property or services (excluding current accounts payable incurred in the ordinary course of business), (f) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such Person, whether or not the Indebtedness secured thereby has been assumed, (g) all Guaranty Obligations by such Person of Indebtedness of others, (h) all Capital Lease Obligations of such Person, (i) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances and (k) all net obligations of such Person under any Hedge Agreements. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor. For purposes of determining Indebtedness, the "principal amount" of the obligations of any Person in respect of any Hedge Agreement at any time shall be the maximum aggregate amount (giving effect to any netting agreements) that such Person would be required to pay if such Hedge Agreement were terminated at such time.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Interest Coverage Ratio" means, the ratio, determined as of the end of each of Fiscal Quarter of the Company, of (a) Consolidated EBIT, to (b) Consolidated Interest Expense, all as calculated for the most-recently ended four Fiscal Quarters and for the Company and its Subsidiaries on a consolidated basis.

"Interest Election Request" means a request by a Borrower to convert or continue a Revolving Borrowing in accordance with Section 2.08.

“Interest Expense” means, with reference to any period, total interest expense (including that attributable to Capital Lease Obligations) of the Company and its Subsidiaries for such period with respect to all outstanding Indebtedness of the Company and its Subsidiaries (including all commissions, discounts and other fees and charges owed with respect to letters of credit and bankers’ acceptance financing and net costs under Hedge Agreements in respect of interest rates to the extent such net costs are allocable to such period in accordance with GAAP), calculated on a consolidated basis for the Company and its Subsidiaries for such period in accordance with GAAP.

“Interest Payment Date” means (a) with respect to any ABR Loan (other than a Swingline Loan), the last day of each March, June, September and December, (b) with respect to any Eurodollar Loan, the last day of the Interest Period applicable to the Borrowing of which such Loan is a part and, in the case of a Eurodollar Borrowing with an Interest Period of more than three months’ duration, each day 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, and (c) with respect to any Swingline Loan, the day that such Loan is required to be repaid.

“Interest Period” means with respect to any Eurodollar Borrowing, the period commencing on the date of such Borrowing and ending on the numerically corresponding day in the calendar month that is one, two, three or six months thereafter, as a Borrower may elect, and; provided that (a) if any Interest Period would end on a day other than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day and (b) any Interest Period that commences on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the last calendar month of such Interest Period) shall end on the last Business Day of the last calendar month of such Interest Period. For purposes hereof, the date of a Borrowing initially shall be the date on which such Borrowing is made and, in the case of a Revolving Borrowing, thereafter shall be the effective date of the most recent conversion or continuation of such Borrowing.

“Issuing Bank” means Wells Fargo and JPMorgan Chase Bank, N.A., each in its capacity as an issuer of Letters of Credit hereunder, and each of their respective successors in such capacity as provided in Section 2.06(i). Each Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by Affiliates of such Issuing Bank, in which case the term “Issuing Bank” shall include any such Affiliate with respect to Letters of Credit issued by such Affiliate.

“Laws” or “laws” means all applicable provisions of constitutions, statutes, rules, regulations and orders of any Governmental Authority, including all orders and decrees of all courts, tribunals and arbitrators.

“LC Disbursement” means a payment made by the applicable Issuing Bank pursuant to a Letter of Credit.

“LC Exposure” means, at any time, the sum of (a) the Dollar Equivalent of the aggregate undrawn amount of all outstanding Letters of Credit at such time plus (b) the Dollar Equivalent of the aggregate amount of all LC Disbursements that have not yet been reimbursed by or on behalf of any Borrower at such time. The LC Exposure of any Revolving Credit Lender at any time shall be its Revolving Credit Commitment Percentage of the total LC Exposure at such time.

“Lenders” means the Persons listed on Schedule 2.01 and any other Person that shall have become a party hereto pursuant to an Assignment and Assumption or Incremental Amendment, other than any such Person that ceases to be a party hereto pursuant to an Assignment and Assumption. Unless the context otherwise requires, the term “Lenders” includes the Swingline Lender.

"Letter of Credit" means the collective reference to any letter of credit or similar instrument (including without limitation a bank guarantee) acceptable to the applicable Issuing Bank issued for the account of any Borrower pursuant to this Agreement and the Existing Letters of Credit. All references in this Agreement to account party, beneficiary, reimbursements, draws and similar terms used with respect to any letter of credit constituting a Letter of Credit shall be interpreted in a similar manner as determined by the applicable Issuing Bank when used with respect to any similar instrument (including without limitation a bank guarantee) acceptable to the applicable Issuing Bank constituting a Letter of Credit.

"Leverage Ratio" means, as of the end of any Fiscal Quarter, the ratio of the Consolidated Total Debt as of such Fiscal Quarter end to the Consolidated EBITDA for the period of four consecutive Fiscal Quarters ending with such Fiscal Quarter end; provided that for purposes of Section 6.06(d), the Leverage Ratio shall be calculated as of the most recently ended Fiscal Quarter on a trailing four Fiscal Quarter period basis.

"Leverage Ratio Increase" has the meaning assigned thereto in Section 6.13(a).

"~~LIBO Rate~~LIBOR" means, subject to the implementation of a Benchmark Replacement~~ Rate~~ in accordance with Section 2.14(b), for the Interest Period for any Eurodollar Borrowing, the rate of interest per annum determined on the basis of the rate as set by the ICE Benchmark Administration Limited, a United Kingdom company (or the successor thereto if such rate is no longer available) for deposits in Dollars for a period equal to the applicable Interest Period at approximately 11:00 a.m. London time, two Business Days prior to the date of commencement of such Interest Period for purposes of calculating effective rates of interest for loans or obligations making reference thereto, for an amount approximately equal to the applicable Eurodollar Borrowing and for a period of time approximately equal to such Interest Period. In the event that such rate is not available at such time for any reason, then ~~the "LIBO Rate~~"LIBOR" with respect to such Eurodollar Borrowing for such Interest Period shall be the rate at which Dollar deposits for a maturity comparable to such Interest Period are offered by the principal London office of the Administrative Agent in immediately available funds in the London interbank market at approximately 11:00 a.m., London time, two Business Days prior to the commencement of such Interest Period. Each calculation by the Administrative Agent of ~~the LIBO Rate~~LIBOR shall be conclusive and binding for all purposes, absent manifest error.

Notwithstanding the foregoing, (x) in no event shall ~~the LIBO Rate~~LIBOR be less than 0% (including, without limitation, any Benchmark Replacement ~~Rate~~ with respect thereto) and (y) unless otherwise specified in any amendment to this Agreement entered into in accordance with Section 2.14(b), in the event that a Benchmark Replacement~~ Rate~~ with respect to ~~the "LIBO Rate~~"LIBOR" is implemented then all references herein to "~~LIBO Rate~~LIBOR" shall be deemed references to such Benchmark Replacement~~ Rate~~.

"Lien" means, with respect to any asset, (a) any mortgage, deed of trust, lien, pledge, hypothecation, encumbrance, charge or security interest in, on or of such asset, (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset and (c) in the case of securities, any purchase option, call or similar right of a third party with respect to such securities.

"Limited Condition Acquisition" means any Permitted Acquisition that is not conditioned on the availability of, or on obtaining, third-party financing and that is consummated within 90 days of the date of execution of the definitive purchase agreement governing such Permitted Acquisition.

"Loan Documents" means, collectively, this Agreement, the Collateral Documents, any Incremental Amendment, any promissory notes issued pursuant to this Agreement, any Letter of Credit applications, the Loan Party Guaranties, and all other agreements, instruments, documents and certificates identified in Section 4.01 executed and delivered to, or in favor of, the Administrative Agent or any Lenders and including all other consents, contracts, notices, letter of credit agreements, letter of credit applications and any agreements by or on behalf of any Loan Party, or any employee of any Loan Party in connection with the issuance of Letters of Credit, and each other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with this Agreement or the transactions contemplated hereby and all other written matter whether heretofore, now or hereafter executed by or on behalf of any Loan Party, or any employee of any Loan Party, and delivered to the Administrative Agent or any Lender in connection with the Agreement or the transactions contemplated hereby. Any reference in the Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative.

"Loan Parties" means the Borrowers and the Guarantors, and "Loan Party" shall mean any of them.

"Loan Party Guaranty" means any guaranty agreements from any Guarantor as are requested by the Administrative Agent and its counsel, in each case as amended, restated, supplemented or otherwise modified from time to time, and substantially in the form attached hereto as Exhibit B.

"Loans" means the collective reference to the loans made by the Lenders to the Borrowers pursuant to this Agreement, including the Revolving Loans and the Swingline Loans, and "Loan" means any of such Loans.

"Manufacturer" means General Motors Corporation, Ford Motor Company and FCA US LLC (f/k/a Chrysler Group LLC).

"Material Adverse Effect" means a material adverse effect on (a) the business, assets, operations, prospects or condition, financial or otherwise, of the Company and the Subsidiaries taken as a whole, (b) the ability of the Loan Parties to perform any of their obligations under this Agreement or any other Loan Document or (c) the rights of or benefits available to the Lenders under this Agreement or any other Loan Document.

"Material Indebtedness" means Indebtedness (other than the Loans and Letters of Credit), or obligations in respect of one or more Hedge Agreements, of any one or more of the Company and its Subsidiaries in an aggregate principal amount exceeding $1,000,000.

"Maturity Date" means the earliest to occur of (a) August 8, 2023, (b) the date of termination of the entire Revolving Credit Commitment by the Company pursuant to Section 2.09, and (c) the date of termination of the Revolving Credit Commitment pursuant to Section 7.01.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Non-Defaulting Lender" means, at any time, each Lender that is not a Defaulting Lender at such time.

"Non-Guarantor Subsidiary" means any Subsidiary of the Company that is not a Guarantor.

“Obligations” means all unpaid principal of and accrued and unpaid interest on (including without limitation interest accruing after the maturity of the Loans and reimbursement obligations and interest accruing after the filing of any petition in bankruptcy, or the commencement of any insolvency, reorganization or like proceeding relating to any Loan Party, whether or not a claim for post-filing or post-petition interest is allowed in such proceeding) the Loans, all LC Exposure, all accrued and unpaid fees and all expenses, reimbursements, indemnities and other obligations of the Loan Parties to the Lenders or to any Lender, the Administrative Agent, the Issuing Bank or to the Issuing Bank or any indemnified party arising under the Loan Documents.

“OFAC” means the U.S. Department of the Treasury’s Office of Foreign Assets Control.

“Other Taxes” means any and all present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies arising from any payment made hereunder or from the execution, delivery or enforcement of, or otherwise with respect to, this Agreement.

“Participant” has the meaning set forth in Section 9.04.

“PATRIOT Act” means the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)).

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

“Permitted Acquisition” means any Acquisition permitted under Section 6.04(e).

“Permitted Encumbrances” means:

(a) liens imposed by law for taxes that are not yet delinquent or are being contested in compliance with Section 5.04;

(b) carriers’, warehousemen’s, mechanics’, materialmen’s, repairmen’s and other like Liens imposed by law, arising in the ordinary course of business and securing obligations that are not overdue by more than 30 days or are being contested in compliance with Section 5.04;

(c) pledges and deposits made in the ordinary course of business in compliance with workers’ compensation, unemployment insurance and other social security laws or regulations;

(d) deposits to secure the performance of bids, trade contracts, leases, statutory obligations, surety and appeal bonds, performance bonds and other obligations of a like nature, in each case in the ordinary course of business;

(e) judgment liens in respect of judgments that do not constitute an Event of Default under clause (k) of Section 7.01;

(f) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business that do not secure any monetary obligations and do not materially detract from the value of the affected property or interfere with the ordinary conduct of business of any Borrower or any Subsidiary;

(g) Liens arising from the filing of precautionary UCC financing statements relating solely to personal property leased or consigned pursuant to operating leases, the consignment of goods or other similar arrangements for the sale of any assets or property entered into in the ordinary course of business of any Borrower and its Subsidiaries;

(h) (i) Liens of a collecting bank arising in the ordinary course of business under Section 4-210 of the Uniform Commercial Code in effect in the relevant jurisdiction and (ii) Liens of any depositary bank in connection with statutory, common law and contractual rights of setoff and recoupment with respect to any deposit account of a Borrower or any Subsidiary thereof; and

(i) contractual Liens of suppliers (including sellers of goods) or customers granted in the ordinary course of business to the extent limited to the property or assets relating to such contract;

provided that the term "Permitted Encumbrances" shall not include any Lien securing Indebtedness.

"Permitted Investments" means:

(a) direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

(b) investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, the highest credit rating obtainable from S&P or from Moody's;

(c) investments in certificates of deposit, banker's acceptances and time deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any commercial bank organized under the laws of the United States of America or any State thereof which has a combined capital and surplus and undivided profits of not less than $500,000,000;

(d) fully collateralized repurchase agreements with a term of not more than 30 days for securities described in clause (a) above and entered into with a financial institution satisfying the criteria described in clause (c) above; and

(e) money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P and Aaa by Moody's and (iii) have portfolio assets of at least $5,000,000,000.

"Person" means any natural person, corporation, limited liability company, trust, joint venture, association, company, partnership, Governmental Authority or other entity.

"Plan" means any employee pension benefit plan subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, and in respect of which any Borrower or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Prime Rate" means, at any time, the rate of interest per annum publicly announced from time to time by the Administrative Agent as its prime rate. Each change in the Prime Rate shall be effective as of the opening of business on the day such change in such prime rate occurs. The parties hereto acknowledge that the rate announced publicly by the Administrative Agent as its prime rate is an index or base rate and shall not necessarily be its lowest or best rate charged to its customers or other banks.

"PTE" means a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Register" has the meaning set forth in Section 9.04.

"Related Parties" means, with respect to any specified Person, such Person's Affiliates and the respective directors, officers, employees, agents and advisors of such Person and such Person's Affiliates.

"Removal Effective Date" has the meaning assigned thereto in Section 8.06(b).

"~~Replacement Rate" has the meaning assigned thereto in Section 2.14(b).~~Relevant Governmental Body" means the Federal Reserve Board and/or the Federal Reserve Bank of New York, or a committee officially endorsed or convened by the Federal Reserve Board and/or the Federal Reserve Bank of New York or any successor thereto.

"Required Lenders" means, at any time, Lenders having Total Credit Exposures representing more than 50% of the Total Credit Exposures of all Lenders at such time; provided that (a) it shall require at least two Lenders (with any Lenders that are Affiliates constituting one Lender for purposes of this definition) to constitute Required Lenders at any time there are two or more Lenders party hereto, and (b) the Total Credit Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"Requirement of Law" means, as to any Person, the Certificate of Incorporation and By Laws or other organizational or governing documents of such Person, and any law, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Resignation Effective Date" has the meaning assigned thereto in Section 8.06(a).

"Restricted Payment" means any dividend or other distribution (whether in cash, securities or other property) with respect to any Equity Interests in the Company or any Subsidiary, or any payment (whether in cash, securities or other property), including any sinking fund or similar deposit, on account of the purchase, redemption, retirement, acquisition, cancellation or termination of any such Equity Interests in the Company or any option, warrant or other right to acquire any such Equity Interests in the Company.

"Revolving Credit Commitment" means, (a) with respect to each Revolving Credit Lender, the obligation of such Revolving Credit Lender to make Revolving Loans and to acquire participations in Letters of Credit and Swingline Loans hereunder, in an aggregate principal amount at any time outstanding not to exceed the amount set forth opposite such Revolving Credit Lender's name on the Register, as such amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 2.04 and the Second Amendment) and (b) with respect to all Revolving Credit Lenders, the aggregate commitment of all Revolving Credit Lenders to make Revolving Loans, as such amount may be modified at any time or from time to time pursuant to the terms hereof (including, without limitation, Section 2.04 and the Second Amendment). The ~~initial~~ amount of each Revolving Lender's Revolving Credit Commitment as of the Second Amendment Effective Date is set forth on Schedule 2.01, or in the Assignment and Assumption pursuant to which such Lender shall have assumed its Revolving Credit Commitment, as applicable. The ~~initial~~ aggregate amount of the Revolving Credit Lenders' Revolving Credit Commitments ~~is $150,000,000.~~on the Second Amendment Effective Date is $175,000,000.

"Revolving Credit Commitment Percentage" means, with respect to any Revolving Credit Lender at any time, the percentage of the total Revolving Credit Commitments of all the Revolving Credit Lenders represented by such Revolving Credit Lender's Revolving Credit Commitment. If the Revolving Credit Commitments have terminated or expired, the Revolving Credit Commitment Percentages shall be determined based upon the Revolving Credit Commitments most recently in effect, giving effect to any assignments. The Revolving Credit Commitment Percentage of each Revolving Credit Lender on the Second Amendment Effective Date is set forth opposite the name of such Lender on Schedule 2.01.

"Revolving Credit Exposure" means, with respect to any Revolving Credit Lender at any time, the sum of the outstanding principal amount of such Revolving Credit Lender's Revolving Loans and its LC Exposure and Swingline Exposure at such time. For; provided that, for purposes of calculating "Revolving Credit Exposure" for use in Sections 2.01, 2.05(a), 2.06(a) and 2.09(b) (or any other provision determining a Lender's Revolving Credit Commitment to fund), the amount of outstanding Swingline Exposure related to the Floorplan Swingline Loans shall be deemed to be the amount of the Floorplan Swingline Commitment (without regard to the outstanding amount of Floorplan Swingline Loans).

"Revolving Credit Facility" means the revolving credit facility established pursuant to Article II (including any increase in such revolving credit facility established pursuant to Section 2.04 or the Second Amendment).

"Revolving Credit Facility Increase" has the meaning assigned thereto in Section 2.04(a).

"Revolving Credit Lenders" means, collectively, all of the Lenders with a Revolving Credit Commitment.

"Revolving Credit Outstandings" means the sum of (a) with respect to Revolving Loans and Swingline Loans on any date, the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Revolving Loans and Swingline Loans, as the case may be, occurring on such date (provided that for purposes of determining "Revolving Credit Outstandings" hereunder, the amount of outstanding Swingline Loans related to Floorplan Swingline Loans shall be deemed to be the amount of the Floorplan Swingline Commitment (without regard to the outstanding amount of Floorplan Swingline Loans)); plus (b) with respect to any LC Exposure on any date, the aggregate outstanding amount thereof on such date after giving effect to any extensions of credit occurring on such date and any other changes in the aggregate amount of the LC Exposure as of such date, including as a result of any reimbursements of outstanding unpaid drawings under any Letters of Credit or any reductions in the maximum amount available for drawing under Letters of Credit taking effect on such date.

"Revolving Loan" means any revolving loan made to a Borrower pursuant to Section 2.03, and all such revolving loans collectively as the context requires.

"S&P" means Standard & Poor's Ratings Services, a division of The McGraw-Hill Companies, Inc.

"Sanctions" means any and all economic or financial sanctions, sectoral sanctions, secondary sanctions, trade embargoes and anti-terrorism laws, including but not limited to those imposed, administered or enforced from time to time by the U.S. government (including those administered by OFAC or the U.S. Department of State), the United Nations Security Council, the European Union, Her Majesty's Treasury, or other relevant sanctions authority with jurisdiction over any Lender, the Company or any of its Subsidiaries or Affiliates.

"Sanctioned Country" means at any time, a country, region or territory which is itself the subject or target of any Sanctions (including, as of the Effective Date, Cuba, Iran, North Korea, Syria and Crimea).

“Sanctioned Person” means, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC (including, without limitation, OFAC’s Specially Designated Nationals and Blocked Persons List and OFAC’s Consolidated Non-SDN List), the U.S. Department of State, the United Nations Security Council, the European Union, Her Majesty’s Treasury, or other relevant sanctions authority, (b) any Person operating, organized or resident in a Sanctioned Country or (c) any Person owned or controlled by any such Person or Persons described in clauses (a) and (b), including a Person that is deemed by OFAC to be a Sanctions target based on the ownership of such legal entity by Sanctioned Person(s).

“Second Amendment” means the Second Amendment to this Agreement, dated as of the Second Amendment Effective Date, by and among the Borrowers, the Guarantors, the Lenders and the Administrative Agent.

“Second Amendment Effective Date” means September 9, 2019.

“Secured Cash Management Agreement” means any Cash Management Agreement between or among any Loan Party and any Cash Management Bank.

“Secured Hedge Agreement” means any Hedge Agreement between or among any Loan Party and any Hedge Bank.

“Secured Obligations” means, collectively, (a) the Obligations and (b) all existing or future payment and other obligations owing by any Loan Party under (i) any Secured Hedge Agreement and (ii) any Secured Cash Management Agreement; provided that the “Secured Obligations” of a Loan Party shall exclude any Excluded Swap Obligations with respect to such Loan Party.

“Secured Parties” means, collectively, the Administrative Agent, the Lenders, the Issuing Banks, the Hedge Banks, the Cash Management Banks, each co-agent or sub-agent appointed by the Administrative Agent from time to time pursuant to Section 8.05, any other holder from time to time of any of any Secured Obligations and, in each case, their respective successors and permitted assigns.

“Solvent” and “Solvency” mean, with respect to any Person on any date of determination, that on such date (a) the fair value of the property of such Person is greater than the total amount of liabilities, including contingent liabilities, of such Person, (b) the present fair salable value of the assets of such Person is not less than the amount that will be required to pay the probable liability of such Person on its debts as they become absolute and matured, (c) such Person does not intend to, and does not believe that it will, incur debts or liabilities beyond such Person’s ability to pay such debts and liabilities as they mature, (d) such Person is not engaged in business or a transaction, and is not about to engage in business or a transaction, for which such Person’s property would constitute an unreasonably small capital, and (e) such Person is able to pay its debts and liabilities, contingent obligations and other commitments as they mature in the ordinary course of business. The amount of contingent liabilities at any time shall be computed as the amount that, in the 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.

“Statutory Reserve Rate” means a fraction (expressed as a decimal), the numerator of which is the number one and the denominator of which is the number one minus the aggregate of the maximum reserve percentages (including any marginal, special, emergency or supplemental reserves) expressed as a decimal established by the Board to which the Administrative Agent is subject, with respect to the Adjusted LIBO Rate, for eurocurrency funding (currently referred to as “Eurocurrency Liabilities” in Regulation D of the Board). Such reserve percentages shall include those imposed pursuant to such Regulation D. Eurodollar Loans shall be deemed to constitute eurocurrency funding and to be subject to such reserve requirements without benefit of or credit for proration, exemptions or offsets that may be available from time to time to any Lender under such Regulation D or any comparable regulation. The Statutory Reserve Rate shall be adjusted automatically on and as of the effective date of any change in any reserve percentage.

"SOFR" with respect to any day means the secured overnight financing rate published for such day by the Federal Reserve Bank of New York, as the administrator of the benchmark, (or a successor administrator) on the Federal Reserve Bank of New York's Website.

"subsidiary" means, with respect to any Person (the "parent") at any date, any corporation, limited liability company, partnership, association or other entity the accounts of which would be consolidated with those of the parent in the parent's consolidated financial statements if such financial statements were prepared in accordance with GAAP as of such date, as well as any other corporation, limited liability company, partnership, association or other entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or, in the case of a partnership, more than 50% of the general partnership interests are, as of such date, owned, controlled or held, or (b) that is, as of such date, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by the parent and one or more subsidiaries of the parent.

"Subsidiary" means any direct or indirect subsidiary of the Company.

"Swap Obligation" means, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Swingline Exposure" means, at any time, the aggregate principal amount of all Swingline Loans outstanding at such time. The Swingline Exposure of any Revolving Credit Lender at any time shall be its Revolving Credit Commitment Percentage of the total Swingline Exposure at such time.

"Swingline Lender" means each of Wells Fargo and JPMorgan Chase Bank, N.A., each in its capacity as a lender of Swingline Loans hereunder (as mutually agreed upon with respect to each Swingline Loan between the applicable Borrower and the applicable Swingline Lender), and references to the term "Swingline Lender" in this Agreement shall be deemed to refer to each such Swingline Lender as the context shall require.

"Swingline Loan" means any Floorplan Swingline Loan or W/C Swingline Loan.

"Taxes" means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges imposed by any Governmental Authority, including any interest, fines, additions to tax or penalties applicable thereto.

"Term SOFR" means the forward-looking term rate based on SOFR that has been selected or recommended by the Relevant Governmental Body.

"Total Credit Exposure" means, as to any Lender at any time, the unused Revolving Credit Commitments and Revolving Credit Exposure of such Lender at such time.

"Transactions" means, collectively, (a) the refinancing of all Indebtedness outstanding under the Existing Credit Agreement, and (b) the execution, delivery and performance by the Loan Parties of this Agreement, the borrowing of Loans and other credit extensions, the use of the proceeds thereof and the issuance of Letters of Credit hereunder.

“Type”, when used in reference to any Loan or Borrowing, refers to whether the rate of interest on such Loan, or on the Loans comprising such Borrowing, is determined by reference to the Adjusted LIBO Rate or the Alternate Base Rate.

“UCC” means the Uniform Commercial Code as in effect in the State of New York.

“Unadjusted Benchmark Replacement” means the Benchmark Replacement excluding the Benchmark Replacement Adjustment.

“Unmatured Default” means any event or condition which upon notice, lapse of time or both would, unless cured or waived, become an Event of Default.

“U.S. Person” means any Person that is a “United States person” as defined in Section 7701(a)(30) of the Code.

“U.S. Tax Compliance Certificate” has the meaning assigned thereto in Section 2.17(e)(3).

“Vehicles” means chassis and/or vehicles manufactured by ~~the~~a Manufacturer and acquired by a Borrower for the purpose of upfitting or modifying with special bodies and/or equipment.

“W/C Swingline Loan” means a Loan made pursuant to Section 2.05 for a purpose other than financing the acquisition by a Borrower of Vehicles.

“Wells Fargo” means Wells Fargo Bank, National Association, a national banking association, and its successors.

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

“Write-Down and Conversion Powers” means, with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule.

SECTION 1.02. Classification of Loans and Borrowings. For purposes of this Agreement, Loans may be classified and referred to by Class (e.g., a “Revolving Loan”) or by Type (e.g., a “Eurodollar Loan” or an “ABR Loan”) or by Class and Type (e.g., a “Eurodollar Revolving Loan”). Borrowings also may be classified and referred to by Class (e.g., a “Revolving Borrowing”) or by Type (e.g., a “Eurodollar Borrowing” or an “ABR Borrowing”) or by Class and Type (e.g., a “Eurodollar Revolving Borrowing”).

SECTION 1.03. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Unless the context requires otherwise (a) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified (subject to any restrictions on such amendments, supplements or modifications set forth herein), (b) any reference herein to any Person shall be construed to include such Person’s successors and assigns, (c) the words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof, (d) all references herein to Articles, Sections, Exhibits and Schedules shall be construed to refer to Articles and Sections of, and Exhibits and Schedules to, this Agreement and (e) the words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 1.04. Accounting Terms; GAAP. Except as otherwise expressly provided herein, all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if the Company notifies the Administrative Agent that the Company requests an amendment to any provision hereof to eliminate the effect of any change occurring after the date hereof in GAAP or in the application thereof on the operation of such provision (or if the Administrative Agent notifies the Company that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, then such provision shall be interpreted on the basis of GAAP as in effect and applied immediately before such change shall have become effective until such notice shall have been withdrawn or such provision amended in accordance herewith. For purposes of calculating all financial covenants and all other covenants, any Acquisition or any sale or other disposition outside the ordinary course of business by any Borrower or any of its Subsidiaries of any asset or group of related assets in one or a series of related transactions, including the incurrence of any Indebtedness and any related financing or other transactions in connection with any of the foregoing, occurring during the period for which such matters are calculated shall be deemed to have occurred on the first day of the relevant period for which such matters were calculated on a pro forma basis acceptable to the Administrative Agent. Notwithstanding any other provision contained herein, except to the extent elected otherwise by the Company, 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 any change in accounting for leases pursuant to GAAP (including those resulting from the implementation of Financial Accounting Standards Board Accounting Standards Codification 842) to the extent such adoption would require treating any lease (whether such lease is entered into before or after the Effective Date) as a capital lease or finance lease where such lease would not have been required to be treated as a capital lease under GAAP as in effect on the Effective Date.

SECTION 1.05. Foreign Currency Calculations. (a) For purposes of determining the Dollar Equivalent of any Letter of Credit denominated in a Foreign Currency or any related amount, the Administrative Agent shall determine the Exchange Rate as of the applicable Exchange Rate Date with respect to each Foreign Currency in which any requested or outstanding Letter of Credit is denominated and shall apply such Exchange Rates to determine such amount (in each case after giving effect to any Letter of Credit Borrowing to be made or repaid on or prior to the applicable date for such calculation).

(b) For purposes of any determination under Article VI or VII, all amounts incurred, outstanding or proposed to be incurred or outstanding, and the amount of each investment, asset disposition or other applicable transaction, denominated in currencies other than Dollars shall be translated into Dollars at the Exchange Rates in effect on the date of such determination; provided that no Event of Default shall arise as a result of any limitation set forth in Dollars in Section 6.01 or 6.02 being exceeded solely as a result of changes in Exchange Rates from those rates applicable at the time or times Indebtedness or Liens were initially consummated in reliance on the exceptions under such Sections. Such Exchange Rates shall be determined in good faith by the Borrowers.

SECTION 1.06. UCC Terms; Rounding. Terms defined in the UCC in effect on the Effective Date and not otherwise defined herein shall, unless the context otherwise indicates, have the meanings provided by those definitions. Subject to the foregoing, the term “UCC” refers, as of any date of determination, to the UCC then in effect. Any financial ratios required to be maintained pursuant to this Agreement shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio or percentage is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

SECTION 1.07. Limited Condition Acquisitions. In the event that a Borrower notifies the Administrative Agent in writing that any proposed Permitted Acquisition is a Limited Condition Acquisition and that such Borrower wishes to test the conditions to such Limited Condition Acquisition and the availability of Incremental Term Loans that is to be used to finance such Limited Condition Acquisition in accordance with this Section, then, so long as agreed to by the Administrative Agent and the lenders providing such Incremental Term Loans, the following provisions shall apply:

(a) any condition to such Limited Condition Acquisition or such Incremental Term Loans that requires that no Unmatured Default or Event of Default shall have occurred and be continuing at the time of such Limited Condition Acquisition or the incurrence of such Incremental Term Loans, shall be satisfied if (i) no Unmatured Default or Event of Default shall have occurred and be continuing at the time of the execution of the definitive purchase agreement, merger agreement or other acquisition agreement governing such Limited Condition Acquisition and (ii) no Event of Default under any of Sections 7.01(a), 7.01(b), 7.01(h) or 7.01(i) shall have occurred and be continuing both before and after giving effect to such Limited Condition Acquisition and any Indebtedness incurred in connection therewith (including such Incremental Term Loans);

(b) any condition to such Limited Condition Acquisition or such Incremental Term Loans that the representations and warranties in this Agreement and the other Loan Documents shall be true and correct at the time of such Limited Condition Acquisition or the incurrence of such Incremental Term Loans shall be subject to customary “SunGard” or other customary applicable “certain funds” conditionality provisions (including, without limitation, a condition that the representations and warranties under the relevant agreements relating to such Limited Condition Acquisition as are material to the lenders providing such Incremental Term Loans shall be true and correct, but only to the extent that the applicable Borrower or its applicable Subsidiary has the right to terminate its obligations under such agreement as a result of a breach of such representations and warranties or the failure of those representations and warranties to be true and correct), so long as all representations and warranties in this Agreement and the other Loan Documents are true and correct at the time of execution of the definitive purchase agreement, merger agreement or other acquisition agreement governing such Limited Condition Acquisition;

(c) any financial ratio test or condition, may upon the written election of a Borrower delivered to the Administrative Agent prior to the execution of the definitive agreement for such Limited Condition Acquisition, be tested either (i) upon the execution of the definitive agreement with respect to such Limited Condition Acquisition or (ii) upon the consummation of the Limited Condition Acquisition and related incurrence of Indebtedness, in each case, after giving effect to the relevant Limited Condition Acquisition and related incurrence of Indebtedness, on a pro forma basis; provided that the failure to deliver a notice under this Section 1.07(c) prior to the date of execution of the definitive agreement for such Limited Condition Acquisition shall be deemed an election to test the applicable financial ratio under sub-clause (ii) of this Section 1.07(c); and

(d) if a Borrower has made an election with respect to any Limited Condition Acquisition to test a financial ratio test or condition at the time specified in clause (c)(i) of this Section, then in connection with any subsequent calculation of any ratio or basket on or following the relevant date of execution of the definitive agreement with respect to such Limited Condition Acquisition and prior to the earlier of (i) the date on which such Limited Condition Acquisition is consummated or (ii) the date that the definitive agreement for such Limited Condition Acquisition is terminated or expires without consummation of such Limited Condition Acquisition, any such ratio or basket shall be required to be satisfied (x) on a pro forma basis assuming such Limited Condition Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have been consummated and (y) assuming such Limited Condition Acquisition and other transactions in connection therewith (including the incurrence or assumption of Indebtedness) have not been consummated.

The foregoing provisions shall apply with similar effect during the pendency of multiple Limited Condition Acquisitions such that each of the possible scenarios is separately tested. Notwithstanding anything to the contrary herein, in no event shall there be more than two Limited Condition Acquisitions at any time outstanding.

SECTION 1.08. Rates. The Administrative Agent does not warrant or accept responsibility for, and shall not have any liability with respect to, the administration, submission or any other matter related to the rates in the definition of "~~LIBO Rate"~~LIBOR" or with respect to any rate that is an alternative or replacement for or successor to any such rate (including, without limitation, any Benchmark Replacement) or the effect of any of the foregoing, or of any Benchmark Replacement Conforming Changes.

SECTION 1.09. Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

ARTICLE II
THE CREDIT FACILITIES

SECTION 2.01. Revolving Loans. Subject to the terms and conditions set forth herein, each Revolving Credit Lender severally agrees to make Revolving Loans to the Borrowers from time to time during the Availability Period; provided that (i) after the Effective Date, the Revolving Credit Outstandings shall not exceed the Revolving Credit Commitments, and (ii) the Revolving Credit Exposure of any Revolving Credit Lender shall not at any time exceed such Revolving Credit Lender's Revolving Credit Commitment. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and re-borrow Revolving Loans hereunder.

SECTION 2.02. Loans and Borrowings. (a) Each Revolving Loan shall be made as part of a Borrowing consisting of Revolving Loans made by the Revolving Credit Lenders ratably in accordance with their respective Revolving Credit Commitments. The failure of any Revolving Credit Lender to make any Revolving Loan required to be made by it shall not relieve any other Revolving Credit Lender of its obligations hereunder; provided that the Revolving Credit Commitments of the Revolving Credit Lenders are several and no Revolving Credit Lender shall be responsible for any other Revolving Credit Lender's failure to make Revolving Loans as required.

(b) Subject to Section 2.14, each Borrowing shall be comprised entirely of ABR Loans or Eurodollar Loans as a Borrower may request in accordance herewith. Each Swingline Loan shall be an ABR Loan or shall bear interest at an alternate rate agreed upon by the applicable Borrower and the Swingline Lender. Each Lender at its option may make any Eurodollar Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the obligation of any Borrower to repay such Loan in accordance with the terms of this Agreement.

(c) At the commencement of each Interest Period for any Eurodollar Borrowing, such Borrowing shall be in an aggregate amount that is an integral multiple of $100,000 and not less than $1,000,000. At the time that each ABR Borrowing is made, such Borrowing shall be in an aggregate amount that is an integral multiple of $100,000 and not less than $500,000; provided that an ABR Revolving Borrowing may be in an aggregate amount that is equal to the entire unused balance of the Revolving Credit Commitments or that is required to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e). Each Swingline Loan shall be in an amount that is an amount required by the applicable Swingline Lender from time to time. Borrowings of more than one Type and Class may be outstanding at the same time; provided that there shall not at any time be more than a total of six (6) Eurodollar Borrowings outstanding.

(d) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

SECTION 2.03. Requests for Revolving Borrowings. To request a Revolving Borrowing, the applicable Borrower shall notify the Administrative Agent of such request by telephone (a) in the case of a Eurodollar Borrowing, not later than 11:00 a.m., Eastern time, three Business Days before the date of the proposed Borrowing or (b) in the case of an ABR Borrowing, not later than 11:00 a.m., Eastern time, on the Business Day of the proposed Borrowing; provided that any such notice of an ABR Revolving Borrowing to finance the reimbursement of an LC Disbursement as contemplated by Section 2.06(e) may be given not later than 11:00 a.m., Eastern time, on the date of the proposed Borrowing. Each such telephonic Borrowing Request shall be irrevocable and shall be confirmed promptly by hand delivery, electronic transmission or telecopy to the Administrative Agent of a written Borrowing Request in a form approved by the Administrative Agent and signed by the applicable Borrower. Each Borrower hereby authorizes any Financial Officer of the Company to submit on behalf of any Borrower Borrowing Requests and any other notices pursuant to this Agreement. Each such telephonic and written Borrowing Request with respect to any Revolving Borrowing shall specify the following information in compliance with Section 2.02:

(i) the aggregate amount of the requested Borrowing;

(ii) the date of such Borrowing, which shall be a Business Day;

(iii) whether such Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing;

(iv) in the case of a Eurodollar Borrowing, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term “Interest Period”; and

(v) the location and number of the applicable Borrower’s account to which funds are to be disbursed, which shall comply with the requirements of Section 2.07.

If no election as to the Type of Revolving Borrowing is specified, then the requested Revolving Borrowing shall be an ABR Borrowing. If no Interest Period is specified with respect to any requested Eurodollar Revolving Borrowing, then the applicable Borrower shall be deemed to have selected an Interest Period of one month’s duration. Promptly following receipt of a Borrowing Request in accordance with this Section, the Administrative Agent shall advise each Revolving Credit Lender of the details thereof and of the amount of such Revolving Credit Lender’s Loan to be made as part of the requested Borrowing.

SECTION 2.04. Incremental Loans.

(a) Request for Increase. At any time after the Second Amendment Effective Date, upon written notice to the Administrative Agent, the Borrowers may, from time to time, request (i) one or more incremental term loans (each, an "Incremental Term Loan") and/or (ii) one or more increases in the Revolving Credit Commitments (each, a "Revolving Credit Facility Increase" and, together with the Incremental Term Loans, the "Incremental Increases"); provided that (A) the aggregate initial principal amount of all Incremental Increases shall not exceed $~~75,000,000,~~50,000,000, (B) any such Incremental Increase shall be in a minimum amount of $5,000,000 (or such lesser amount agreed to by the Administrative Agent) or, if less, the remaining amount permitted pursuant to the foregoing clause (A), and (C) no more than five (5) Incremental Increases shall be permitted to be requested during the term of this Agreement.

(b) Incremental Lenders. Each notice from the Borrowers pursuant to this Section shall set forth the requested amount and proposed terms of the relevant Incremental Increase. Incremental Increases may be provided by any existing Lender or by any other Persons (an "Incremental Lender"); provided that the Administrative Agent, each Issuing Bank and/or each Swingline Lender, as applicable, shall have consented (not to be unreasonably withheld or delayed) to such Incremental Lender's providing such Incremental Increases to the extent any such consent would be required under Section 9.04(b) for an assignment of Loans or Revolving Credit Commitments, as applicable, to such Incremental Lender. At the time of sending such notice, the Borrowers (in consultation with the Administrative Agent) shall specify the time period within which each Incremental Lender is requested to respond, which shall in no event be less than ten (10) Business Days from the date of delivery of such notice to the proposed Incremental Lenders. Each proposed Incremental Lender may elect or decline, in its sole discretion, and shall notify the Administrative Agent within such time period whether it agrees, to provide an Incremental Increase and, if so, whether by an amount equal to, greater than or less than requested. Any Person not responding within such time period shall be deemed to have declined to provide an Incremental Increase.

(c) Increase Effective Date and Allocations. The Administrative Agent and the Borrowers shall determine the effective date (the "Increase Effective Date") and the final allocation of such Incremental Increase (limited in the case of the Incremental Lenders to their own respective allocations thereof). The Administrative Agent shall promptly notify the Borrowers and the Incremental Lenders of the final allocation of such Incremental Increases and the Increase Effective Date.

(d) Conditions to Effectiveness of Increase. Any Incremental Increase shall become effective as of such Increase Effective Date, which in the case of any Incremental Term Loan incurred to finance a Limited Condition Acquisition shall be subject to Section 1.07; provided that:

(i) no Unmatured Default or Event of Default shall exist on such Increase Effective Date immediately prior to or after giving effect to (A) such Incremental Increase or (B) the making of the initial Loans pursuant thereto;

(ii) all of the representations and warranties set forth in Article III shall be true and correct in all material respects (or if qualified by materiality or Material Adverse Effect, in all respects) as of such Increase Effective Date, or if such representation speaks as of an earlier date, as of such earlier date;

(iii) the Administrative Agent shall have received from the Company, an officer's compliance certificate from a Financial Officer of the Company demonstrating that the Borrowers are in compliance with the financial covenants set forth in Section 6.13 based on the financial statements most recently delivered pursuant to Section 5.01(a) or 5.01(b), as applicable, both before and after giving effect (on a pro forma basis) to the incurrence of any such Incremental Increase (and assuming that any such Revolving Credit Facility Increase is fully drawn) and any Permitted Acquisition, refinancing of Indebtedness or other event consummated in connection therewith giving rise to a pro forma basis adjustment;

(iv) each Incremental Increase shall constitute Obligations of the Borrowers and will be guaranteed by the Guarantors and secured by the Collateral on a *pari passu* basis;

(v) in the case of each Incremental Term Loan (the terms of which shall be set forth in the relevant Incremental Amendment):

(A) the maturity of any such Incremental Term Loan shall not be earlier than the Maturity Date;

(B) the upfront fees, Applicable Rate pricing grid, if applicable, amortization and mandatory prepayments for any Incremental Term Loan shall be determined by the applicable Incremental Lenders and the Borrowers on the applicable Increase Effective Date; and

(C) except as provided above, all other terms and conditions applicable to any Incremental Term Loan shall be reasonably satisfactory to the Administrative Agent and the Borrowers;

(vi) in the case of each Revolving Credit Facility Increase (the terms of which shall be set forth in the relevant Incremental Amendment):

(A) each such Revolving Credit Facility Increase shall have the same terms, including maturity, Applicable Rate and commitment fees, as the Revolving Credit Facility; provided that any upfront fees payable by the Borrowers to the Lenders under any Revolving Credit Facility Increases may differ from those payable under the then existing Revolving Credit Commitments;

(B) the outstanding Revolving Loans and Revolving Credit Commitment Percentages of Swingline Loans and LC Exposure will be reallocated by the Administrative Agent on the applicable Increase Effective Date among the Revolving Credit Lenders (including the Incremental Lenders providing such Revolving Credit Facility Increase) in accordance with their revised Revolving Credit Commitment Percentages (and the Revolving Credit Lenders (including the Incremental Lenders providing such Revolving Credit Facility Increase) agree to make all payments and adjustments necessary to effect such reallocation and the Borrowers shall pay any and all costs required pursuant to Section 2.16 in connection with such reallocation as if such reallocation were a repayment); and

(C) except as provided above, all of the terms and conditions applicable to such Revolving Credit Facility Increase shall be identical to the terms and conditions applicable to the Revolving Credit Facility; and

(vii) the Administrative Agent shall have received from the Borrowers, any customary legal opinions or other documents (including, without limitation, a resolution duly adopted by the board of directors (or equivalent governing body) of each Loan Party authorizing such Incremental Increase), modifications to existing instruments and documents reasonably requested by Administrative Agent in connection with any such transaction.

(e) Incremental Amendments. Each such Incremental Increase shall be effected pursuant to an amendment (an "Incremental Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Loan Parties, the Administrative Agent and the applicable Incremental Lenders, which Incremental Amendment may, without the consent of any other Lenders, effect such amendments to this Agreement and the other Loan Documents as may be necessary or appropriate, in the reasonable opinion of the Administrative Agent, to effect the provisions of this Section 2.04.

(f) Use of Proceeds. The proceeds of any Incremental Increase may be used by the Borrowers and their Subsidiaries for working capital and other general corporate purposes, including the financing of Permitted Acquisitions and other investments and any other use not prohibited by this Agreement.

SECTION 2.05. Swingline Loans. (a) General. Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrowers from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding $~~15,000,000,~~20,000,000, (ii) the sum of the total Revolving Credit Exposures exceeding the total Revolving Credit Commitments, (iii) the aggregate principal amount of outstanding Floorplan Swingline Loans exceeding $~~10,000,000~~15,000,000 (the "Floorplan Swingline Commitment"), and (iv) the aggregate principal amount of outstanding W/C Swingline Loans exceeding $5,000,000; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Notwithstanding anything herein to the contrary, for purposes of determining the amount of the Loans and Letters of Credit that may be made under this Agreement, the Administrative Agent may assume that the aggregate amount of the Swingline Loans made by the Swingline Lender is $~~15,000,000,~~20,000,000, absent a written agreement to the contrary among the Company, the Swingline Lender and the Administrative Agent. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and re-borrow Swingline Loans.

(b) Procedures. Procedures for W/C Swingline Loans. To request a W/C Swingline Loan, a Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 12:00 noon, Eastern time, on the day of a proposed W/C Swingline Loan or by such other time and by other procedures as may be agreed upon from time to time between the applicable Borrower and the Swingline Lender. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested W/C Swingline Loan and whether such W/C Swingline Loan shall be an ABR Loan or shall bear interest at an alternate rate agreed upon by the applicable Borrower and the Swingline Lender, and each W/C Swingline Loan shall bear interest at the ABR or at an alternate rate if agreed upon by the applicable Borrower and the Swingline Lender. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from any Borrower. The Swingline Lender shall make each W/C Swingline Loan available to the applicable Borrower by means of a credit to the general deposit account of the applicable Borrower with the Swingline Lender (or, in the case of a W/C Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e), by remittance to the Issuing Bank) by 3:00 p.m., Eastern time, on the requested date of such W/C Swingline Loan.

(ii) Procedures for Floorplan Swingline Loans. To request a Floorplan Swingline Loan, a Borrower, Manufacturer or such other person or entity as described below shall notify the Swingline Lender by such time and by procedures as may be agreed upon from time to time between the applicable Borrower and the Swingline Lender. Each such notice shall be irrevocable and shall specify the requested date (which shall be a Business Day) and amount of the requested Floorplan Swingline Loan. Each Floorplan Swingline Loan shall bear interest as provided in Schedule 2.05(b)(ii) attached hereto and by this reference incorporated herein. Upon request from time to time, the Swingline Lender will promptly advise the Administrative Agent of any such notice received from any Borrower, Manufacturer or other person and/or the then current Swingline Exposure. Each request for a Floorplan Swingline Loan, whether such request comes from a Borrower, from a Manufacturer, from some other person or entity under some drafting or similar type agreement, or from another dealer or third party with respect to (i) the acquisition by a Borrower of a Floored Item or (ii) a refinancing (take-out) of Vehicles financed with another floorplan (inventory) lender (each a "Floorplan Swingline Loan Request"), shall be in writing, in a form acceptable to the Swingline Lender, and shall be accompanied by such information the Swingline Lender may require from time to time, in its sole and absolute discretion, including copies of invoices, certificates, bills of sale, delivery tickets, title documents, ledger cards, statements of account, tax receipts, Manufacturer certificates of origin, Manufacturer repurchase agreements or repurchase options or inventory lists of prior floorplan (inventory) lender. The Swingline Lender may refuse to fund, or delay funding of, any Floorplan Swingline Loan Request until the Swingline Lender has reviewed, analyzed and approved such Floorplan Swingline Loan Request and all supporting documentation and information, which review and approval shall be for the purpose of determining that the applicable Manufacturer, distributor or other seller has delivered the requisite documentation pursuant to the Swingline Lender's agreement with ~~the~~such Manufacturer. Floorplan Swingline Loans may be made by the Swingline Lender at its option directly to the requesting Borrower, to a Manufacturer, distributor or other seller of Floored Items, to any other person or entity in connection with the requesting Borrower's acquisition of Floored Items, or to the prior floorplan (inventory) lender of a Borrower. Each such Floorplan Swingline Loan, whether by depositing or transferring funds to, or for the account of, a Manufacturer, a prior floorplan (inventory) lender of a Borrower or by paying drafts in any other manner, shall be the same as if the Swingline Lender had issued funds directly to a Borrower. The Swingline Lender shall not be obligated to make any Floorplan Swingline Loan that exceeds 100% of a Borrower's net cost for any Vehicle, including freight charges and any associated Manufacturer's "hold-back", but excluding all other discounts, rebates, prizes, premiums, credits and everything else of value received by such Borrower. Notwithstanding the foregoing, the Swingline Lender in its sole and absolute discretion may make a Floorplan Swingline Loan (in excess of the net cost, invoice, market reference guide price or purchase price limitations referenced in this sub-paragraph) that is equal to the outstanding principal balance of a Borrower's Vehicle inventory, as stated by the prior floorplan (inventory) lender.

(c) Payment of Floorplan Swingline Loans. The applicable Borrower shall cause the applicable Manufacturer to forward all proceeds of Floored Items directly to the Swingline Lender for repayment of the Floorplan Swingline Loan which financed the purchase of such Floored Item.

(d) Documentary Drafts. Each Borrower agrees that the Swingline Lender shall have no obligation to examine or review any document provided with any Floorplan Swingline Loan Request including, but not limited to, documentary drafts drawn on a Borrower. The Swingline Lender may conclusively rely on any invoice, advice or other document from a Manufacturer, distributor or other seller of Floored Items as being genuine, authorized and correct in all respects. Each Borrower hereby relieves and releases the Swingline Lender from any and all responsibility and liability whatsoever arising out of, or in any way related to, the correctness, genuineness, sufficiency, validity or authenticity of any invoice, advice or other document or instrument presented to the Swingline Lender for, or in connection with, any payment or for the existence, quantity, quality, condition, identity, packing, value, title, delivery, or any other aspect or quality, of the property purported to be described in, or represented by any such invoice, advice or other document or instrument.

(e) Proceeds of Floored Items. Each Borrower covenants and agrees that it shall not use any proceeds received by such Borrower on account of the sale, lease, transfer, or placing in use of a Floored Item without first repaying, in full, the Floorplan Swingline Loan for such Floored Item.

(f) Dealer Access System. Certain Borrowers have requested access to the Swingline Lender's internet web based "Dealer Access System" to permit such Borrowers to access certain account information relating to the Floorplan Swingline Loans and to facilitate the making of any payments on the Floorplan Swingline Loans by authorizing the Swingline Lender to debit any one or more of the applicable Borrower's deposit accounts with the Swingline Lender or with such other financial institutions as indicated by the applicable Borrower. In consideration for the Swingline Lender's granting to such Borrowers access to the Swingline Lender's Dealer Access System to view loan account information and make Floorplan Swingline Loan payments, each such Borrower acknowledges its responsibility for the security of its passwords and other information necessary for access to the Swingline Lender's Dealer Access System and fully, finally, and forever releases the Swingline Lender and its successors, assigns, directors, officers, employees, agents, and representatives from any and all causes of action, claims, debts, demands, and liabilities, of whatever kind or nature, in law or equity, such Borrower may now or hereafter have, in any way relating to such Borrower's access to, or use of, or the Swingline Lender's suspension or termination of certain systems features of the Swingline Lender's Dealer Access System.

(g) Participation by Lenders. The Swingline Lender may by written notice given to the Administrative Agent not later than 10:00 a.m., Eastern time, on any Business Day require the Revolving Credit Lenders to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Credit Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to each Revolving Credit Lender, specifying in such notice such Revolving Credit Lender's Revolving Credit Commitment Percentage of such Swingline Loan or Loans. Each Revolving Credit Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Revolving Credit Lender's Revolving Credit Commitment Percentage of such Swingline Loan or Loans. Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of an Event of Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever. Each Revolving Credit Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.07 with respect to Revolving Loans made by such Revolving Credit Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Credit Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Credit Lenders. The Administrative Agent shall notify the applicable Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the Swingline Lender. Any amounts received by the Swingline Lender from the Borrowers (or other party on behalf of the Borrowers) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the Revolving Credit Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear; provided that any such payment so remitted shall be repaid to the Swingline Lender or to the Administrative Agent, as applicable, if and to the extent such payment is required to be refunded to any Borrower for any reason. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve any Borrower of any default in the payment thereof.

(h) Settlement Among Swingline Lender and Lenders. Notwithstanding anything to the contrary contained in this Agreement, with respect to the Floorplan Swingline Loans:

(i) It is agreed that, from and after the Effective Date, the Floorplan Swingline Loans are intended by Swingline Lender and Revolving Credit Lenders to be shared pro rata by Revolving Credit Lenders and Swingline Lender in accordance with their Revolving Credit Commitment Percentages. Notwithstanding such agreement, Revolving Credit Lenders and Swingline Lender agree that in order to facilitate the administration of this Agreement with respect to the Floorplan Swingline Loans, settlement between Swingline Lender and Revolving Credit Lenders, in connection with the Floorplan Swingline Loans shall, subject to the provisions of clause (iv) below, occur on the last Business Day of each month (the "Settlement Date") in accordance with the provisions of this Section 2.05(h).

(ii) Swingline Lender agrees to deliver to the Administrative Agent and the Lenders within three (3) Business Days after each Settlement Date, a statement of account with the Borrowers in respect of the Floorplan Swingline Loans for the preceding month. Such monthly statement of account shall state the net Floorplan Swingline Loan balance, and the net amount (excluding any payments of interest, which shall be settled pursuant to clause (iii) hereof) due from a Revolving Credit Lender to Swingline Lender, such that such Revolving Credit Lender has paid to Swingline Lender its appropriate amount of the applicable Floorplan Swingline Loans. Such payments shall be made in immediately available funds and, absent manifest error, Swingline Lender's books and records showing the statements of account rendered to each Revolving Credit Lender shall be considered accurate unless objected to by a Revolving Credit Lender within sixty (60) days from the date the statements of account were rendered to such Revolving Credit Lender. If such notice is given by 10:00 a.m. (Eastern Standard Time), each Revolving Credit Lender, or Swingline Lender, as the case may be, will on such day, by 4:00 p.m. (Eastern Standard Time), pay the net amount. If such statement is given after 10:00 a.m. (Eastern Standard Time) each Revolving Credit Lender, or Swingline Lender, as the case may be, shall make such payments no later than 1:00 p.m. (Eastern Standard Time) on the next Business Day.

(iii) Swingline Lender agrees to pay and otherwise account for, to Revolving Credit Lenders, no later than the third (3rd) Business Day of each month, the interest due Revolving Credit Lenders in respect of its Revolving Credit Commitment Percentage in respect of Floorplan Swingline Loans funded during the previous calendar month, as such interest is earned and paid by the applicable Borrower, pursuant to the terms, provisions, covenants and conditions of this Agreement. Revolving Credit Lenders shall receive interest to the extent of its Revolving Credit Commitment Percentage at the interest rate in respect of the closing daily balances in the applicable Borrower's Floorplan Swingline Loans account for each day during the immediately preceding calendar month to the extent such amounts were funded by Revolving Credit Lenders and as such interest was earned and received by Swingline Lender from the applicable Borrowers pursuant to the terms, provisions, covenants and conditions of this Agreement.

(iv) Swingline Lender shall have the right at any time to require, by notice to the Revolving Credit Lenders (delivered as set forth below), that all settlements in respect of Floorplan Swingline Loans made, and repayments of any amounts outstanding under this Agreement with respect to the Floorplan Swingline Loans be made on the last Business Day of each week or a daily basis (in either case, the "Alternative Settlement Date"). Swingline Lender shall deliver written notice to the Administrative Agent and the Revolving Credit Lenders two (2) Business Days prior to the effectiveness of any such Alternative Settlement Date, unless an Unmatured Default or Event of Default has occurred and is continuing under any of the Loan Documents, in which case such written notice may be delivered prior to 10:00 a.m. (Eastern Standard Time) on the Business Day prior to the date such Alternative Settlement Date is to be effective. From and after the giving of such notice (and until such time, if any, as Swingline Lender notifies the Administrative Agent and the Lenders of its determination to return to another settlement date), each Revolving Credit Lender shall pay to Swingline Lender such Revolving Credit Lender's ratable portion of the amount of any Floorplan Swingline Loan to be made under this Agreement (x) in the case of a daily Alternative Settlement Basis, on the date such Floorplan Swingline Loan is made provided that Revolving Credit Lenders receive notice of the Floorplan Swingline Loan by 10:00 a.m. (Eastern Standard Time), or by 1:00 p.m. (Eastern Standard Time) on the following Business Day in the event Revolving Credit Lenders receive notice after 10:00 a.m. (Eastern Standard Time) of a Floorplan Swingline Loan and (y) in the case of a weekly Alternative Settlement Basis, on a basis similar to that described in clause (ii) of this Section 2.05(h) (and as shall be more fully described in the applicable notice of Alternative Settlement Date). Notwithstanding the foregoing, the parties agree that in the event that on any Business Day, after giving effect to the payments received for, or collections on account of, any Floorplan Swingline Loan, the principal amount of such Floorplan Swingline Loan funded by Revolving Credit Lenders based on their respective Revolving Credit Commitment Percentage exceeds the aggregate outstanding principal amount of the Floorplan Swingline Loan, Swingline Lender shall have the right to require, by notice to Revolving Credit Lenders, that settlements with respect to such Floorplan Swingline Loan be made on such day, so long as written notice is delivered to Revolving Credit Lenders prior to 10:00 a.m. (Eastern Standard Time) on such day, or on the next succeeding Business Day, if such notice is received after 10:00 a.m. (Eastern Standard Time) on such date.

(v) Swingline Lender and Revolving Credit Lenders each acknowledge and agree that it is for the convenience of the parties to this Agreement that funding of Floorplan Swingline Loans under the this Agreement by Revolving Credit Lenders and allocation of collections in respect of such Floorplan Swingline Loans between Swingline Lender and Revolving Credit Lenders will occur on the basis of the settlement procedures described in this Section 2.05(h). For the avoidance of doubt, Swingline Lender and Revolving Credit Lenders hereby acknowledge and agree, that Revolving Credit Lender's obligation to fund its Revolving Credit Commitment Percentage of any Floorplan Swingline Loan funded under this Agreement by Swingline Lender shall be absolute and unconditional and shall not be affected by any circumstance, including, without limitation, (A) any set-off, counterclaim, recoupment, defense or other right which such Revolving Credit Lender may have against Swingline Lender, any Borrower or any other party for any reason whatsoever (except Revolving Credit Lender's right of set off with respect to amounts otherwise payable by Swingline Lender to such Revolving Credit Lender hereunder and wrongfully withheld by Swingline Lender); (B) the occurrence or continuance of any Unmatured Default or Event of Default; (C) any adverse change in the condition (financial or otherwise) of any Borrower or any other party; or (D) any other circumstance, happening or event whatsoever, whether or not similar to any of the foregoing. If a Revolving Credit Lender does not make available to Swingline Lender the amount required pursuant to clause (ii) above, Swingline Lender shall be entitled to recover such amount on demand from such Revolving Credit Lender, together with interest thereon for each day from the date of non-payment until such amount is paid in full, at the Federal Funds Rate.

(vi) If any amounts received by Swingline Lender hereunder are later required to be returned or repaid by Swingline Lender to the Borrowers, whether by court order, settlement or otherwise, each Revolving Credit Lender shall, upon demand by Swingline Lender, pay to Swingline Lender an amount equal to Lender's Revolving Credit Commitment Percentage of all such amounts required to be returned by Swingline Lender.

(vii) If a Revolving Credit Lender shall, at any time, fail to make any payment to Swingline Lender required hereunder, Swingline Lender may, but shall not be required to, retain payments that would otherwise be made to such Revolving Credit Lender hereunder and apply such payments to such Revolving Credit Lender's defaulted obligations hereunder, at such time, and in such order, as Swingline Lender may elect in its sole and absolute discretion.

(viii) With respect to the payment of any funds under this Section 2.05(h), whether from Swingline Lender to a Revolving Credit Lender or from a Revolving Credit Lender to Swingline Lender, the party failing to make full payment when due pursuant to the terms hereof shall, upon written demand by the other party, pay such amount together with interest on such amount at the Federal Funds Rate.

(i) Independent Swingline Lender Obligations. The failure of any Swingline Lender to make its Swingline Loan shall not relieve any other Swingline Lender of its obligation hereunder to make its Swingline Loan on the date of such Swingline Loan, but no Swingline Lender shall be responsible for the failure of any other Swingline Lender to make a Swingline Loan.

SECTION 2.06. Letters of Credit. (a) General. Subject to the terms and conditions set forth herein, each Borrower may request the issuance of Letters of Credit denominated in Dollars or any Foreign Currency for its own account, in a form reasonably acceptable to the Administrative Agent and the applicable Issuing Bank, at any time and from time to time during the Availability Period. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by the applicable Borrower to, or entered into by the applicable Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Upon the effectiveness of this Agreement, each Existing Letter of Credit shall, without any further action by any party, be deemed to have been issued as a Letter of Credit hereunder on the Effective Date and shall for all purposes hereof be treated as a Letter of Credit under this Agreement.

(b) Notice of Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit (or the amendment, renewal or extension of an outstanding Letter of Credit), the applicable Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) to the applicable Issuing Bank and the Administrative Agent (reasonably in advance of the requested date of issuance, amendment, renewal or extension) a notice requesting the issuance of a Letter of Credit, or identifying the Letter of Credit to be amended, renewed or extended, and specifying the date of issuance, amendment, renewal or extension (which shall be a Business Day), the date on which such Letter of Credit is to expire (which shall comply with paragraph (c) of this Section), the amount of such Letter of Credit, the name and address of the beneficiary thereof and such other information as shall be necessary to prepare, amend, renew or extend such Letter of Credit. If requested by the applicable Issuing Bank, the applicable Borrower also shall submit a letter of credit application on such Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit the applicable Borrower shall be deemed to represent and warrant that), after giving effect to such issuance, amendment, renewal or extension (i) the LC Exposure shall not exceed $20,000,000 and (ii) the total Revolving Credit Exposures shall not exceed the total Revolving Credit Commitments.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (i) the date one year after the date of the issuance of such Letter of Credit (provided that Letters of Credit having a one-year tenor may provide for the renewal thereof for additional one-year periods, but not extending beyond the date referred to in clause (ii) below) and (ii) the date that is five Business Days prior to the Maturity Date.

(d) Participations. By the issuance of a Letter of Credit (or an amendment to a Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Issuing Bank or the Revolving Credit Lenders, such Issuing Bank hereby grants to each Revolving Credit Lender, and each Revolving Credit Lender hereby acquires from such Issuing Bank, a participation in such Letter of Credit equal to such Revolving Credit Lender's Revolving Credit Commitment Percentage of the aggregate amount available to be drawn under such Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Credit Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable Issuing Bank, such Revolving Credit Lender's Revolving Credit Commitment Percentage of each LC Disbursement made by such Issuing Bank and not reimbursed by the applicable Borrower on the date due as provided in paragraph (e) of this Section, or of any reimbursement payment required to be refunded to the applicable Borrower for any reason. Each Revolving Credit Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Letter of Credit or the occurrence and continuance of an Event of Default or reduction or termination of the Revolving Credit Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement. If an Issuing Bank shall make any LC Disbursement in respect of a Letter of Credit, the applicable Borrower shall reimburse such LC Disbursement by paying to the Administrative Agent an amount equal to such LC Disbursement not later than 3:00 p.m., Eastern time, on the date that such LC Disbursement is made, if the applicable Borrower shall have received notice of such LC Disbursement prior to 10:00 a.m., Eastern time, on such date, or, if such notice has not been received by the applicable Borrower prior to such time on such date, then not later than 3:00 p.m., Eastern time, on the Business Day immediately following the day that the applicable Borrower receives such notice; provided that the applicable Borrower may, subject to the conditions to borrowing set forth herein, request in accordance with Section 2.03 or 2.05 that such payment be financed with an ABR Revolving Borrowing or Swingline Loan in an equivalent amount (which, for any amount denominated in a Foreign Currency, shall be the Dollar Equivalent thereof) and, to the extent so financed, the applicable Borrower's obligation to make such payment shall be discharged and replaced by the resulting ABR Revolving Borrowing or Swingline Loan. If the applicable Borrower fails to make such payment when due, such amount, if denominated in a Foreign Currency shall be converted to Dollars (equal to the Dollar Equivalent thereof) and the Administrative Agent shall notify each Revolving Credit Lender of the applicable LC Disbursement, the payment then due from the applicable Borrower in respect thereof and such Revolving Credit Lender's Revolving Credit Commitment Percentage thereof. Promptly following receipt of such notice, each Revolving Credit Lender shall pay to the Administrative Agent its Revolving Credit Commitment Percentage of the payment then due from the applicable Borrower, in the same manner as provided in Section 2.07 with respect to Revolving Loans made by such Revolving Credit Lender (and Section 2.07 shall apply, mutatis mutandis, to the payment obligations of the Revolving Credit Lenders), and the Administrative Agent shall promptly pay to the applicable Issuing Bank the amounts so received by it from the Revolving Credit Lenders. Promptly following receipt by the Administrative Agent of any payment from the applicable Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Issuing Bank or, to the extent that Lenders have made payments pursuant to this paragraph to reimburse the Issuing Bank, then to such Revolving Credit Lenders and the applicable Issuing Bank as their interests may appear. Any payment made by a Revolving Credit Lender pursuant to this paragraph to reimburse an Issuing Bank for any LC Disbursement (other than the funding of ABR Revolving Loans or a Swingline Loan as contemplated above) shall not constitute a Revolving Loan and shall not relieve the applicable Borrower of its obligation to reimburse such LC Disbursement.

(f) Obligations Absolute. Each Borrower's obligation to reimburse LC Disbursements as provided in paragraph (e) of this Section shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by an Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not comply with the terms of such Letter of Credit, or (iv) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section, constitute a legal or equitable discharge of, or provide a right of setoff against, the applicable Borrower's obligations hereunder. Neither the Administrative Agent, the Revolving Credit Lenders nor any Issuing Bank, nor any of their Related Parties, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of the applicable Issuing Bank; provided that nothing in this subsection 2.06(f) shall be construed to excuse the applicable Issuing Bank from liability to the applicable Borrower to the extent of any direct damages (as opposed to consequential damages, claims in respect of which are hereby waived by each Borrower to the extent permitted by Applicable Law) suffered by the applicable Borrower that are caused by such Issuing Bank's failure to exercise care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence or willful misconduct on the part of an Issuing Bank (as finally determined by a court of competent jurisdiction), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, the applicable Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(g) Disbursement Procedures. The applicable Issuing Bank shall, promptly following its receipt thereof, examine all documents purporting to represent a demand for payment under a Letter of Credit. Such Issuing Bank shall promptly notify the Administrative Agent and the applicable Borrower by telephone (confirmed by telecopy) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve the applicable Borrower of its obligation to reimburse such Issuing Bank and the Lenders with respect to any such LC Disbursement.

(h) Interim Interest. If the applicable Issuing Bank shall make any LC Disbursement, then, unless the applicable Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that the applicable Borrower reimburses such LC Disbursement, at the rate per annum then applicable to ABR Revolving Loans (or in the case such LC Disbursement is denominated in a Foreign Currency, at the rate reasonably determined by the Administrative Agent to be the cost of funding such amount plus the then Applicable Rate with respect to Eurodollar Loans); provided that, if the applicable Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section, then Section 2.13(d) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Credit Lender pursuant to paragraph (e) of this Section to reimburse such Issuing Bank shall be for the account of such Revolving Credit Lender to the extent of such payment.

(i) Replacement of an Issuing Bank. An Issuing Bank may be replaced at any time by written agreement among the applicable Borrower, the Administrative Agent, the replaced Issuing Bank and the successor Issuing Bank. The Administrative Agent shall notify the Revolving Credit Lenders of any such replacement of an Issuing Bank. At the time any such replacement shall become effective, the applicable Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.12(b). From and after the effective date of any such replacement, (i) the successor Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or to any previous or other Issuing Bank, or to such successor and all previous and other Issuing Banks, as the context shall require. After the replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such replacement, but shall not be required to issue additional Letters of Credit.

(j) Cash Collateralization. If any Event of Default shall occur and be continuing, on the Business Day that the applicable Borrower receives notice from the Administrative Agent or the Required Lenders (or, if the maturity of the Loans has been accelerated, Lenders with LC Exposure representing greater than 50% of the total LC Exposure) demanding the deposit of Cash Collateral pursuant to this paragraph, the applicable Borrower shall fully Cash Collateralize the LC Exposure as of such date plus any accrued and unpaid interest thereon; provided that the obligation to deposit such Cash Collateral shall become effective immediately, and such deposit shall become immediately due and payable, without demand or other notice of any kind, upon the occurrence of any Event of Default with respect to the applicable Borrower described in clause (h) or (i) of Section 7.01. Such Cash Collateral shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the applicable Borrower under this Agreement. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made at the option and sole discretion of the Administrative Agent and at the applicable Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the applicable Issuing Bank for LC Disbursements for which it has not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the applicable Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other obligations of the applicable Borrower under this Agreement. If a Borrower is required to provide an amount of Cash Collateral hereunder as a result of the occurrence of an Event of Default, such amount (to the extent not applied as aforesaid) shall be returned to the applicable Borrower within three Business Days after all Events of Default have been cured or waived.

(k) Information to Administrative Agent and Lenders. Promptly following any change in any Letters of Credit outstanding, the applicable Issuing Bank shall deliver to the Administrative Agent, each Revolving Credit Lender and the Borrowers a notice describing the aggregate amount of all Letters of Credit issued by such Issuing Bank outstanding at such time. Upon the request of any Revolving Credit Lender from time to time, an Issuing Bank shall deliver any other information reasonably requested by such Revolving Credit Lender with respect to each Letter of Credit issued by such Issuing Bank then outstanding. Other than as set forth in this subsection, an Issuing Bank shall have no duty to notify the Revolving Credit Lenders regarding the issuance or other matters regarding Letters of Credit issued hereunder. The failure of an Issuing Bank to perform its requirements under this subsection shall not relieve any Revolving Credit Lender from its obligations under the immediately preceding subsection (d).

SECTION 2.07. Funding of Revolving Borrowings. Each Revolving Credit Lender shall make each Revolving Loan to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds by 12:00 noon, Eastern time, to the account of the Administrative Agent most recently designated by it for such purpose by notice to the Revolving Credit Lenders; provided that Swingline Loans shall be made as provided in Section 2.05. The Administrative Agent will make such Revolving Loans available to the applicable Borrower by promptly crediting the amounts so received, in like funds, either (i) to an account of the applicable Borrower maintained with the Administrative Agent, or (ii) via wire transfer pursuant to instructions provided by the applicable Borrower, in each case as designated by the applicable Borrower in the applicable Borrowing Request; provided that ABR Revolving Loans made to finance the reimbursement of an LC Disbursement as provided in Section 2.06(e) shall be remitted by the Administrative Agent to the applicable Issuing Bank.

(b) Unless the Administrative Agent shall have received notice from a Revolving Credit Lender prior to the proposed date of any Borrowing that such Revolving Credit Lender will not make available to the Administrative Agent such Revolving Credit Lender's share of such Borrowing, the Administrative Agent may assume that such Revolving Credit Lender has made such share available on such date in accordance with paragraph (a) of this Section and may, in reliance upon such assumption, make available to the applicable Borrower a corresponding amount. In such event, if a Revolving Credit Lender has not in fact made its share of the applicable Borrowing available to the Administrative Agent, then the applicable Revolving Credit Lender and the applicable Borrower severally agree to pay to the Administrative Agent forthwith on demand such corresponding amount with interest thereon, for each day from and including the date such amount is made available to the applicable Borrower to but excluding the date of payment to the Administrative Agent, at (i) in the case of such Revolving Credit Lender, the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation or (ii) in the case of the applicable Borrower, the interest rate applicable to ABR Loans. If such Revolving Credit Lender pays such amount to the Administrative Agent, then such amount shall constitute such Revolving Credit Lender's Revolving Loan included in such Borrowing.

SECTION 2.08. Interest Elections. (a) Each Borrowing initially shall be of the Type specified in the applicable Borrowing Request and, in the case of a Eurodollar Borrowing, shall have an initial Interest Period as specified in such Borrowing Request. Thereafter, the applicable Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Eurodollar Borrowing, may elect Interest Periods therefor, all as provided in this Section. The applicable Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing. This Section shall not apply to Swingline Borrowings, which may not be converted or continued.

(b) To make an election pursuant to this Section, the applicable Borrower shall notify the Administrative Agent of such election by telephone by the time that a Borrowing Request would be required under Section 2.03 and/or Section 2.13 if the applicable Borrower were requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Interest Election Request shall be irrevocable and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Interest Election Request in a form approved by the Administrative Agent and signed by the applicable Borrower.

(c) Each telephonic and written Interest Election Request shall specify the following information:

(i) the Borrowing to which such Interest Election Request applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Interest Election Request, which shall be a Business Day;

(iii) whether the resulting Borrowing is to be an ABR Borrowing or a Eurodollar Borrowing; and

(iv) if the resulting Borrowing is a Eurodollar Borrowing, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period". If any such Interest Election Request requests a Eurodollar Borrowing but does not specify an Interest Period, then the applicable Borrower shall be deemed to have selected an Interest Period of one month's duration.

(d) Promptly following receipt of an Interest Election Request, the Administrative Agent shall advise each applicable Lender of the details thereof and of such applicable Lender's portion of each resulting Borrowing.

(e) If the applicable Borrower fails to deliver a timely Interest Election Request with respect to a Eurodollar Borrowing prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to an ABR Borrowing. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing and the Administrative Agent, at the request of the Required Lenders, so notifies the applicable Borrower, then, so long as an Event of Default is continuing (i) no outstanding Revolving Borrowing may be converted to or continued as a Eurodollar Borrowing and (ii) unless repaid, each Eurodollar Borrowing shall be converted to an ABR Borrowing at the end of the Interest Period applicable thereto.

SECTION 2.09. Termination and Reduction of Revolving Credit Commitments. (a) Unless previously terminated, the Revolving Credit Commitments shall terminate on the Maturity Date.

(b) The Borrowers may at any time terminate, or from time to time reduce, the Revolving Credit Commitments; provided that (i) each reduction of the Revolving Credit Commitments shall be in an amount that is an integral multiple of $1,000,000 and not less than $5,000,000 and (ii) the Borrowers shall not terminate or reduce the Revolving Credit Commitments if, after giving effect to any concurrent prepayment of the Revolving Loans in accordance with Section 2.11, the Revolving Credit Exposures would exceed the total Revolving Credit Commitments.

(c) The Borrowers shall notify the Administrative Agent of any election to terminate or reduce the Revolving Credit Commitments under paragraph (b) of this Section at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the Revolving Credit Lenders of the contents thereof. Each notice delivered by the Borrowers pursuant to this Section shall be irrevocable; provided that a notice of termination of the Revolving Credit Commitments delivered by the Borrowers may state that such notice is conditioned upon the effectiveness of other credit facilities, in which case such notice may be revoked by the Borrowers (by notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Any termination or reduction of the Revolving Credit Commitments shall be permanent. Each reduction of the Revolving Credit Commitments shall be made ratably among the Revolving Credit Lenders in accordance with their respective Revolving Credit Commitments.

SECTION 2.10. Repayment of Loans; Evidence of Debt. (a) The Borrowers hereby unconditionally promise to pay (i) to the Administrative Agent for the account of each Lender the then unpaid principal amount of each Loan on the Maturity Date and (ii) to the Swingline Lender the then unpaid principal amount of each Swingline Loan on the earliest of (x) the Maturity Date, (y) the date five (5) Business Days after demand by the Swingline Lender in its discretion if no Event of Default exists and (z) the demand by the Swingline Lender in its discretion if an Event of Default exists. The Obligations of the Borrowers hereunder and under the Loan Documents are joint and several.

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

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

(d) The entries made in the accounts maintained pursuant to paragraph (b) or (c) of this Section shall be prima facie evidence of the existence and amounts of the obligations recorded therein absent manifest error; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligation of the Borrowers to repay the Loans in accordance with the terms of this Agreement.

(e) Any Lender may request that Loans made by it be evidenced by promissory notes. In such event, the Borrowers shall prepare, execute and deliver to such Lender promissory notes payable to the order of such Lender (or, if requested by such Lender, to such Lender and its registered assigns) and in a form approved by the Administrative Agent. Thereafter, the Loans evidenced by such promissory notes and interest thereon shall at all times (including after assignment pursuant to Section 9.04) be represented by one or more promissory notes in such form payable to the order of the payee named therein (or, if such promissory note is a registered note, to such payee and its registered assigns).

SECTION 2.11. Prepayment of Revolving Loans.

(a) Each Borrower shall have the right at any time and from time to time to prepay any Revolving Borrowing in whole or in part, subject to prior notice in accordance with paragraph (b) of this Section. The applicable Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Eurodollar Revolving Borrowing, not later than 11:00 a.m., Eastern time, three Business Days before the date of prepayment, (ii) in the case of prepayment of an ABR Revolving Borrowing, not later than 11:00 a.m., Eastern time, one Business Day before the date of prepayment or (iii) in the case of prepayment of a Swingline Loan, not later than 12:00 noon, Eastern time, on the date of prepayment. Each such notice shall be irrevocable and shall specify the prepayment date and the principal amount of each Revolving Borrowing or portion thereof to be prepaid; provided that, if a notice of prepayment is given in connection with a conditional notice of termination of the Revolving Credit Commitments as contemplated by Section 2.09, then such notice of prepayment may be revoked if such notice of termination is revoked in accordance with Section 2.09. Promptly following receipt of any such notice relating to a Revolving Borrowing, the Administrative Agent shall advise the Revolving Credit Lenders of the contents thereof. Each partial prepayment of any Revolving Borrowing shall be in an amount that would be permitted in the case of an advance of a Revolving Borrowing of the same Type as provided in Section 2.02. Each prepayment of a Revolving Borrowing shall be applied ratably to the Revolving Loans included in the prepaid Revolving Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.13 and amounts required to paid pursuant to Section 2.16.

(b) If at any time the Revolving Credit Outstandings exceed the Revolving Credit Commitment, then the Borrowers shall repay immediately upon notice from the Administrative Agent, by payment to the Administrative Agent for the account of the Revolving Credit Lenders, Revolving Credit Outstandings in an amount equal to such excess with each such repayment applied first, to the principal amount of outstanding Swingline Loans, second to the principal amount of outstanding Revolving Loans and third, with respect to any Letters of Credit then outstanding, a payment of Cash Collateral into a Cash Collateral account opened by the Administrative Agent, for the benefit of the Revolving Credit Lenders, in an amount equal to such excess.

SECTION 2.12. Fees. The Borrowers agree to pay, on a joint and several basis, to the Administrative Agent for the account of each Revolving Credit Lender a commitment fee, which shall accrue at the Applicable Rate on the average daily amount of the Available Revolving Commitment of such Revolving Credit Lender during the period from and including the Effective Date to but excluding the date on which such Revolving Credit Commitment terminates. Accrued commitment fees shall be payable in arrears on the last Business Day of each March, June, September and December of each year and on the date on which the Revolving Credit Commitments terminate, commencing on the first such date to occur after the date hereof. All commitment fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(b) The Borrowers agree to pay, on a joint and several basis, (i) to the Administrative Agent for the account of each Revolving Credit Lender a participation fee with respect to its participations in Letters of Credit, which shall accrue at the same Applicable Rate used to determine the interest rate applicable to Eurodollar Loans on the average daily amount of such Revolving Credit Lender's LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date on which such Revolving Credit Lender's Revolving Credit Commitment terminates and the date on which such Revolving Credit Lender ceases to have any LC Exposure, and (ii) to the applicable Issuing Bank a fronting fee, which shall accrue at the rate of 0.25% per annum on the average daily amount of the LC Exposure (excluding any portion thereof attributable to unreimbursed LC Disbursements) during the period from and including the Effective Date to but excluding the later of the date of termination of the Revolving Credit Commitments and the date on which there ceases to be any LC Exposure, as well as such Issuing Bank's standard fees with respect to the issuance, amendment, renewal or extension of any Letter of Credit or processing of drawings thereunder. Participation fees and fronting fees accrued through and including the last day of each March, June, September and December of each year shall be payable on the third Business Day following such last day, commencing on the first such date to occur after the Effective Date; provided that all such fees shall be payable on the date on which the Revolving Credit Commitments terminate and any such fees accruing after the date on which the Revolving Credit Commitments terminate shall be payable on demand. Any other fees payable to an Issuing Bank pursuant to this paragraph shall be payable within 10 days after demand. All participation fees and fronting fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(c) The Borrowers agree to pay, on a joint and several basis, to the Administrative Agent, for its own account, fees payable in the amounts and at the times separately agreed upon between the Company and the Administrative Agent.

(d) The Borrowers agree to pay, on a joint and several basis, to the Administrative Agent and the Arranger all fees set forth in the Commitment Letter.

(e) All fees payable hereunder shall be paid on the dates due, in immediately available funds, to the Administrative Agent (or to an Issuing Bank, in the case of fees payable to it) for distribution, in the case of commitment fees and participation fees, to the Lenders. Fees paid shall not be refundable under any circumstances.

SECTION 2.13. Interest. The Loans comprising each ABR Borrowing or a ABR Loan (including each Swingline Loan) shall bear interest at the Alternate Base Rate plus the Applicable Rate.

(b) The Loans comprising each Eurodollar Borrowing or a Eurodollar Loan shall bear interest at the Adjusted LIBO Rate for the Interest Period in effect for such Borrowing plus the Applicable Rate.

(c) Subject to Section 7.02 and notwithstanding the foregoing, (i) immediately upon the occurrence and during the continuance of an Event of Default under Section 7.01(a), (b), (h), and (i), or (ii) at the election of the Required Lenders (or the Administrative Agent at the direction of the Required Lenders), upon the occurrence and during the continuance of any other Event of Default, (A) the Borrowers shall no longer have the option to request Eurodollar Loans, Swingline Loans or Letters of Credit, (B) all outstanding Eurodollar Loans shall bear interest at a rate per annum of two percent (2%) in excess of the rate (including the Applicable Rate) then applicable to Eurodollar Loans until the end of the applicable Interest Period and thereafter at a rate equal to two percent (2%) in excess of the rate (including the Applicable Rate) then applicable to ABR Loans, (C) all outstanding ABR Loans and other Obligations arising hereunder or under any other Loan Document shall bear interest at a rate per annum equal to two percent (2%) in excess of the rate (including the Applicable Rate) then applicable to ABR Loans or such other Obligations arising hereunder or under any other Loan Document and (D) all accrued and unpaid interest shall be due and payable on demand of the Administrative Agent. Interest shall continue to accrue on the Obligations after the filing by or against any Borrower of any petition seeking any relief in bankruptcy or under any Debtor Relief Law.

(d) Accrued interest on each Loan shall be payable in arrears on each Interest Payment Date for such Loan and on the Maturity Date; provided that (i) interest accrued pursuant to paragraph (c) of this Section shall be payable on demand, (ii) in the event of any repayment or prepayment of any Loan (other than a prepayment of an ABR Loan prior to the end of the Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (iii) in the event of any conversion of any Eurodollar Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(e) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest computed by reference to the Alternate Base Rate at times when the Alternate Base Rate is based on the Prime Rate shall be computed on the basis of a year of 365 days (or 366 days in a leap year), and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Alternate Base Rate, Adjusted LIBO Rate or ~~LIBO Rate~~LIBOR shall be determined by the Administrative Agent, and such determination shall be conclusive absent manifest error.

SECTION 2.14. Alternate Rate of Interest.

(a) Subject to Section 2.14(b), if prior to the commencement of any Interest Period for a Eurodollar Borrowing: (i) the Administrative Agent determines (which determination shall be conclusive absent manifest error) that adequate and reasonable means do not exist for ascertaining the Adjusted LIBO Rate or ~~the LIBO Rate~~LIBOR, as applicable, for such Interest Period; or (ii) the Administrative Agent is advised by the Required Lenders that the Adjusted LIBO Rate or ~~the LIBO Rate~~LIBOR, as applicable, for such Interest Period will not adequately and fairly reflect the cost to such Lenders (or Lender) of making or maintaining their Loans (or its Loan) included in such Borrowing for such Interest Period; then the Administrative Agent shall give notice thereof to the Borrowers and the Lenders by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Borrowers and the Lenders that the circumstances giving rise to such notice no longer exist, (A) any Interest Election Request that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a Eurodollar Borrowing shall be ineffective, and (B) if any Borrowing Request requests a Eurodollar Revolving Borrowing, such Borrowing shall be made as an ABR Borrowing; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

(b) Effect of Benchmark Transition Event.

(i) ~~(b) Notwithstanding anything to the contrary in Section 2.14(a) above, if the Administrative Agent has made the determination (such determination to be conclusive absent manifest error) that (i) the circumstances described in Section 2.14(a)(i) have arisen and that such circumstances are unlikely to be temporary, (ii) any applicable interest rate specified herein is no longer a widely recognized benchmark rate for newly originated loans in the U.S. syndicated loan market in the applicable currency or (iii) the applicable supervisor or administrator (if any) of any applicable interest rate specified herein or any Governmental Authority having, or purporting to have, jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which any applicable interest rate specified herein shall no longer be used for determining interest rates for loans in the U.S. syndicated loan market in the applicable currency, then the Administrative Agent may, to the extent practicable (in consultation with the Company and as determined by the Administrative Agent to be generally in accordance with similar situations in other transactions in which it is serving as administrative agent or otherwise consistent with market practice generally), establish a replacement interest rate (the "Replacement Rate"), in which case, the Replacement Rate shall, subject to the next two sentences, replace such applicable interest rate for all purposes under the Loan Documents unless and until (A) an event described in Section 2.14(a)(i), (b)(i), (b)(ii) or (b)(iii) occurs with respect to the Replacement Rate or (B) the Administrative Agent (or the Required Lenders through the Administrative Agent) notifies the Company that the Replacement Rate does not adequately and fairly reflect the cost to the Lenders of funding the Loans bearing interest at the Replacement Rate. In connection with the establishment and application of the Replacement Rate, this Agreement and the other Loan Documents shall be amended solely with the consent of the Administrative Agent and the Company, as may be necessary or appropriate, in the opinion of the Administrative Agent, to effect the provisions of this Section 2.14(b). Notwithstanding anything to the contrary in this Agreement or the other Loan Documents (including, without limitation, Section 9.02), such amendment shall become effective without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the delivery of such amendment to the Lenders, written notices from such Lenders that in the aggregate constitute Required Lenders, with each such notice stating that such Lender objects to such amendment (which such notice shall note with specificity the particular provisions of the amendment to which such Lender objects). To the extent the Replacement Rate is approved by the Administrative Agent in connection with this clause (b), the Replacement Rate shall be applied in a manner consistent with market practice; provided that, in each case, to the extent such market practice is not administratively feasible for the Administrative Agent, such Replacement Rate shall be applied as otherwise reasonably determined by the Administrative Agent (it being understood that any such modification by the Administrative Agent shall not require the consent of, or consultation with, any of the Lenders).~~Benchmark Replacement. Notwithstanding anything to the contrary herein or in any other Loan Document, upon the occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, the Administrative Agent and the Borrowers may amend this Agreement to replace LIBOR with a Benchmark Replacement. Any such amendment with respect to a Benchmark Transition Event will become effective at 5:00 p.m. on the fifth (5th) Business Day after the Administrative Agent has posted such proposed amendment to all Lenders and the Borrowers so long as the Administrative Agent has not received, by such time, written notice of objection to such amendment from Lenders comprising the Required Lenders. Any such amendment with respect to an Early Opt-in Election will become effective on the date that Lenders comprising the Required Lenders have delivered to the Administrative Agent written notice that such Required Lenders accept such amendment. No replacement of LIBOR with a Benchmark Replacement pursuant to this Section 2.14(b) will occur prior to the applicable Benchmark Transition Start Date.

(ii) Benchmark Replacement Conforming Changes. In connection with the implementation of a Benchmark Replacement, the Administrative Agent will have the right to make Benchmark Replacement Conforming Changes from time to time and, notwithstanding anything to the contrary herein or in any other Loan Document, any amendments implementing such Benchmark Replacement Conforming Changes will become effective without any further action or consent of any other party to this Agreement.

(iii) Notices; Standards for Decisions and Determinations. The Administrative Agent will promptly notify the Borrowers and the Lenders of (A) any occurrence of a Benchmark Transition Event or an Early Opt-in Election, as applicable, and its related Benchmark Replacement Date and Benchmark Transition Start Date, (B) the implementation of any Benchmark Replacement, (C) the effectiveness of any Benchmark Replacement Conforming Changes and (D) the commencement or conclusion of any Benchmark Unavailability Period. Any determination, decision or election that may be made by the Administrative Agent or Lenders pursuant to this Section 2.14(b), including any determination with respect to a tenor, rate or adjustment or of the occurrence or non-occurrence of an event, circumstance or date and any decision to take or refrain from taking any action, will be conclusive and binding absent manifest error and may be made in its or their sole discretion and without consent from any other party hereto, except, in each case, as expressly required pursuant to this Section 2.14(b).

(iv) Benchmark Unavailability Period. Upon the Borrowers' receipt of notice of the commencement of a Benchmark Unavailability Period, the applicable Borrowers may revoke any request for a Eurodollar Loan of, conversion to or continuation of Eurodollar Loans to be made, converted or continued during any Benchmark Unavailability Period and, failing that, the Borrowers will be deemed to have converted any such request into a request for a borrowing of or conversion to Base Rate Loans. During any Benchmark Unavailability Period, the component of the Base Rate based upon LIBOR will not be used in any determination of the Base Rate.

SECTION 2.15. Increased Costs. (a) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, any Lender (except any such reserve requirement reflected in the Adjusted LIBO Rate) or any Issuing Bank; or

(ii) impose on any Lender or any Issuing Bank or the London interbank market any other condition affecting this Agreement or Eurodollar Loans made by such Lender or any Letter of Credit or participation therein; and the result of any of the foregoing shall be to increase the cost to such Lender of making or maintaining any Eurodollar Loan (or of maintaining its obligation to make any such Loan) or to increase the cost to such Lender or such Issuing Bank of participating in, issuing or maintaining any Letter of Credit or to reduce the amount of any sum received or receivable by such Lender or such Issuing Bank hereunder (whether of principal, interest or otherwise), then the Borrowers will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank, as the case may be, for such additional costs incurred or reduction suffered.

(b) If any Lender or an Issuing Bank determines that any Change in Law regarding capital requirements has or would have the effect of reducing the rate of return on such Lender's or such Issuing Bank's capital or on the capital of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by, or participations in Letters of Credit held by, such Lender, or the Letters of Credit issued by such Issuing Bank, to a level below that which such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's or such Issuing Bank's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy), then from time to time the Borrowers will pay to such Lender or such Issuing Bank, as the case may be, such additional amount or amounts as will compensate such Lender or such Issuing Bank or such Lender's or such Issuing Bank's holding company for any such reduction suffered.

(c) A certificate of a Lender or an Issuing Bank setting forth the amount or amounts necessary to compensate such Lender or such Issuing Bank or its holding company, as the case may be, as specified in paragraph (a) or (b) of this Section shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay such Lender or such Issuing Bank, as the case may be, the amount shown as due on any such certificate within 10 days after receipt thereof.

(d) 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 such Lender's or such Issuing Bank's right to demand such compensation; provided that the Borrowers shall not be required to compensate a Lender or an Issuing Bank pursuant to this Section for any increased costs or reductions incurred more than 270 days prior to the date that such Lender or such Issuing Bank, as the case may be, notifies the Borrowers of the Change in Law giving rise to such increased costs or reductions and of such Lender's or such Issuing Bank's intention to claim compensation therefor; provided, further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 270-day period referred to above shall be extended to include the period of retroactive effect thereof.

SECTION 2.16. Break Funding Payments. In the event of (a) the payment of any principal of any Eurodollar Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (b) the conversion of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto, (c) the failure to borrow, convert, continue or prepay any Eurodollar Loan on the date specified in any notice delivered pursuant hereto (regardless of whether such notice may be revoked under Section 2.11(b) and is revoked in accordance therewith), or (d) the assignment of any Eurodollar Loan other than on the last day of the Interest Period applicable thereto as a result of a request by the Borrowers pursuant to Section 2.19, then, in any such event, the Borrowers shall compensate each Lender for the loss, cost and expense attributable to such event. In the case of a Eurodollar Loan, such loss, cost or expense to any Lender shall be deemed to include an amount determined by such Lender to be the excess, if any, of (i) the amount of interest which would have accrued on the principal amount of such Loan had such event not occurred, at the Adjusted LIBO Rate that would have been applicable to such Loan, for the period from the date of such event to the last day of the then current Interest Period therefor (or, in the case of a failure to borrow, convert or continue, for the period that would have been the Interest Period for such Loan), over (ii) the amount of interest which would accrue on such principal amount for such period at the interest rate which such Lender would bid were it to bid, at the commencement of such period, for dollar deposits of a comparable amount and period from other banks in the eurodollar market. A certificate of any Lender setting forth any amount or amounts that such Lender is entitled to receive pursuant to this Section shall be delivered to the Borrowers and shall be conclusive absent manifest error. The Borrowers shall pay such Lender the amount shown as due on any such certificate within 10 days after receipt thereof.

SECTION 2.17. Taxes. Any and all payments by or on account of any obligation of the Borrowers hereunder shall be made free and clear of and without deduction for any Indemnified Taxes or Other Taxes; provided that if any Borrower shall be required to deduct any Indemnified Taxes or Other Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions (including deductions applicable to additional sums payable under this Section) the Administrative Agent, Lender or Issuing Bank (as the case may be) receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Borrower shall make such deductions and (iii) such Borrower shall pay the full amount deducted to the relevant Governmental Authority in accordance with Applicable Law.

(b) In addition, the Borrowers shall pay any Other Taxes to the relevant Governmental Authority in accordance with Applicable Law.

(c) Each Borrower shall indemnify the Administrative Agent, each Lender and each Issuing Bank, within 10 days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes paid by the Administrative Agent, such Lender or such Issuing Bank, as the case may be, on or with respect to any payment by or on account of any obligation of such Borrower hereunder (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section) and any penalties, interest and reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to the Borrowers by a Lender or an Issuing Bank, or by the Administrative Agent on its own behalf or on behalf of a Lender or an Issuing Bank, shall be conclusive absent manifest error.

(d) As soon as practicable after any payment of Indemnified Taxes or Other Taxes by a Borrower to a Governmental Authority, such Borrower shall deliver to the Administrative Agent the original or a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment or other evidence of such payment reasonably satisfactory to the Administrative Agent.

(e) (i) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments made under any Loan Document shall deliver to the Borrowers and the Administrative Agent, at the time or times reasonably requested by the Borrowers or the Administrative Agent, such properly completed and executed documentation reasonably requested by the Borrowers or the Administrative Agent as will permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Borrowers or the Administrative Agent, shall deliver such other documentation prescribed by Applicable Law or reasonably requested by the Borrowers or the Administrative Agent as will enable the Borrowers or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in the preceding two sentences, the completion, execution and submission of such documentation (other than such documentation set forth in Section 2.17(e)(ii)(A), (ii)(B) and (ii)(D) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

(ii) Without limiting the generality of the foregoing:

(A) Any Lender that is a U.S. Person shall deliver to the Borrowers and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed copies of IRS Form W-9 certifying that such Lender is exempt from United States federal backup withholding tax;

(B) any Foreign Lender shall, to the extent it is legally entitled to do so, deliver to the Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), whichever of the following is applicable:

(1) 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 copies of IRS Form W-8BEN-E establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the "interest" article of such tax treaty and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E establishing an exemption from, or reduction of, United States federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) executed copies of IRS Form W-8ECI;

(3) 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 substantially in the form of Exhibit C 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 any Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code (a "U.S. Tax Compliance Certificate") and (y) executed copies of IRS Form W-8BEN-E; or

(4) to the extent a Foreign Lender is not the beneficial owner, executed copies of IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN-E, a U.S. Tax Compliance Certificate substantially in the form of Exhibit C, 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 substantially in the form of Exhibit C 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 Borrowers and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or prior to the date on which such Foreign Lender becomes a Lender under this Agreement (and from time to time thereafter upon the reasonable request of the Borrowers or the Administrative Agent), executed copies of any other form prescribed by Applicable Law as a basis for claiming exemption from or a reduction in United States federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Applicable Law to permit the Borrowers or the Administrative Agent to determine the withholding or deduction required to be made; and

(D) if a payment made to a Lender under any Loan Document would be subject to United States federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Borrowers and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrowers or the Administrative Agent such documentation prescribed by Applicable Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Borrowers or the Administrative Agent as may be necessary for the Borrowers and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (D), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

Each Lender agrees that if any form or certification it previously delivered expires or becomes obsolete or inaccurate in any respect, it shall update such form or certification or promptly notify the Borrowers and the Administrative Agent in writing of its legal inability to do so.

(f) If the Administrative Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes or Other Taxes as to which it has been indemnified by a Borrower or with respect to which a Borrower has paid additional amounts pursuant to this Section 2.17, it shall pay over such refund to such Borrower (but only to the extent of indemnity payments made, or additional amounts paid, by such Borrower under this Section 2.17 with respect to the Taxes or Other Taxes giving rise to such refund), net of all out-of-pocket expenses of the Administrative Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such refund); provided, that each Borrower, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid over to such Borrower (plus any penalties, interest or other charges imposed by the relevant Governmental Authority) to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such refund to such Governmental Authority. This Section shall not be construed to require the Administrative Agent or any Lender to make available its tax returns (or any other information relating to its taxes which it deems confidential) to the Borrowers or any other Person.

SECTION 2.18. Payments Generally; Pro Rata Treatment; Sharing of Set-offs. (a) Each Borrower shall make each payment required to be made by it hereunder (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Section 2.15, 2.16 or 2.17, or otherwise) prior to 12:00 noon, Eastern time, on the date when due, in immediately available funds, without set-off or counterclaim. Any amounts received after such time on any date may, in the discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at such office designated by the Administrative Agent, except payments to be made directly to an Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 2.15, 2.16, 2.17 and 9.03 shall be made directly to the Persons entitled thereto. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment hereunder shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension. All payments hereunder of (i) principal or interest in respect of any Loan shall be made in Dollars, (ii) reimbursement obligations shall be made in the currency in which the Letter of Credit in respect of which such reimbursement obligation exists is denominated and (iii) any other amount due hereunder or under another Loan Document shall be made in Dollars.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied as set forth in Section 7.03.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Borrowers pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to any Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under Applicable Law, that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against such Borrower rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Borrower in the amount of such participation.

(d) Unless the Administrative Agent shall have received notice from a Borrower prior to the date on which any payment is due to the Administrative Agent for the account of the Lenders or an Issuing Bank hereunder that such Borrower will not make such payment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or the applicable Issuing Bank, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of the Lenders or the applicable Issuing Bank, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or such Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

SECTION 2.19. Mitigation Obligations; Replacement of Lenders. (a) If any Lender requests compensation under Section 2.15, or if any Borrower is required to pay any additional amount to any Lender or any Governmental Authority for the account of any Lender pursuant to Section 2.17, then such Lender shall use reasonable efforts to designate a different lending office for funding or booking its Loans hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 2.15 or 2.17, as the case may be, in the future and (ii) would not subject such Lender to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender. The Borrowers hereby agree to pay all reasonable costs and expenses incurred by any Lender in connection with any such designation or assignment.

(b) If any Lender (i) shall become affected by any of the changes or events described in Section 2.15 or 2.17 and any Borrower is required to pay additional amounts or make indemnity payments with respect to the Lender thereunder, (ii) is a Defaulting Lender or (iii) has failed to consent to a proposed amendment, waiver, discharge or termination which pursuant to the terms of Section 9.02 or any other provision of any Loan Document requires the consent of all affected Lenders and with respect to which the Required Lenders shall have granted their consent (any such Lender being hereinafter referred to as a "Departing Lender"), then in such case, the Borrowers may, upon at least five Business Days' notice to the Administrative Agent and such Departing Lender (or such shorter notice period specified by the Administrative Agent), designate a replacement lender acceptable to the Administrative Agent (a "Replacement Lender") to which such Departing Lender shall, subject to its receipt (unless a later date for the remittance thereof shall be agreed upon by the Company and the Departing Lender) of all amounts owed to such Departing Lender under Sections 2.15 or 2.17, assign all (but not less than all) of its interests, rights, obligations, Loans and Revolving Credit Commitments hereunder; provided, that the Departing Lender shall have received payment of an amount equal to the outstanding principal of its Loans and participations in LC Disbursements and Swingline Loans, accrued interest thereon, accrued fees and all other amounts payable to it hereunder, from the Replacement Lender (to the extent of such outstanding principal and accrued interest and fees) or the Borrowers (in the case of all other amounts). Upon any assignment by any Lender pursuant to this Section 2.19 becoming effective, the Replacement Lender shall thereupon be deemed to be a "Lender" for all purposes of this Agreement (unless such Replacement Lender was, itself, a Lender prior thereto) and such Departing Lender shall thereupon cease to be a "Lender" for all purposes of this Agreement and shall have no further rights or obligations hereunder (other than pursuant to Section 2.15 or 2.17 and Section 9.03) while such Departing Lender was a Lender.

(c) Notwithstanding any Departing Lender's failure or refusal to assign its rights, obligations, Loans and Revolving Credit Commitments under this Section 2.19, the Departing Lender shall cease to be a "Lender" for all purposes of this Agreement and the Replacement Lender shall be substituted therefor upon payment to the Departing Lender by the Replacement Lender of all amounts set forth in this Section 2.19 without any further action of the Departing Lender.

SECTION 2.20. Defaulting Lenders. Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as such Lender is no longer a Defaulting Lender, to the extent permitted by Applicable Law:

(a) Waivers and Amendments. Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of Required Lenders.

(b) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 7.01 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 9.08 shall be applied at such time or times as may be determined by the Administrative Agent as follows: first, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; second, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank or the Swingline Lender hereunder; third, to Cash Collateralize each Issuing Bank's Fronting Exposure with respect to such Defaulting Lender in accordance with subsection (e) below; fourth, as the Borrowers may request (so long as no Unmatured Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; fifth, if so determined by the Administrative Agent and the Borrowers, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize any Issuing Bank's future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with subsection (e) below; sixth, to the payment of any amounts owing to the Lenders, the Issuing Banks or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, any Issuing Bank or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; seventh, so long as no Unmatured Default or Event of Default exists, to the payment of any amounts owing to the Borrowers as a result of any judgment of a court of competent jurisdiction obtained by the Borrowers against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and eighth, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements, in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Article IV were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LC Exposure and Swingline Loans are held by the Lenders pro rata in accordance with their respective Revolving Credit Commitment Percentages (determined without giving effect to subsection (d) of this Section 2.16 below). Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this subsection shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(c) Certain Fees.

(i) No Defaulting Lender shall be entitled to receive any fee payable under Section 2.12(a) for any period during which that Lender is a Defaulting Lender (and the Borrowers shall not be required to pay any such fee that otherwise would have been required to have been paid to that Defaulting Lender).

(ii) Each Defaulting Lender shall be entitled to receive payable under Section 2.12(b) participation fees with respect to Letters of Credit for any period during which that Lender is a Defaulting Lender only to the extent allocable to its Revolving Credit Commitment Percentage of the stated amount of Letters of Credit for which it has provided Cash Collateral pursuant to subsection (e) of this Section 2.20 below.

(iii) With respect to any fee not required to be paid to any Defaulting Lender pursuant to the immediately preceding clauses (i) or (ii), the Borrowers shall (x) pay to each Non-Defaulting Lender that portion of any such fee otherwise payable to such Defaulting Lender with respect to such Defaulting Lender's participation in LC Exposure or Swingline Exposure that has been reallocated to such Non-Defaulting Lender pursuant to the immediately following subsection (d), (y) pay to each Issuing Bank and Swingline Lender, as applicable, the amount of any such fee otherwise payable to such Defaulting Lender to the extent allocable to such Issuing Bank's or Swingline Lender's Fronting Exposure to such Defaulting Lender, and (z) not be required to pay the remaining amount of any such fee.

(d) Reallocation of Participations to Reduce Fronting Exposure. All or any part of such Defaulting Lender's participation in LC Exposure and Swingline Exposure shall be reallocated among the Non-Defaulting Lenders in accordance with their respective Revolving Credit Commitment Percentages (determined without regard to such Defaulting Lender's Revolving Credit Commitment) but only to the extent that ~~(x) the conditions set forth in Article IV are satisfied at the time of such reallocation (and, unless the Borrowers shall have otherwise notified the Administrative Agent at such time, the Borrowers shall be deemed to have represented and warranted that such conditions are satisfied at such time), and (y)~~ such reallocation does not cause the aggregate Revolving Credit Exposure of any Non-Defaulting Lender to exceed such Non-Defaulting Lender's Revolving Credit Commitment. No reallocation hereunder shall constitute a waiver or release of any claim of any party hereunder against a Defaulting Lender arising from that Lender having become a Defaulting Lender, including any claim of a Non-Defaulting Lender as a result of such Non-Defaulting Lender's increased exposure following such reallocation.

(e) Cash Collateral, Repayment of Swingline Loans.

(i) If the reallocation described in the immediately preceding subsection (d) above cannot, or can only partially, be effected, the Borrowers shall, without prejudice to any right or remedy available to it hereunder or under law, (x) first, prepay Swingline Loans in an amount equal to the Swingline Lender's Fronting Exposure and (y) second, Cash Collateralize each Issuing Bank's Fronting Exposure in accordance with the procedures set forth in this subsection.

(ii) At any time that there shall exist a Defaulting Lender, within 1 Business Day following the written request of the Administrative Agent or any Issuing Bank (with a copy to the Administrative Agent), the Borrowers shall Cash Collateralize each Issuing Bank's Fronting Exposure with respect to such Defaulting Lender (determined after giving effect to the immediately preceding subsection (d) and any Cash Collateral provided by such Defaulting Lender) in an amount not less than the aggregate Fronting Exposure of the Issuing Banks with respect to Letters of Credit issued and outstanding at such time.

(iii) The Borrowers, and to the extent provided by any Defaulting Lender, such Defaulting Lender, hereby grant to the Administrative Agent, for the benefit of the Issuing Banks, and agree to maintain, a first priority security interest in all such Cash Collateral as security for the Defaulting Lenders' obligation to fund participations in respect of LC Exposure, to be applied pursuant to the immediately following clause (iv). If at any time the Administrative Agent determines that Cash Collateral is subject to any right or claim of any Person other than the Administrative Agent and the Issuing Banks as herein provided, or that the total amount of such Cash Collateral is less than the aggregate Fronting Exposure of the Issuing Banks with respect to Letters of Credit issued and outstanding at such time, the Borrowers will, promptly upon demand by the Administrative Agent, pay or provide to the Administrative Agent additional Cash Collateral in an amount sufficient to eliminate such deficiency (after giving effect to any Cash Collateral provided by the Defaulting Lender).

(iv) Notwithstanding anything to the contrary contained in this Agreement, Cash Collateral provided under this Section in respect of Letters of Credit shall be applied to the satisfaction of the Defaulting Lender's obligation to fund participations in respect of LC Exposure (including, as to Cash Collateral provided by a Defaulting Lender, any interest accrued on such obligation) for which the Cash Collateral was so provided, prior to any other application of such property as may otherwise be provided for herein.

(v) Cash Collateral (or the appropriate portion thereof) provided to reduce any Issuing Bank's Fronting Exposure shall no longer be required to be held as Cash Collateral pursuant to this subsection following (x) the elimination of the applicable Fronting Exposure (including by the termination of Defaulting Lender status of the applicable Lender), or (y) the determination by the Administrative Agent and each Issuing Bank that there exists excess Cash Collateral; provided that, subject to the preceding subsection (b) of this Section 2.20, the Person providing Cash Collateral and any applicable Issuing Bank may agree that Cash Collateral shall be held to support future anticipated Fronting Exposure.

(f) Defaulting Lender Cure. If the Borrowers, the Administrative Agent, the Swingline Lender and the Issuing Bank agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein (which may include arrangements with respect to any Cash Collateral), that Lender will, to the extent applicable, purchase at par that portion of outstanding Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Loans and funded and unfunded participations in Letters of Credit and Swingline Loans to be held pro rata by the Lenders in accordance with their respective Revolving Credit Commitment Percentages (determined without giving effect to the immediately preceding subsection (d)), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrowers while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

(g) New Swingline Loans/Letters of Credit. So long as any Lender is a Defaulting Lender, (i) the Swingline Lender shall not be required to fund any Swingline Loans unless it is satisfied that it will have no Fronting Exposure after giving effect to such Swingline Loan and (ii) no Issuing Bank shall be required to issue, extend, renew or increase any Letter of Credit unless it is satisfied that it will have no Fronting Exposure after giving effect thereto.

ARTICLE III
REPRESENTATIONS AND WARRANTIES

Each Borrower represents and warrants to the Lenders that:

SECTION 3.01. Organization; Powers. Each of the Borrowers and their Subsidiaries is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization, has all requisite power and authority to carry on its business as now conducted and, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, is qualified to do business in, and is in good standing in, every jurisdiction where a failure to be so qualified would result in a Material Adverse Effect. No Borrower, nor any of its or their Subsidiaries, is an EEA Financial Institution.

SECTION 3.02. Authorization; Enforceability. The Transactions are within such Borrower's and its Subsidiaries' corporate or limited liability powers, as applicable, and have been duly authorized by all necessary corporate or limited liability and, if required, stockholder, member, or manager action, as applicable. This Agreement has been duly executed and delivered by such Borrower and constitutes a legal, valid and binding obligation of such Borrower, enforceable in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

SECTION 3.03. Governmental Approvals; No Conflicts. The performance by such Borrower and, if applicable, the Subsidiaries of its or their obligations under the Loan Documents (a) do not require any consent or approval of, registration or filing with, or any other action by, any Governmental Authority, except such as have been obtained or made and are in full force and effect, (b) will not violate any Applicable Law or regulation or the articles, charter, by-laws, operating agreement or other organizational documents, as applicable, of such Borrower or any of its Subsidiaries or any order of any Governmental Authority, (c) will not violate or result in a default under any indenture, agreement or other instrument binding upon such Borrower or any of its Subsidiaries or its assets, or give rise to a right thereunder to require any payment to be made by such Borrower or any of its Subsidiaries, and (d) will not result in the creation or imposition of any Lien on any asset of such Borrower or any of its Subsidiaries, except in favor of the Administrative Agent, for the benefit of the Secured Parties.

SECTION 3.04. Financial Condition; No Material Adverse Change. (a) The Company has heretofore furnished to the Lenders its consolidated balance sheet and statements of income, stockholders equity and cash flows as of and for the Fiscal Year ended December 31, 2017, reported on by BDO USA, LLP, independent public accountant. Such financial statements 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 dates and for such periods in accordance with GAAP.

(b) Since December 31, 2017, there has been no material adverse change in the business, assets, operations, prospects or condition, financial or otherwise, of the Company and its Subsidiaries, taken as a whole.

SECTION 3.05. Properties. (a) Each of the Borrowers and their Subsidiaries has good title to, or valid leasehold interests in, all its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business as currently conducted or to utilize such properties for their intended purposes.

(b) Each of the Borrowers and their Subsidiaries owns, or is licensed to use, all trademarks, tradenames, copyrights, patents and other intellectual property material to its business, and the use thereof by such Borrower and its Subsidiaries 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.

(c) As of the Effective Date, each Subsidiary (other than Inactive Subsidiaries which have been previously disclosed to the Administrative Agent prior to the Effective Date) of the Company, including its ownership, is described on Schedule 3.05 hereto. Each Subsidiary of the Company has and will have all requisite power to own or lease the properties material to its business and to carry on its business as now being conducted and as proposed to be conducted. All outstanding shares of Equity Interests of each class of each Subsidiary of the Company have been and will be validly issued and are and will be fully paid and non-assessable and, except as otherwise indicated in Schedule 3.05 hereto or disclosed in writing to the Administrative Agent and the Lenders from time to time, are and will be owned, beneficially and of record, by the Company or another Subsidiary of the Company free and clear of any Liens other than Liens permitted under this Agreement.

SECTION 3.06. Litigation and Environmental Matters. (a) There are no actions, suits or proceedings by or before any arbitrator or Governmental Authority pending against or, to the knowledge of the Borrowers, threatened against or affecting any Borrower or any of their Subsidiaries (i) as to which there is a reasonable possibility of an adverse determination and that, if adversely determined, could reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect (other than the Disclosed Matters) or (ii) that involve any Loan Document or the Transactions.

(b) Except for the Disclosed Matters and except with respect to any other matters that, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect, none of the Borrowers nor any of their Subsidiaries (i) has failed to comply in all material respects with any Environmental Law or to obtain, maintain or comply in all material respects with any permit, license or other approval required under any Environmental Law, (ii) has become subject to any Environmental Liability, (iii) has received notice of any claim with respect to any Environmental Liability or (iv) knows of any basis for any Environmental Liability.

(c) Since the date of this Agreement, there has been no change in the status of the Disclosed Matters that, individually or in the aggregate, has resulted in, or materially increased the likelihood of, a Material Adverse Effect.

SECTION 3.07. Compliance with Laws and Agreements. Each of the Borrowers and their Subsidiaries is in compliance with all laws, regulations and orders of any Governmental Authority applicable to it or its property and all indentures, agreements and other instruments binding upon it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.08. Investment Company Status. None of the Borrowers nor any of their Subsidiaries is an "investment company" as defined in, or subject to regulation under, the Investment Company Act of 1940.

SECTION 3.09. Taxes. Each of the Borrowers and their Subsidiaries has timely filed or caused to be filed all Tax returns and reports required to have been filed and have paid or caused to be paid all Taxes required to have been paid by them, except (a) Taxes that are being contested in good faith by appropriate proceedings and for which such Borrower or such Subsidiary, as applicable, has set aside on its books adequate reserves or (b) to the extent that the failure to do so could not reasonably be expected to result in a Material Adverse Effect.

SECTION 3.10. ERISA.

(a) No ERISA Event has occurred or is reasonably expected to occur that, when taken together with all other such ERISA Events for which liability is reasonably expected to occur, could reasonably be expected to result in a Material Adverse Effect. The present value of all accumulated benefit obligations under each Plan (based on the assumptions used for purposes of Statement of Financial Accounting Standards No. 87) did not, as of the date of the most recent financial statements reflecting such amounts, exceed the fair market value of the assets of such Plan.

(b) As of the Effective Date, no Borrower is nor will it be using "plan assets" (within the meaning of 29 CFR § 2510.3-101, as modified by Section 3(42) of ERISA) of one or more Benefit Plans in connection with the Loans, the Letters of Credit or the Revolving Credit Commitments.

SECTION 3.11. Disclosure. Each Borrower has disclosed to the Lenders all agreements, instruments and corporate or other restrictions to which it or any of its Subsidiaries is subject, and all other matters known to it, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. No reports, financial statements, certificates or other information furnished by or on behalf of such Borrower to the Administrative Agent or any Lender in connection with the negotiation of this Agreement or delivered hereunder (as modified or supplemented by other information so furnished) contains any material misstatement of fact or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading; provided that, with respect to projected financial information, such Borrower represents only that such information was prepared in good faith based upon assumptions believed to be reasonable at the time. As of the Effective Date, all of the information included in a Beneficial Ownership Certification is true and correct.

SECTION 3.12. Anti-Corruption Laws and Sanctions.

(a) None of (i) the Borrowers, any of the other Loan Parties, any of the other Subsidiaries, or any other Affiliate of any Borrower or (ii) to the knowledge of any Borrower, any agent or representative of any Borrower or any Subsidiary that will act in any capacity in connection with or benefit from this Agreement: (A) is a Sanctioned Person or currently the subject or target of any Sanctions, (B) has its assets located in a Sanctioned Country, (C) directly or indirectly derives revenues from investments in, or transactions with, Sanctioned Persons, (D) has taken any action, directly or indirectly, that would result in a violation by such Persons of any Anti-Corruption Laws, or (E) has violated any Anti-Money Laundering Law.

(b) Each of the Borrowers, the other Loan Parties, each of the other Subsidiaries, or each other Affiliate of any Borrower has implemented and maintains in effect policies and procedures designed to ensure compliance by such Borrower, other Loan Party or Subsidiary and their respective directors, officers, employees, agents and Affiliates with all Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions.

(c) Each Borrower, other Loan Party and Subsidiary, and to the knowledge of the Borrowers, each director, officer, employee, agent and Affiliate of each Borrower and each such Subsidiary, is in compliance with the Anti-Corruption Laws and Anti-Money Laundering Laws in all material respects and applicable Sanctions.

(d) No proceeds of the Loans or Letters of Credit have been used, directly or indirectly, by the Borrowers, the other Loan Parties, each of the other Subsidiaries, or each other Affiliate of any Borrower or any of its or their respective directors, officers, employees and agents in violation of Section 5.08(b).

SECTION 3.13. No Default. No Event of Default or Unmatured Default has occurred and is continuing.

SECTION 3.14. Employee Relations. As of the Effective Date, no Borrower nor any Subsidiary thereof is party to any collective bargaining agreement, nor has any labor union been recognized as the representative of its employees except as set forth on Schedule 3.14. Except as set forth on Schedule 3.14, no Borrower knows of any pending, threatened or contemplated strikes, work stoppage or other collective labor disputes involving its employees or those of its Subsidiaries that, individually or in the aggregate, could reasonably be expected to have a Material Adverse Effect.

SECTION 3.15. Solvency. Both before and after giving effect to the extensions of credit made to the Borrowers on the Effective Date, the Company and its Subsidiaries, on a consolidated basis, are Solvent.

SECTION 3.16. Collateral Documents. The provisions of the Collateral Documents are effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid and enforceable perfected first priority Lien, subject to Liens permitted under Section 6.02 and exclusions permitted under the Collateral Documents, on all right, title and interest of the respective Loan Parties in the Collateral, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar state or federal bankruptcy laws from time to time in effect which affect the enforcement of creditors' rights in general and the availability of equitable remedies. Except for any filings completed on or prior to the Effective Date and as contemplated hereby and by the Collateral Documents, no filing or other action will be necessary to perfect or protect such Liens.

ARTICLE IV
CONDITIONS

SECTION 4.01. Effective Date. The obligations of the Lenders to make Loans and of the Issuing Banks to issue Letters of Credit hereunder shall not become effective until the date on which each of the following conditions is satisfied (or waived in accordance with Section 9.02):

(a) Credit Agreement and Loan Documents. The Administrative Agent (or its counsel) shall have received (i) from each party hereto either (A) a counterpart of this Agreement signed on behalf of such party or (B) written evidence satisfactory to the Administrative Agent (which may include telecopy transmission of a signed signature page of this Agreement) that such party has signed a counterpart of this Agreement and (ii) duly executed copies of the Loan Documents and such other legal opinions, certificates, documents, instruments, lien searches and agreements and other conditions and requirements as the Administrative Agent shall reasonably request in connection with the transactions contemplated by this Agreement and the Loan Documents, all in form and substance satisfactory to the Administrative Agent and its counsel.

(b) Opinion. The Administrative Agent shall have received a favorable written opinion (addressed to the Administrative Agent and the Lenders and dated the Effective Date) of Varnum LLP, counsel for the Loan Parties, in form and substance satisfactory to the Administrative Agent, and covering such matters relating to the Loan Parties, this Agreement or the Transactions as the Administrative Agent shall reasonably request. The Borrowers hereby request such counsel to deliver such opinion.

(c) Charter Documents. The Administrative Agent shall have received such documents and certificates as the Administrative Agent or its counsel may reasonably request relating to the organization, existence and good standing of the Loan Parties, the authorization of the Transactions and any other legal matters relating to the Loan Parties, this Agreement or the Transactions, all in form and substance satisfactory to the Administrative Agent and its counsel.

(d) Personal Property Collateral.

(i) Filings and Recordings. The Administrative Agent shall have received all filings and recordations that are necessary to perfect the security interests of the Administrative Agent, on behalf of the Secured Parties, in the Collateral and the Administrative Agent shall have received evidence reasonably satisfactory to the Administrative Agent that upon such filings and recordations such security interests constitute valid and perfected first priority Liens thereon (subject to Liens permitted under Section 6.02 and exclusions permitted under the Collateral Documents).

(ii) Pledged Collateral. The Administrative Agent shall have received (A) original stock certificates or other certificates evidencing the certificated Equity Interests pledged pursuant to the Collateral Documents, together with an undated stock power for each such certificate duly executed in blank by the registered owner thereof and (B) each original promissory note pledged pursuant to the Collateral Documents together with an undated allonge for each such promissory note duly executed in blank by the holder thereof.

(iii) Lien Search. The Administrative Agent shall have received the results of a Lien search (including a search as to judgments, bankruptcy, tax and intellectual property matters), in form and substance reasonably satisfactory thereto, made against the Loan Parties under the Uniform Commercial Code (or applicable judicial docket) as in effect in each jurisdiction in which filings or recordations under the Uniform Commercial Code should be made to evidence or perfect security interests in all assets of such Loan Party, indicating among other things that the assets of each such Loan Party are free and clear of any Lien (except for Liens permitted under Section 6.02).

(iv) Property and Liability Insurance. The Administrative Agent shall have received, in each case in form and substance reasonably satisfactory to the Administrative Agent, evidence of property, business interruption and liability insurance covering each Loan Party, evidence of payment of all insurance premiums for the current policy year of each policy (with appropriate endorsements naming the Administrative Agent as lender's loss payee on all policies for property hazard insurance and as additional insured on all policies for liability insurance), and if requested by the Administrative Agent, copies of such insurance policies.

(v) Intellectual Property. The Administrative Agent shall have received security agreements duly executed by the applicable Loan Parties for all federally registered copyrights, copyright applications, patents, patent applications, trademarks and trademark applications included in the Collateral, in each case in proper form for filing with the U.S. Patent and Trademark Office or U.S. Copyright Office, as applicable.

(e) Certificate. The Administrative Agent shall have received an officer's certificate in form and substance reasonably satisfactory to the Administrative Agent, dated the Effective Date and signed by the Chief Financial Officer of the Company, (a) confirming compliance with the conditions set forth in paragraphs (a) and (b) of Section 4.02, and (b) certifying that after giving pro forma effect to each element of the Transactions, the Company and its Subsidiaries (on a consolidated basis) are Solvent.

(f) Financial Statements. The Lenders shall have received satisfactory historical financial statements, pro forma financial statements and projections of the Company and its Subsidiaries, including (i) audited consolidated balance sheets and related consolidated statements of income, shareholder's equity and cash flows for the three most recently completed Fiscal Years ended at least 90 days prior to the Effective Date, (ii) unaudited consolidated balance sheets and related consolidated statements of income and cash flows for each interim Fiscal Quarter ended since the last audited financial statements and at least 45 days prior to the Effective Date and (iii) if requested by Administrative Agent, projections prepared by management of balance sheets, income statements and cash flow statements of the Company and its Subsidiaries, which will be quarterly for the first year after the Effective Date and annually thereafter for the term of this Agreement (and which will not be inconsistent with information previously provided to the Administrative Agent).

(g) Fees. The Lenders and the Administrative Agent shall have received, substantially concurrently with the effectiveness hereof, all fees required to be paid, and all expenses for which invoices have been presented (including the reasonable fees and documented expenses of legal counsel to the Administrative Agent), on or before the Effective Date.

(h) Existing Indebtedness. The Borrowers shall have paid, concurrently with the
initial Loans hereunder, all Indebtedness that is not permitted hereunder and shall have terminated all credit facilities and all Liens relating thereto, all in a manner satisfactory to the Administrative Agent and its counsel.

(i) Consents; Defaults.

(i) Governmental and Third Party Approvals. The Lenders shall have received all material governmental, shareholder and third party consents and approvals necessary (or any other material consents as determined in the reasonable discretion of the Administrative Agent) in connection with the transactions contemplated by this Agreement and the other Loan Documents and all applicable waiting periods shall have expired without any action being taken by any Person that could reasonably be expected to restrain, prevent or impose any material adverse conditions on any of the Lenders or such other transactions or that could seek or threaten any of the foregoing, and no law or regulation shall be applicable which in the reasonable judgment of the Administrative Agent could reasonably be expected to have such effect.

(ii) No Injunction, Etc. No action, proceeding or investigation shall have been instituted, threatened or proposed before any Governmental Authority to enjoin, restrain, or prohibit, or to obtain substantial damages in respect of, or which is related to or arises out of this Agreement or the other Loan Documents or the consummation of the transactions contemplated hereby or thereby, or which, in the Administrative Agent's sole discretion, would make it inadvisable to consummate the transactions contemplated by this Agreement or the other Loan Documents or the consummation of the transactions contemplated hereby or thereby.

(j) PATRIOT Act, etc.

(i) The Loan Parties shall have provided to the Administrative Agent and the Lenders the documentation and other information requested by the Administrative Agent in order to comply with requirements of any Anti-Money Laundering Laws, including, without limitation, the PATRIOT Act and any applicable "know your customer" rules and regulations.

(ii) Each Loan Party or Subsidiary thereof that qualifies as a "legal entity customer" under the Beneficial Ownership Regulation shall have delivered to the Administrative Agent, and any Lender requesting the same, a Beneficial Ownership Certification in relation to such Loan Party or such Subsidiary, in each case prior to the Effective Date.

Without limiting the generality of the provisions of Section 8.09, for purposes of determining compliance with the conditions specified in this Section 4.01, the Administrative Agent and each Lender that has signed this Agreement shall be deemed to have consented to, approved or accepted or to be satisfied with, each document or other matter required thereunder to be consented to or approved by or acceptable or satisfactory to a Lender unless the Administrative Agent shall have received notice from such Lender prior to the proposed Effective Date specifying its objection thereto.

SECTION 4.02. Each Credit Event. The obligation of each Lender to make a Loan on the occasion of any Borrowing, and of each Issuing Bank to issue, amend, renew or extend any Letter of Credit, is subject to the satisfaction or waiver of the following conditions:

(a) Subject to Section 1.07 with respect to any Incremental Term Loan incurred to finance a Limited Condition Acquisition, the representations and warranties of the Borrowers set forth in this Agreement and the other Loan Documents shall be true and correct on and as of the date of such Borrowing or the date of issuance, amendment, renewal or extension of such Letter of Credit, as applicable.

(b) Subject to Section 1.07 with respect to any Incremental Term Loan used to finance a Limited Condition Acquisition, at the time of and immediately after giving effect to such Borrowing or the issuance, amendment, renewal or extension of such Letter of Credit, as applicable, no Event of Default or Unmatured Default shall have occurred and be continuing.

Each Borrowing and each issuance, amendment, renewal or extension of a Letter of Credit shall be deemed to constitute a representation and warranty by the Borrowers on the date thereof as to the matters specified in paragraphs (a) and (b) of this Section.

ARTICLE V
AFFIRMATIVE COVENANTS

Until the Revolving Credit Commitments have expired or terminated and all of the Obligations have been paid and satisfied in full in cash (including the principal of and interest on each Loan and all fees payable hereunder) and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed or Cash Collateralized, each Borrower covenants and agrees with the Lenders that:

SECTION 5.01. Financial Statements; Ratings Change and Other Information. The Company will furnish to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice):

(a) within 90 days after the end of each Fiscal Year, 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 BDO USA, 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) 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) within 45 days after the end of each of the first three Fiscal Quarters, its consolidated balance sheet and related statements of operations, stockholders' equity and cash flows as of the end of and for such Fiscal Quarter and 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 one of its Financial Officers 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, subject to normal year-end audit adjustments and the absence of footnotes;

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a certificate of a Financial Officer of the Company (i) certifying as to whether an Event of Default has occurred and, if an Event of Default has occurred, specifying the details thereof and any action taken or proposed to be taken with respect thereto, (ii) setting forth reasonably detailed calculations demonstrating compliance with Section 6.13 and (iii) stating whether any change in GAAP or in the application thereof has occurred since the date of the audited financial statements referred to in Section 3.04 and, if any such change has occurred, specifying the effect of such change on the financial statements accompanying such certificate; and

(d) promptly after the same becomes publicly available, copies of all periodic and other reports, proxy statements and other materials filed by the Company or any Subsidiary with the Securities and Exchange Commission, or any Governmental Authority succeeding to any or all of the functions of said Commission, or with any national securities exchange, as the case may be; and

(e) promptly following any request therefor, such other information regarding the operations, business affairs and financial condition of any Borrower or any Subsidiary, or compliance with the terms of this Agreement, as the Administrative Agent or any Lender may reasonably request, including any information and documentation required under applicable "know your customer" rules and regulations, the PATRIOT Act, or any applicable Anti-Money Laundering Laws.

Documents required to be delivered pursuant to Section 5.01(a), (b) or (d) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date (i) on which the Company posts such documents, or provides a link thereto on the Company's website; or (ii) on which such documents are posted on the Company's behalf on an Internet or intranet website, if any, to which each Lender and the Administrative Agent have access (whether a commercial, third-party website or whether sponsored by the Administrative Agent); provided that: (A) the Company shall deliver paper copies of such documents to the Administrative Agent or any Lender that requests the Company to deliver such paper copies until a written request to cease delivering paper copies is given by the Administrative Agent or such Lender and (B) the Company shall notify the Administrative Agent and each Lender (by facsimile or electronic mail) of the posting of any such documents and provide to the Administrative Agent by electronic mail electronic versions of such documents. Notwithstanding anything contained herein, in every instance the Company shall be required to provide paper copies of the officer's compliance certificates required by Section 5.01(c) to the Administrative Agent. Except for such officer's compliance certificates, the Administrative Agent shall have no obligation to request the delivery or to maintain copies of the documents referred to above, and in any event shall have no responsibility to monitor compliance by the Company with any such request for delivery, and each Lender shall be solely responsible for requesting delivery to it or maintaining its copies of such documents.

SECTION 5.02. Notices of Material Events. Such Borrower will furnish to the Administrative Agent (which shall promptly make such information available to the Lenders in accordance with its customary practice) prompt written notice of the following:

(a) the occurrence of any Event of Default or Unmatured Default;

(b) the filing or commencement of any action, suit or proceeding by or before any arbitrator or Governmental Authority against or affecting any Borrower or any Affiliate thereof that, if adversely determined, 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 any Borrower and its Subsidiaries in an aggregate amount exceeding $1,000,000; 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 shall be accompanied by a statement of a Financial Officer or other executive officer of the Company setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

SECTION 5.03. Existence; Conduct of Business. Such Borrower will, and will cause each of its Subsidiaries to, do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence and the rights, licenses, permits, privileges and franchises material to the conduct of its business; provided that the foregoing shall not prohibit any merger, consolidation, liquidation or dissolution permitted under Section 6.03.

SECTION 5.04. Payment of Obligations. Such Borrower will, and will cause each of its Subsidiaries to, pay its obligations, including Tax liabilities, that, if not paid, could result in a Material Adverse Effect before the same shall become delinquent or in default, except where (a) the validity or amount thereof is being contested in good faith by appropriate proceedings, (b) such Borrower or such Subsidiary has set aside on its books adequate reserves with respect thereto in accordance with GAAP and (c) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

SECTION 5.05. Maintenance of Properties; Insurance. Such Borrower will, and will cause each of its Subsidiaries to, (a) keep and maintain all property material to the conduct of its business in good working order and condition, ordinary wear and tear excepted, and (b) 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 (with appropriate endorsements naming the Administrative Agent as lender's loss payee on all policies for property hazard insurance and as additional insured on all policies for liability insurance).

SECTION 5.06. Books and Records; Inspection Rights. Such Borrower will, and will cause each of its Subsidiaries to, keep proper books of record and account in which full, true and correct entries are made of all dealings and transactions in relation to its business and activities. Such Borrower will, and will cause each of its Subsidiaries to, permit any representatives designated by the Administrative Agent or any Lender, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

SECTION 5.07. Compliance with Laws. Such Borrower will, and will cause each of its Subsidiaries to, comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. Such Borrower will not, and will not permit any of its Subsidiaries, to be or become subject at any time to any law, regulation, or list of any government agency (including, without limitation, the U.S. Office of Foreign Asset Control list) that prohibits or limits any Lender from making any advance or extension of credit to such Borrower or Guarantor or from otherwise conducting business with such Borrower or Guarantor, or fail to provide documentary and other evidence of such Borrower's or Guarantor's identity as may be reasonably requested by any Lender at any time to enable such Lender to verify such Borrower's or Guarantor's identity or to comply with any Applicable Law or regulation, including, without limitation, Section 326 of the USA Patriot Act of 2001, 31 U.S.C. Section 5318.

SECTION 5.08. Use of Proceeds and Letters of Credit. (a) The proceeds of the Loans will be used only to (i) refinance existing Indebtedness (including Indebtedness under the Existing Credit Agreement) (ii) to consummate mergers and Acquisitions permitted by this Agreement, (iii) pay fees and expenses in connection with the Transactions and (iv) for general corporate purposes. No part of the proceeds of any Loan will be used, whether directly or indirectly, for any purpose that entails a violation of any of the Regulations of the Board, including Regulations T, U and X.

(b) The Borrowers will not request any extension of credit, and the Borrowers shall not use, and shall ensure that the Subsidiaries and their respective directors, officers, employees and agents shall not use, the proceeds of any extension of credit, directly or indirectly, (i) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any Person in violation of any Anti-Corruption Laws, (ii) for the purpose of funding, financing or facilitating any activities, business or transaction of or with any Sanctioned Person, or in any Sanctioned Country, or (iii) in any manner that would result in the violation of any Sanctions applicable to any party hereto.

SECTION 5.09. Compliance with Anti-Corruption Laws, Anti-Money Laundering Laws and Sanctions. Each Borrower will (a) maintain in effect and enforce policies and procedures designed to ensure compliance by such Borrower, its Subsidiaries and their respective directors, officers, employees and agents with Anti-Corruption Laws, Anti-Money Laundering Laws and applicable Sanctions, (b) notify the Administrative Agent and each Lender that previously received a Beneficial Ownership Certification of any change in the information provided in the Beneficial Ownership Certification that would result in a change to the list of beneficial owners identified therein, and (c) promptly upon the reasonable request of the Administrative Agent or any Lender, provide the Administrative Agent or such Lender, as the case may be, any information or documentation requested by it for purposes of complying with the Beneficial Ownership Regulation.

SECTION 5.10. Additional Subsidiaries.

(a) Additional Domestic Subsidiaries. Such Borrower shall promptly notify the Administrative Agent of the creation or acquisition (including by division) of any Domestic Subsidiary or if any existing Domestic Subsidiary no longer constitutes an Inactive Subsidiary and, within sixty (60) days after such creation or acquisition (or the date any existing Domestic Subsidiary no longer constitutes an Inactive Subsidiary), as such time period may be extended by the Administrative Agent in its sole discretion, cause such Domestic Subsidiary (other than an Inactive Subsidiary or a Foreign Holding Company) to (i) become a Guarantor by delivering to the Administrative Agent a duly executed supplement to the Loan Party Guaranty or such other document as the Administrative Agent shall deem appropriate for such purpose, (ii) grant a security interest in all Collateral (subject to the exceptions specified in the Collateral Agreement) owned by such Domestic Subsidiary by delivering to the Administrative Agent a duly executed supplement to each applicable Collateral Document or such other document as the Administrative Agent shall deem appropriate for such purpose and comply with the terms of each applicable Collateral Document, (iii) deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 4.01 as may be reasonably requested by the Administrative Agent, (iv) if such Equity Interests are certificated, deliver to the Administrative Agent such original certificated Equity Interests or other certificates and stock or other transfer powers evidencing the Equity Interests of such Person, (v) deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with respect to such Domestic Subsidiary, and (vi) deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(b) Additional First-Tier Foreign Subsidiaries/Foreign Holding Companies. Such Borrower will notify the Administrative Agent promptly after any Person becomes a First-Tier Foreign Subsidiary or a Foreign Holding Company, and promptly thereafter (and, in any event, within forty five (45) days after such notification, as such time period may be extended by the Administrative Agent in its sole discretion), cause (i) the applicable Loan Party to deliver to the Administrative Agent Collateral Documents pledging sixty-five percent (65%) of the total outstanding voting Equity Interests (and one hundred percent (100%) of the non-voting Equity Interests) of any such new Subsidiary and a consent thereto executed by such new Subsidiary (including, without limitation, if applicable, original certificated Equity Interests (or the equivalent thereof pursuant to the Applicable Laws and practices of any relevant foreign jurisdiction) evidencing the Equity Interests of such new Subsidiary, together with an appropriate undated stock or other transfer power for each certificate duly executed in blank by the registered owner thereof), (ii) such Person to deliver to the Administrative Agent such opinions, documents and certificates referred to in Section 4.01 as may be reasonably requested by the Administrative Agent, (iii) such Person to deliver to the Administrative Agent such updated Schedules to the Loan Documents as requested by the Administrative Agent with regard to such Person, and (iv) such Person to deliver to the Administrative Agent such other documents as may be reasonably requested by the Administrative Agent, all in form, content and scope reasonably satisfactory to the Administrative Agent.

(c) Merger Subsidiaries. Notwithstanding the foregoing, to the extent any new Subsidiary is created solely for the purpose of consummating a merger transaction pursuant to a Permitted Acquisition, and such new Subsidiary at no time holds any assets or liabilities other than any merger consideration contributed to it contemporaneously with the closing of such merger transaction, such new Subsidiary shall not be required to take the actions set forth in Section 5.10(a) and/or (b), as applicable, until the consummation of such Permitted Acquisition (at which time, the surviving entity of the respective merger transaction shall be required to so comply with Section 5.10(a) and/or (b), as applicable, within thirty (30) days of the consummation of such Permitted Acquisition, as such time period may be extended by the Administrative Agent in its sole discretion).

SECTION 5.11. Further Assurances. Such Borrower shall execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents), which may be required under any Applicable Law, or which the Administrative Agent or the Required Lenders may reasonably request, to effectuate the transactions contemplated by the Loan Documents or to grant, preserve, protect or perfect the Liens created or intended to be created by the Collateral Documents or the validity or priority of any such Lien, all at the reasonable expense of the Loan Parties. Each Borrower also agrees to provide to the Administrative Agent, from time to time upon the reasonable request by the Administrative Agent, evidence reasonably satisfactory to the Administrative Agent as to the perfection and priority of the Liens created or intended to be created by the Collateral Documents.

SECTION 5.12. Additional Covenants. If at any time any Borrower or any of its Subsidiaries shall enter into or be a party to any instrument or agreement, including all such instruments or agreements in existence as of the date hereof and all such instruments or agreements entered into after the date hereof, relating to or amending any provisions applicable to any of its Indebtedness, which includes any material covenants or defaults not substantially provided for in this Agreement or more favorable to the lender or lenders thereunder than those provided for in this Agreement, then the applicable Borrower shall promptly so advise the Administrative Agent and the Lenders. Thereupon, if the Administrative Agent or the Required Lenders shall request, upon notice to the Company, the Administrative Agent and the Lenders shall enter into an amendment to this Agreement or an additional agreement (as the Administrative Agent may request), providing for substantially the same material covenants and defaults as those provided for in such instrument or agreement to the extent required and as may be selected by the Administrative Agent.

SECTION 5.13. Post-Closing Matters. Such Borrowers shall execute and deliver the documents and complete the tasks set forth on Schedule 5.13, in each case within the time limits specified on such Schedule (as such deadlines may be extended by the Administrative Agent in writing from time to time).

ARTICLE VI
NEGATIVE COVENANTS

Until the Revolving Credit Commitments have expired or terminated and all of the Obligations have been paid and satisfied in full in cash (including the principal of and interest on each Loan and all fees payable hereunder) and all Letters of Credit shall have expired or terminated and all LC Disbursements shall have been reimbursed or Cash Collateralized, each Borrower covenants and agrees with the Lenders that:

SECTION 6.01. Indebtedness. Such Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Indebtedness, except:

(a) Indebtedness created hereunder;

(b) Indebtedness existing on the date hereof and set forth in Schedule 6.01 and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof;

(c) unsecured intercompany Indebtedness: (i) owed by any Loan Party to another Loan Party, (ii) owed by any Loan Party to any Non-Guarantor Subsidiary (provided that such Indebtedness shall be subordinated to the Obligations in a manner reasonably satisfactory to the Administrative Agent), (iii) owed by any Non-Guarantor Subsidiary to any other Non-Guarantor Subsidiary and (iv) owed by any Non-Guarantor Subsidiary to any Loan Party to the extent permitted pursuant to Section 6.04(c)(iv);

(d) (i) Guarantees by any Loan Party of Indebtedness of any other Loan Party not otherwise prohibited pursuant to this Section 6.01, (ii) Guarantees by any Non-Guarantor Subsidiary of Indebtedness of a Borrower or any Subsidiary not otherwise prohibited pursuant to this Section 6.01, and (iii) Guarantees by any Loan Party of Indebtedness of any Non-Guarantor Subsidiary to the extent permitted pursuant to Section 6.04(c);

(e) Indebtedness of the Borrowers or any Subsidiary incurred to finance the acquisition, construction or improvement of any fixed or capital assets, including Capital Lease Obligations and any Indebtedness assumed in connection with the acquisition of any such assets or secured by a Lien on any such assets prior to the acquisition thereof, and extensions, renewals and replacements of any such Indebtedness that do not increase the outstanding principal amount thereof; provided that (i) such Indebtedness is incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement and (ii) the aggregate principal amount of Indebtedness permitted by this clause (e) shall not exceed $5,000,000 at any time outstanding;

(f) Indebtedness owing under Hedge Agreements permitted under Section 6.05;

(g) Indebtedness under Cash Management Agreements entered into in the ordinary course of business;

(h) Indebtedness under performance bonds, surety bonds, release, appeal and similar bonds, statutory obligations or with respect to workers' compensation claims, in each case incurred in the ordinary course of business, and reimbursement obligations in respect of any of the foregoing; and

(i) If no Event of Default or Unmatured Default exists or would be caused thereby, other Indebtedness in an aggregate principal amount not exceeding $50,000,000 at any time outstanding.

SECTION 6.02. Liens. Such Borrower will not, and will not permit any Subsidiary to, create, incur, assume or permit to exist any Lien on any property or asset now owned or hereafter acquired by it, or assign or sell any income or revenues (including accounts receivable) or rights in respect of any thereof, except:

(a) Permitted Encumbrances;

(b) any Lien on any property or asset of the Borrowers or any Subsidiary existing on the date hereof and set forth in Schedule 6.02; provided that (i) such Lien shall not apply to any other property or asset of any Borrower or any Subsidiary and (ii) such Lien shall secure only those obligations which it secures on the date hereof and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(c) any Lien existing on any property or asset prior to the acquisition thereof by any Borrower or any Subsidiary or existing on any property or asset of any Person that becomes a Subsidiary after the date hereof prior to the time such Person becomes a Subsidiary; provided that (i) such Lien is not created in contemplation of or in connection with such acquisition or such Person becoming a Subsidiary, as the case may be, (ii) such Lien shall not apply to any other property or assets of any Borrower or any Subsidiary and (iii) such Lien shall secure only those obligations which it secures on the date of such acquisition or the date such Person becomes a Subsidiary, as the case may be and extensions, renewals and replacements thereof that do not increase the outstanding principal amount thereof;

(d) Liens on fixed or capital assets acquired, constructed or improved by any Borrower or any Subsidiary; provided that (i) such security interests secure Indebtedness permitted by clause (e) of Section 6.01, (ii) such security interests and the Indebtedness secured thereby are incurred prior to or within 90 days after such acquisition or the completion of such construction or improvement, (iii) the Indebtedness secured thereby does not exceed the cost of acquiring, constructing or improving such fixed or capital assets and (iv) such security interests shall not apply to any other property or assets of any Borrower or any Subsidiary;

(e) Liens created pursuant to the Loan Documents; and

(f) Liens not otherwise permitted hereunder on assets other than the Collateral securing Indebtedness or other obligations in the aggregate principal amount not to exceed $10,000,000 at any time outstanding.

SECTION 6.03. Fundamental Changes. Such Borrower will not, and will not permit any Subsidiary to, merge into 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 (in one transaction or in a series of transactions) all or substantially all of the stock or assets of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or liquidate or dissolve, except that, if at the time thereof and immediately after giving effect thereto no Event of Default or Unmatured Default shall have occurred and be continuing:

(a) (i) any Subsidiary may merge into any Borrower in a transaction in which a Borrower is the surviving corporation and (ii) any Subsidiary may merge into a Guarantor in a transaction in which a Guarantor is the surviving entity;

(b) any Non-Guarantor Subsidiary may merge into any other Non-Guarantor Subsidiary;

(c) any Subsidiary may sell, transfer, lease or otherwise dispose of its assets to any Borrower or to a Guarantor; provided that, with respect to any such disposition by any Non-Guarantor Subsidiary, the consideration for such disposition shall not exceed the fair market value of such assets;

(d) any Non-Guarantor Subsidiary may sell, transfer, lease or otherwise dispose of its assets to any other Non-Guarantor Subsidiary;

(e) any Asset Dispositions permitted by Section 6.09 (other than clause (b) thereof) shall be permitted;

(f) any Subsidiary may merge with or into the Person such Subsidiary was formed to acquire in connection with a Permitted Acquisition; provided that a Guarantor shall be the continuing or surviving entity or simultaneously with such transaction, the continuing or surviving entity shall become a Guarantor pursuant to Section 5.10 in connection therewith; and

(g) any Subsidiary may liquidate or dissolve if the Company determines in good faith that such liquidation or dissolution is in the best interests of the Borrowers and is not materially disadvantageous to the Lenders;

provided that any such merger, liquidation, dissolution or disposition involving a Person that is not a wholly owned Subsidiary immediately prior to such merger, liquidation, dissolution or disposition shall not be permitted unless also permitted by Section 6.04.

SECTION 6.04. Investments, Loans, Advances, Guarantees and Acquisitions. Such Borrower will not, and will not permit any of its Subsidiaries to, purchase, hold or acquire (including pursuant to any merger with any Person that was not a wholly-owned Subsidiary prior to such merger) any capital stock, evidences of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing) of, make or permit to exist any loans or advances to, guarantee any obligations of, or make or permit to exist any investment or any other interest in, any other Person, or make any Acquisition, except:

(a) Permitted Investments;

(b) investments by the Borrowers in the capital stock of their respective Subsidiaries on the Effective Date and other investments existing on the Effective Date and described on Schedule 6.04;

(c) investments or loans and advances made after the Effective Date (i) by any Loan Party in any other Loan Party, (ii) by any Non-Guarantor Subsidiary in any Loan Party, (iii) by any Non-Guarantor Subsidiary in any other Non-Guarantor Subsidiary and (iv) by any Loan Party in any Non-Guarantor Subsidiary in an aggregate amount at any time outstanding, together with the amount of outstanding mergers or Acquisitions of or by Non-Guarantor Subsidiaries (that do not otherwise become a Guarantor in the period provided for under Section 5.10) pursuant to Section 6.04(e), not to exceed $30,000,000;

(d) Guarantees and Hedge Agreements constituting Indebtedness permitted by Section 6.01; and

(e) any merger or Acquisition (which in the case of a Limited Condition Acquisition, shall be subject to Section 1.07) if (i) such merger involves any Borrower, such Borrower shall be the surviving or continuing corporation thereof, (ii) immediately before and after giving effect such merger or Acquisition, no Event of Default or Unmatured Default shall exist or shall have occurred and be continuing and the representations and warranties contained in Article III and in the other Loan Documents shall be true and correct on and as of the date thereof (both before and after such merger or Acquisition is consummated) as if made on the date such merger or Acquisition is consummated, (iii) at least 10 Business Days' prior to the consummation of such merger or Acquisition (or such shorter period agreed to by the Administrative Agent), the Borrowers shall have provided to the Administrative Agent a certificate of the Chief Financial Officer or Treasurer of the Company (attaching pro forma computations acceptable to the Administrative Agent to demonstrate compliance with all financial covenants hereunder, and a pro forma Leverage Ratio of not more than 0.25 to 1.00 less than the maximum permitted Leverage Ratio pursuant to Section 6.13(a) (after giving effect to any Leverage Ratio Increase then in effect or elected in connection therewith), each stating that such merger or Acquisition complies with this Section 6.04(e), all laws and regulations and that any other conditions under this Agreement relating to such transaction have been satisfied, and such certificate shall contain such other information and certifications as requested by the Administrative Agent and be in form and substance satisfactory to the Administrative Agent, (iv) at least 10 Business Days' prior to the consummation of such merger or Acquisition (or such shorter period agreed to by the Administrative Agent), the Borrowers shall have delivered all acquisition documents and other agreements and documents relating to such merger or Acquisition, and the Administrative Agent shall have completed a satisfactory review thereof and completed such other due diligence satisfactory to the Administrative Agent, (v) the Borrowers shall, at least 10 Business Days prior to the consummation of merger or Acquisition (or such shorter period agreed to by the Administrative Agent), provide such other certificates and documents as requested by the Administrative Agent, in form and substance satisfactory to the Administrative Agent, (vi) the target of such merger or Acquisition is in a line of business permitted under Section 6.10, and (vii) such merger or Acquisition is not opposed by the board of directors (or similar governing body) of the selling person or the person whose equity interests are to be acquired, unless the Administrative Agent consents to such merger or Acquisition; provided that the aggregate amount of mergers or Acquisitions of or by Non-Guarantor Subsidiaries (that do not otherwise become a Guarantor in the period provided for under Section 5.10) at any time outstanding, together with the amount of outstanding investments made pursuant to Section 6.04(c)(iv), shall not exceed $30,000,000;

(f) investments in the form of Restricted Payments permitted pursuant to Section 6.06; and

(g) investments not otherwise permitted pursuant to this Section in an aggregate amount not to exceed $10,000,000 at any time outstanding; provided that immediately before and immediately after giving pro forma effect to any such investments, no Unmatured Default or Event of Default shall have occurred and be continuing.

For purposes of determining the amount of any investment outstanding for purposes of this Section 6.04, such amount shall be deemed to be the amount of such investment when made, purchased or acquired (without adjustment for subsequent increases or decreases in the value of such investment) less any amount realized in respect of such investment upon the sale, collection or return of capital (not to exceed the original amount invested).

SECTION 6.05. Hedge Agreements. Such Borrower will not, and will not permit any of its Subsidiaries to, enter into any Hedge Agreement, except (a) Hedge Agreements entered into to hedge or mitigate risks to which any Borrower or any Subsidiary has actual exposure, and (b) Hedge Agreements entered into in order to effectively cap, collar or exchange interest rates (from fixed to floating rates, from one floating rate to another floating rate or otherwise) with respect to any interest-bearing liability or investment of any Borrower or any Subsidiary.

SECTION 6.06. Restricted Payments. Such Borrower will not, and will not permit any of its Subsidiaries to, declare or make, or agree to pay or make, directly or indirectly, any Restricted Payment, except:

(a) such Borrower may declare and pay dividends with respect to its Equity Interests payable solely in additional shares of its common stock;

(b) Subsidiaries may declare and pay dividends ratably with respect to their Equity Interests;

(c) such Borrower may make Restricted Payments pursuant to and in accordance with stock option plans or other benefit plans for management or employees of such Borrower and its Subsidiaries; and

(d) other Restricted Payments not exceeding $25,000,000 during any Fiscal Year so long as (i) as of the end of such Fiscal Year and at the time of the making of any Restricted Payment during such Fiscal Year the Leverage Ratio (on a pro forma basis after giving effect to such Restricted Payment and any Indebtedness incurred in connection therewith when determined in connection with the making of a Restricted Payment) is less than or equal to 2.00 to 1.00, and (ii) no less than five Business Days prior to making any Restricted Payment, which when added to all prior Restricted Payments made during such Fiscal Year exceeds $10,000,000, the Company delivers its pro forma computations acceptable to the Administrative Agent to demonstrate its compliance with the immediately preceding clause (i); provided that Restricted Payments made under this clause (d) shall not exceed $10,000,000 during any Fiscal Year if the Leverage Ratio as of the end of such Fiscal Year (or on a pro forma basis after giving effect to such Restricted Payment and any Indebtedness incurred in connection therewith) is greater than 2.00 to 1.00.

SECTION 6.07. Transactions with Affiliates. Such Borrower will not, and will not permit any of its Subsidiaries to, sell, lease or otherwise transfer any property or assets to, or purchase, lease or otherwise acquire any property or assets from, or otherwise engage in any other transactions with, any of its Affiliates, except (a) in the ordinary course of business at prices and on terms and conditions not less favorable to such Borrower or such Subsidiary than could be obtained on an arm's-length basis from unrelated third parties, (b) transactions between or among the Company and its wholly owned Subsidiaries not involving any other Affiliate and (c) any transaction permitted by Sections 6.01, 6.03, 6.04, 6.06 and 6.09.

SECTION 6.08. Restrictive Agreements. Such Borrower will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon (a) the ability of such Borrower or any Subsidiary to create, incur or permit to exist any Lien upon any of its property or assets, or (b) the ability of any Subsidiary to pay dividends or other distributions with respect to any shares of its capital stock or to make or repay loans or advances to such Borrower or any other Subsidiary or to guaranty Indebtedness of such Borrower or any other Subsidiary; provided that (i) the foregoing shall not apply to restrictions and conditions imposed by law or by this Agreement, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Schedule 6.08 (but shall apply to any extension or renewal of, or any amendment or modification expanding the scope of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary pending such sale; provided such restrictions and conditions apply only to the Subsidiary that is to be sold and such sale is permitted hereunder, (iv) clause (a) of the foregoing shall not apply to restrictions or conditions imposed by any agreement relating to secured Indebtedness permitted by this Agreement if such restrictions or conditions apply only to the property or assets securing such Indebtedness and (v) clause (a) of the foregoing shall not apply to customary provisions in leases and other contracts restricting the assignment thereof.

SECTION 6.09. Disposition of Assets; Etc. Such Borrower will not, and will not permit any Subsidiary to make any Asset Disposition, other than:

(a) inventory sold in the ordinary course of business upon customary credit terms;

(b) the transfer of assets permitted pursuant to Section 6.03;

(c) the disposition of any Hedge Agreement;

(d) the transfer by any Loan Party of its assets to any other Loan Party;

(e) the transfer by any Non-Guarantor Subsidiary of its assets to any Loan Party; provided that in connection with any new transfer, such Loan Party shall not pay more than an amount equal to the fair market value of such assets as determined in good faith at the time of such transfer;

(f) the transfer by any Non-Guarantor Subsidiary of its assets to any other Non-Guarantor Subsidiary;

(g) the sale of obsolete, worn-out or surplus assets no longer used or usable in the business of the Borrowers or any of their Subsidiaries;

(h) Asset Dispositions in connection with Insurance and Condemnation Events; provided that the requirements of Section 2.15(b) are complied with in connection therewith; and

(i) Asset Dispositions not otherwise permitted pursuant to this Section; provided that (i) at the time of such Asset Disposition, no Unmatured Default or Event of Default shall exist or would result from such Asset Disposition, (ii) such Asset Disposition is made for fair market value, and (iii) the aggregate fair market value of all property disposed of in reliance on this clause (i) shall not exceed $10,000,000 in any Fiscal Year.

SECTION 6.10. Nature of Business. Such Borrower and its Subsidiaries shall not make any substantial change in the nature of its business from that engaged in on the date of this Agreement or engage in any other businesses other than those in which it is engaged on the date of this Agreement.

SECTION 6.11. Inconsistent Agreements. Such Borrower and its Subsidiaries shall not enter into any agreement containing any provision which would be violated or breached by this Agreement or any of the transactions contemplated hereby or by performance by such Borrower or any of its Subsidiaries of its obligations in connection therewith.

SECTION 6.12. Accounting Changes. The Company shall not change its Fiscal Year or make any significant changes (a) in accounting treatment and reporting practices except as permitted by GAAP and disclosed to the Lenders, or (b) in tax reporting treatment except as permitted by law and disclosed to the Lenders.

SECTION 6.13. Financial Covenants. The Borrowers will not:

(a) Leverage Ratio. Permit or suffer the Leverage Ratio to exceed 3.25 to 1.00 as of any Fiscal Quarter end (commencing with the Fiscal Quarter ending September 30, 2018); provided that, in connection with any Permitted Acquisition or series of Permitted Acquisitions during any twelve-month period occurring after the Effective Date having aggregate consideration (including cash, Cash Equivalents and other deferred payment obligations) in excess of $50,000,000 for such Permitted Acquisition or series of Permitted Acquisitions occurring during any twelve-month period, the Company may, at its election, in connection with such Permitted Acquisition or the last in a series of Permitted Acquisitions and upon prior written notice to the Administrative Agent, increase the required Leverage Ratio pursuant to this Section to 3.50 to 1.00, which such increase shall be applicable (i) with respect to a Permitted Acquisition that is not a Limited Condition Acquisition, for the fiscal quarter in which such Permitted Acquisition is consummated and the three (3) consecutive quarterly test periods thereafter or (ii) with respect to a Permitted Acquisition that is a Limited Condition Acquisition, for purposes of determining pro forma compliance with this Section 6.13(a) at the time the definitive purchase agreement, merger agreement or other acquisition agreement governing the Permitted Acquisition is executed, for the fiscal quarter in which such Permitted Acquisition is consummated and for the three (3) consecutive quarterly test periods after which such Permitted Acquisition is consummated (each, a "Leverage Ratio Increase"); provided that there shall be at least two (2) full fiscal quarters following the cessation of each such Leverage Ratio Increase during which no Leverage Ratio Increase shall then be in effect.

(b) Interest Coverage Ratio. Permit or suffer the Interest Coverage Ratio to be less than 3.00 to 1.00 as of any Fiscal Quarter end, commencing with the Fiscal Quarter ending September 30, 2018.

SECTION 6.14. Payments and Modifications of Subordinated Indebtedness. Such Borrower and its Subsidiaries will not:

(a) amend, modify, waive or supplement (or permit the modification, amendment, waiver or supplement of) any of the terms or provisions of any subordinated Indebtedness in any respect which would materially and adversely affect the rights or interests of the Administrative Agent and Lenders hereunder or would violate the subordination terms thereof.

(b) cancel, forgive, make any payment or prepayment on, or redeem or acquire for value (including, without limitation, (x) by way of depositing with any trustee with respect thereto money or securities before due for the purpose of paying when due and (y) at the maturity thereof) any subordinated Indebtedness, except (i) refinancings, refundings, renewals, extensions or exchange of any subordinated Indebtedness permitted by Section 6.01 and by any subordination provisions applicable thereto, and (ii) the payment of principal and interest, expenses and indemnities in respect of subordinated Indebtedness expressly permitted by the subordination agreement or any subordination provisions applicable thereto.

ARTICLE VII
EVENTS OF DEFAULT

SECTION 7.01. Events of Default. If any of the following events (each an "Event of Default") shall occur:

(a) any Borrower shall fail to pay any principal of any Loan or any reimbursement obligation in respect of any LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or otherwise;

(b) any Borrower shall fail to pay any interest on any Loan or any fee or any other amount (other than an amount referred to in clause (a) of this Article) payable under this Agreement, when and as the same shall become due and payable, and such failure shall continue unremedied for a period of five Business Days;

(c) any representation or warranty made or deemed made by or on behalf of any Borrower or any Subsidiary in or in connection with this Agreement or any other Loan Document or any amendment or modification hereof or waiver hereunder or thereunder, or in any report, certificate, financial statement or other document furnished pursuant to or in connection with this Agreement or any amendment or modification hereof or waiver hereunder, shall prove to have been incorrect when made or deemed made;

(d) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in Section 5.02, 5.03 (with respect to any Loan Party's existence), 5.08, or 5.10 or in Article VI;

(e) any Loan Party shall fail to observe or perform any covenant, condition or agreement contained in this Agreement or any other Loan Document (other than those specified in clause (a), (b) or (d) of this Article), and such failure shall continue unremedied for a period of 30 days after notice thereof from the Administrative Agent to the Borrowers (which notice will be given at the request of any Lender);

(f) any Borrower or any Subsidiary shall fail to make any payment (whether of principal or interest and regardless of amount) in respect of any Material Indebtedness, when and as the same shall become due and payable, after giving effect to any grace period, if any;

(g) any event or condition occurs that results in any Material Indebtedness becoming due prior to its scheduled maturity or that enables or permits (with or without the giving of notice, the lapse of time or both) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity; provided that this clause (g) shall not apply to secured Indebtedness that becomes due as a result of the voluntary sale or transfer of the property or assets securing such Indebtedness;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed seeking (i) liquidation, reorganization or other relief in respect of any Borrower or any Subsidiary or its debts, or of a substantial part of its assets, under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect or (ii) the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or any Subsidiary or for a substantial part of its assets, and, in any such case, such proceeding or petition shall continue undismissed for 90 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) any Borrower or any Subsidiary shall (i) voluntarily commence any proceeding or file any petition seeking liquidation, reorganization or other relief under any Federal, state or foreign bankruptcy, insolvency, receivership or similar law now or hereafter in effect, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or petition described in clause (h) of this Section, (iii) apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator or similar official for any Borrower or any Subsidiary or for a substantial part of its assets, (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) take any action for the purpose of effecting any of the foregoing;

(j) any Borrower or any Subsidiary shall become unable, admit in writing its inability or fail generally to pay its debts as they become due;

(k) one or more judgments for the payment of money in an aggregate amount in excess of $1,000,000 shall be rendered against any Borrower, any Subsidiary or any combination thereof and the same shall remain undischarged for a period of 30 consecutive days during which execution shall not be effectively stayed, or any action shall be legally taken by a judgment creditor to attach or levy upon any assets of any Borrower or any Subsidiary to enforce any such judgment;

(l) an ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect;

(m) a Change in Control shall occur;

(n) any Loan Document shall fail to remain in full force or effect or any action shall be taken to discontinue or to assert the invalidity or unenforceability of any Loan Document, or any Loan Party shall fail to comply with any of the terms or provisions of any Loan Document if the failure continues beyond any period of grace provided for in the applicable Loan Document;

(o) any material provision of any other Loan Document for any reason ceases to be valid, binding and enforceable in accordance with its terms (or any Loan Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms), or any Loan Document shall for any reason cease to create a valid and perfected first priority Lien (subject to Liens permitted hereunder) on, or security interests in, any of the Collateral purported to be covered thereby, in each case other than in accordance with the express terms hereof or thereof; or

then, and in every such event (other than an event with respect to a Borrower described in clause (h) or (i) of this Section), and at any time thereafter during the continuance of such event, the Administrative Agent may, and at the request of the Required Lenders shall, by notice to the Borrowers, take either or both of the following actions, at the same or different times: (i) terminate the Revolving Credit Commitments, and thereupon the Revolving Credit Commitments shall terminate immediately, (ii) declare the Loans then outstanding to be due and payable in whole (or in part, in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), and thereupon the principal of the Loans so declared to be due and payable, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall become due and payable immediately, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers; and in case of any event with respect to any Borrower described in clause (h) or (i) of this Section, the Revolving Credit Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and all fees and other obligations of the Borrowers accrued hereunder, shall automatically become due and payable, without presentment, demand, protest or other notice of any kind, all of which are hereby waived by the Borrowers, and (iii) exercise any rights and remedies provided to the Administrative Agent under the Loan Documents or at law or equity.

SECTION 7.02. Rights and Remedies; Non-Waiver; etc. Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Section 7.01 for the benefit of all the Lenders and the Issuing Banks; provided that the foregoing shall not prohibit (a) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (b) any Issuing Bank or the Swingline Lender from exercising the rights and remedies that inure to its benefit (solely in its capacity as an Issuing Bank or Swingline Lender, as the case may be) hereunder and under the other Loan Documents, (c) any Lender from exercising setoff rights in accordance with Section 9.08 (subject to the terms of Section 2.18), or (d) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (i) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Section 7.01 and (ii) in addition to the matters set forth in clauses (b), (c) and (d) of the preceding proviso and subject to Section 2.18, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

SECTION 7.03. Crediting of Payments and Proceeds. In the event that the Obligations have been accelerated pursuant to Section 7.01 or the Administrative Agent or any Lender has exercised any remedy set forth in this Agreement or any other Loan Document, all payments received on account of the Secured Obligations and all net proceeds from the enforcement of the Secured Obligations shall, subject to the provisions of Sections 2.06 and 2.20, be applied by the Administrative Agent as follows:

First, to payment of that portion of the Secured Obligations constituting fees, indemnities, expenses and other amounts, including attorney fees, payable to the Administrative Agent in its capacity as such;

Second, to payment of that portion of the Secured Obligations constituting fees (other than commitment fees and Letter of Credit fees payable to the Revolving Credit Lenders), indemnities and other amounts (other than principal and interest) payable to the Lenders, the Issuing Banks and the Swingline Lender under the Loan Documents, including attorney fees, ratably among the Lenders, the Issuing Banks and the Swingline Lender in proportion to the respective amounts described in this clause Second payable to them;

Third, to payment of that portion of the Secured Obligations constituting accrued and unpaid commitment fees, Letter of Credit fees payable to the Revolving Credit Lenders and interest on the Loans and unreimbursed LC Disbursements, ratably among the Lenders, the Issuing Banks and the Swingline Lender in proportion to the respective amounts described in this clause Third payable to them;

Fourth, to payment of that portion of the Secured Obligations constituting unpaid principal of the Loans, unreimbursed LC Disbursements and payment obligations then owing under Secured Hedge Agreements and Secured Cash Management Agreements, ratably among the Lenders, the Issuing Banks, the Hedge Banks and the Cash Management Banks in proportion to the respective amounts described in this clause Fourth payable to them;

Fifth, to the Administrative Agent for the account of the Issuing Banks, to Cash Collateralize any LC Exposure then outstanding; and

Last, the balance, if any, after all of the Secured Obligations have been indefeasibly paid in full, to the Borrowers or as otherwise required by Applicable Law.

Notwithstanding the foregoing, Secured Obligations arising under Secured Cash Management Agreements and Secured Hedge Agreements shall be excluded from the application described above if the Administrative Agent has not received written notice thereof, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be. Each Cash Management Bank or Hedge Bank not a party to this Agreement that has given the notice contemplated by the preceding sentence shall, by such notice, be deemed to have acknowledged and accepted the appointment of the Administrative Agent pursuant to the terms of Article VIII for itself and its Affiliates as if a “Lender” party hereto.

SECTION 7.04. Administrative Agent May File Proofs of Claim. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or unreimbursed LC Disbursements shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrower) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, unreimbursed LC Disbursements and all other Secured Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under Sections 2.12 and 9.03) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same;

and any custodian, receiver, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Sections 2.12 and 9.03.

SECTION 7.05. Credit Bidding.

(a) The Administrative Agent, on behalf of itself and the Secured Parties, shall have the right, exercisable at the discretion of the Required Lenders, to credit bid and purchase for the benefit of the Administrative Agent and the Secured Parties all or any portion of Collateral at any sale thereof conducted by the Administrative Agent under the provisions of the UCC, including pursuant to Sections 9-610 or 9-620 of the UCC, at any sale thereof conducted under the provisions of the United States Bankruptcy Code, including Section 363 thereof, or a sale under a plan of reorganization, or at any other sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with Applicable Law. Such credit bid or purchase may be completed through one or more acquisition vehicles formed by the Administrative Agent to make such credit bid or purchase and, in connection therewith, the Administrative Agent is authorized, on behalf of itself and the other Secured Parties, to adopt documents providing for the governance of the acquisition vehicle or vehicles, and assign the applicable Secured Obligations to any such acquisition vehicle in exchange for Equity Interests and/or debt issued by the applicable acquisition vehicle (which shall be deemed to be held for the ratable account of the applicable Secured Parties on the basis of the Secured Obligations so assigned by each Secured Party); provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof, shall be governed, directly or indirectly, by the vote of the Required Lenders, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in Section 9.02.

(b) Each Lender hereby agrees, on behalf of itself and each of its Affiliates that is a Secured Party, that, except as otherwise provided in any Loan Document or with the written consent of the Administrative Agent and the Required Lenders, it will not take any enforcement action, accelerate obligations under any of the Loan Documents, or exercise any right that it might otherwise have under Applicable Law to credit bid at foreclosure sales, UCC sales or other similar dispositions of Collateral.

ARTICLE VIII
THE ADMINISTRATIVE AGENT

SECTION 8.01. Appointment and Authority.

(a) Each of the Lenders and each Issuing Bank hereby irrevocably appoints Wells Fargo to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article are solely for the benefit of the Administrative Agent, the Lenders and the Issuing Banks, and neither the Company nor any Subsidiary thereof shall have rights as a third-party beneficiary of any of such provisions. It is understood and agreed that the use of the term “agent” herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any Applicable Law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacity as a potential Hedge Bank or Cash Management Bank) and the Issuing Banks hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender and such Issuing Bank for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Secured Obligations, together with such powers and discretion as are reasonably incidental thereto (including, without limitation, to enter into additional Loan Documents or supplements to existing Loan Documents on behalf of the Secured Parties). In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to this Article VIII for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Collateral Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent), shall be entitled to the benefits of all provisions of Articles VIII and IX (including Section 9.03, as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

SECTION 8.02. Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Borrowers or any Subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

SECTION 8.03. Exculpatory Provisions.

(a) The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder and thereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Unmatured Default or Event of Default has occurred and is continuing;

(ii) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or Applicable Law, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to any Borrower or any of their respective Subsidiaries or Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity.

(b) The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Section 9.02 and Section 7.01) or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Unmatured Default or Event of Default unless and until notice describing such Unmatured Default or Event of Default is given to the Administrative Agent by a Borrower, a Lender or an Issuing Bank.

(c) The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Unmatured Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the satisfaction of any condition set forth in Article IV or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent or (vi) the utilization of any Issuing Bank's L/C Commitment (it being understood and agreed that each Issuing Bank shall monitor compliance with its own L/C Commitment without any further action by the Administrative Agent).

SECTION 8.04. Reliance by the Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, or the issuance, extension, renewal or increase of a Letter of Credit, that by its terms must be fulfilled to the satisfaction of a Lender or an Issuing Bank, the Administrative Agent may presume that such condition is satisfactory to such Lender or such Issuing Bank unless the Administrative Agent shall have received notice to the contrary from such Lender or such Issuing Bank prior to the making of such Loan or the issuance of such Letter of Credit. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

SECTION 8.05. Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facility as well as activities as Administrative Agent. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

SECTION 8.06. Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders, the Issuing Banks and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, in consultation with the Borrowers, to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to), on behalf of the Lenders and the Issuing Banks, appoint a successor Administrative Agent meeting the qualifications set forth above; provided that in no event shall any such successor Administrative Agent be a Defaulting Lender. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (d) of the definition thereof, the Required Lenders may, to the extent permitted by Applicable Law, by notice in writing to the Borrowers and such Person, remove such Person as Administrative Agent and, in consultation with the Borrowers, appoint a successor. If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable), (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders or the Issuing Banks under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) except for any indemnity payments owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender and each Issuing Bank directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring or removed Administrative Agent (other than any rights to indemnity payments owed to the retiring or removed Administrative Agent), and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents. The fees payable by the Borrowers to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrowers and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Article and Section 9.03 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent or related to its duties as Administrative Agent that are carried out following its retirement or removal.

(d) Any resignation by, or removal of, Wells Fargo as Administrative Agent pursuant to this Section shall also constitute its resignation as an Issuing Bank and a Swingline Lender. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring Issuing Bank, if in its sole discretion it elects to, and Swingline Lender, (ii) the retiring Issuing Bank and Swingline Lender shall be discharged from all of their respective duties and obligations hereunder or under the other Loan Documents, and (iii) the successor Issuing Bank, if in its sole discretion it elects to, shall issue letters of credit in substitution for the Letters of Credit, if any, outstanding at the time of such succession or make other arrangements satisfactory to the retiring Issuing Bank to effectively assume the obligations of the retiring Issuing Bank with respect to such Letters of Credit.

SECTION 8.07. Non-Reliance on Administrative Agent and Other Lenders. Each Lender and each Issuing Bank acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

SECTION 8.08. No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the syndication agents, documentation agents, co-agents, arrangers or bookrunners listed on the cover page hereof shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent, a Lender or an Issuing Bank hereunder.

SECTION 8.09. Collateral and Guaranty Matters.

(a) Each of the Lenders (including in its or any of its Affiliate's capacities as a potential Hedge Bank or Cash Management Bank) irrevocably authorize the Administrative Agent, at its option and in its discretion:

(i) to release any Lien on any Collateral granted to or held by the Administrative Agent, for the ratable benefit of the Secured Parties, under any Loan Document (A) upon the termination of the Revolving Credit Commitment and payment in full of all Secured Obligations (other than (1) contingent indemnification obligations and (2) obligations and liabilities under Secured Cash Management Agreements or Secured Hedge Agreements as to which arrangements satisfactory to the applicable Cash Management Bank or Hedge Bank shall have been made) and the expiration or termination of all Letters of Credit (other than Letters of Credit which have been Cash Collateralized or as to which other arrangements satisfactory to the Administrative Agent and the applicable Issuing Bank shall have been made), (B) that is sold or otherwise disposed of or to be sold or otherwise disposed of as part of or in connection with any sale or other disposition to a Person other than a Loan Party permitted under the Loan Documents, or (C) if approved, authorized or ratified in writing in accordance with Section 9.02;

(ii) to subordinate any Lien on any Collateral granted to or held by the Administrative Agent under any Loan Document to the holder of any Lien permitted pursuant to Section 6.02(d); and

(iii) to release any Guarantor from its obligations under any Loan Documents if such Person ceases to be a Subsidiary as a result of a transaction permitted under the Loan Documents.

Upon request by the Administrative Agent at any time, the Required Lenders will confirm in writing the Administrative Agent's authority to release or subordinate its interest in particular types or items of property, or to release any Guarantor from its obligations under the Loan Party Guaranty pursuant to this Section 8.09. In each case as specified in this Section 8.09, the Administrative Agent will, at the Borrowers' expense, execute and deliver to the applicable Loan Party such documents as such Loan Party may reasonably request to evidence the release of such item of Collateral from the assignment and security interest granted under the Collateral Documents or to subordinate its interest in such item, or to release such Guarantor from its obligations under the Loan Party Guaranty, in each case in accordance with the terms of the Loan Documents and this Section 8.09. In the case of any such sale, transfer or disposal of any property constituting Collateral in a transaction constituting an Asset Disposition permitted pursuant to Section 6.09 to a Person other than a Loan Party, the Liens created by any of the Collateral Documents on such property shall be automatically released without need for further action by any person.

(b) The Administrative Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

SECTION 8.10. Secured Hedge Agreements and Secured Cash Management Agreements. No Cash Management Bank or Hedge Bank that obtains the benefits of Section 7.03 or any Collateral by virtue of the provisions hereof or of any Collateral Document shall have any right to notice of any action or to consent to, direct or object to any action hereunder or under any other Loan Document or otherwise in respect of the Collateral (including the release or impairment of any Collateral) other than in its capacity as a Lender and, in such case, only to the extent expressly provided in the Loan Documents. Notwithstanding any other provision of this Article VIII to the contrary, the Administrative Agent shall not be required to verify the payment of, or that other satisfactory arrangements have been made with respect to, Secured Cash Management Agreements and Secured Hedge Agreements unless the Administrative Agent has received written notice of such Secured Cash Management Agreements and Secured Hedge Agreements, together with such supporting documentation as the Administrative Agent may request, from the applicable Cash Management Bank or Hedge Bank, as the case may be.

ARTICLE IX
MISCELLANEOUS

SECTION 9.01. Notices. (a) Except in the case of notices and other communications expressly permitted to be given by telephone (and subject to paragraph (b) below), all notices and other communications provided for herein shall be in writing and shall be delivered by hand or overnight courier service, mailed by certified or registered mail or sent by telecopy, as follows:

(i) if to the Borrowers, to Spartan Motors, Inc. at 1541 Reynolds Road, Charlotte, MI 48813, Attention of the Group Treasurer & Director of Investment Relations (Telecopy No. (517) 543-5403);

(ii) if to the Administrative Agent or Wells Fargo as an Issuing Bank or Swingline Lender, to Wells Fargo Bank, N.A., 1525 W WT Harris Blvd., MAC D1109-019, Charlotte, NC 28262, Attention of Syndication Agency Services (Telecopy No. (704) 715-0092);

(iii) if to JPMorgan Chase Bank as an Issuing Bank or Swingline Lender, to JPMorgan Chase Bank, N.A., Loan and Agency Services Group, 10 South Dearborn, 7th Floor, Chicago, Illinois 60603, Mail Code IL1-0010, Attention of Muoy Lim (Telecopy No. (312) 385-7183);

(iv) if to PNC Bank, National Association, to Brecksville Lending Services, 6750 Miller Road, Brecksville, OH, 44141-3262, Attention of Angela Johnson (Telecopy No. (877) 718-7654); and

(v) if to any other Lender, to it at its address (or telecopy number) set forth in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article II unless otherwise agreed by the Administrative Agent and the applicable Lender. The Administrative Agent or the Borrowers may, in their discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

(c) Any party hereto may change its address or telecopy number for notices and other communications hereunder by notice to the other parties hereto. All notices and other communications given to any party hereto in accordance with the provisions of this Agreement shall be deemed to have been given on the date of receipt.

SECTION 9.02. Waivers; Amendments. (a) No failure or delay by the Administrative Agent, any Issuing Bank or any Lender in exercising any right or power hereunder or under any other Loan Document shall operate as a waiver thereof, nor shall any single or partial exercise of any such right or power, or any abandonment or discontinuance of steps to enforce such a right or power, preclude any other or further exercise thereof or the exercise of any other right or power. The rights and remedies of the Administrative Agent, the Issuing Banks and the Lenders hereunder and under any other Loan Document are cumulative and are not exclusive of any rights or remedies that they would otherwise have. No waiver of any provision of any Loan Document or consent to any departure by any Borrower therefrom shall in any event be effective unless the same shall be permitted by paragraph (b) of this Section, and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. Without limiting the generality of the foregoing, the making of a Loan or issuance of a Letter of Credit shall not be construed as a waiver of any Event of Default, regardless of whether the Administrative Agent, any Lender or any Issuing Bank may have had notice or knowledge of such Event of Default at the time.

(b) Neither this Agreement nor any provision hereof may be waived, amended or modified except pursuant to an agreement or agreements in writing entered into by the Borrowers and the Required Lenders or by the Borrowers and the Administrative Agent with the consent of the Required Lenders; provided that (x) no such agreement shall (i) increase the Revolving Credit Commitment of any Revolving Credit Lender without the written consent of such Revolving Credit Lender, (ii) reduce or forgive the principal amount of any Loan or LC Disbursement or reduce the rate of interest thereon, or reduce or forgive any interest or fees or other amounts payable hereunder, without the written consent of each Lender affected thereby, (iii) postpone the scheduled date of payment of the principal amount of any Loan or LC Disbursement, or any interest thereon, or any fees payable hereunder, or reduce the amount of, waive or excuse any such payment, or postpone the scheduled date of expiration of any Revolving Credit Commitment, without the written consent of each Lender affected thereby, (iv) change Section 2.18(b) or (c) or Section 7.03 in a manner that would alter the pro rata sharing of payments or order of application required thereby, without the written consent of each Lender, (v) change any of the provisions of this Section or the definition of “Required Lenders” or any other provision hereof specifying the number or percentage of Lenders required to waive, amend or modify any rights hereunder or make any determination or grant any consent hereunder, without the written consent of each Lender, or (vi) release all or substantially all of the Collateral, all of the Guarantors or Guarantors comprising substantially all of the credit support for the Secured Obligations (other than as authorized in Section 8.09 or as otherwise specifically permitted or contemplated in this Agreement or the applicable Collateral Document), in each case, without the written consent of each Lender; and (y) no such agreement shall amend, modify or otherwise affect the rights or duties of the Administrative Agent, any Issuing Bank or any Swingline Lender hereunder without the prior written consent of the Administrative Agent, the applicable Issuing Bank or the applicable Swingline Lender, as the case may be.

(c) Notwithstanding anything to the contrary herein, (i) the Administrative Agent may, with the consent of the Company only, (A) amend, modify or supplement this Agreement or any of the other Loan Documents to cure any ambiguity, omission, mistake, defect or inconsistency (provided that any such amendment, modification or supplement shall not be adverse to the interests of the Lenders taken as a whole), and (B) enter into amendments or modification to this Agreement or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to implement any Benchmark Replacement ~~Rate~~or any Benchmark Replacement Conforming Changes or otherwise effectuate the terms of Section 2.14(b) in accordance with the terms of Section 2.14(b), (ii) each Lender hereby irrevocably authorizes the Administrative Agent on its behalf, and without further consent, to enter into amendments or modifications to this Agreement (including, without limitation, amendments to this Section 9.02) or any of the other Loan Documents or to enter into additional Loan Documents as the Administrative Agent reasonably deems appropriate in order to effectuate the terms of Section 2.04 (including, without limitation, as applicable, (x) to permit the Incremental Increases to share ratably in the benefits of this Agreement and the other Loan Documents and (y) to include the Incremental Increases in any determination of Required Lenders or similar required lender terms applicable thereto); provided that no amendment or modification shall result in any increase in the amount of any Lender's Revolving Credit Commitment, Revolving Credit Commitment Percentage or Loans, in each case, without the written consent of such affected Lender and (iii) each Lender hereby irrevocably authorizes the Administrative Agent on its behalf, and without further consent of any Lender (but with the consent of the Company and the Administrative Agent), to amend and restate this Agreement if, upon giving effect to such amendment and restatement, such Lender shall no longer be a party to this Agreement (as so amended and restated), the Revolving Credit Commitments of such Lender shall have been terminated, such Lender shall have no other commitment or obligation hereunder and shall have been paid in full all principal, interest and other amounts owing to it or accrued for its account during this Agreement.

SECTION 9.03. Expenses; Indemnity; Damage Waiver. The Borrowers shall pay (i) all reasonable out-of-pocket expenses incurred by the Administrative Agent and its Affiliates, including the reasonable fees, charges and disbursements of counsel for the Administrative Agent, in connection with the syndication of the credit facilities provided for herein, the preparation and administration of this Agreement or any amendments, modifications or waivers of the provisions hereof (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) all reasonable out-of-pocket expenses incurred by the applicable Issuing Bank in connection with the issuance, amendment, renewal or extension of any Letter of Credit or any demand for payment thereunder and (iii) all out-of-pocket expenses incurred by the Administrative Agent, any Issuing Bank or any Lender, including the fees, charges and disbursements of any counsel for the Administrative Agent, any Issuing Bank or any Lender, in connection with the enforcement or protection of its rights in connection with this Agreement, including its rights under this Section, or in connection with the Loans made or Letters of Credit issued hereunder, including all such out-of-pocket expenses incurred during any workout, restructuring or negotiations in respect of such Loans or Letters of Credit.

(b) The Borrowers shall indemnify the Administrative Agent, each Issuing Bank and each Lender, and each Related Party of any of the foregoing Persons (each such Person being called an "Indemnitee") against, and hold each Indemnitee harmless from, any and all losses, claims, damages, liabilities and related expenses, including the fees, charges and disbursements of any counsel for any Indemnitee, incurred by or asserted against any Indemnitee arising out of, in connection with, or as a result of (i) the execution or delivery of this Agreement or any agreement or instrument contemplated hereby, the performance by the parties hereto of their respective obligations hereunder or the consummation of the Transactions or any other transactions contemplated hereby, (ii) any Loan or Letter of Credit or the use of the proceeds therefrom (including any refusal by the applicable Issuing Bank to honor a demand for payment under a Letter of Credit if the documents presented in connection with such demand do not strictly comply with the terms of such Letter of Credit), (iii) any actual or alleged presence or release of Hazardous Materials on or from any property owned or operated by any Borrower or any of its Subsidiaries, or any Environmental Liability related in any way to any Borrower or any of its Subsidiaries, or (iv) any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory and regardless of whether any Indemnitee is a party thereto; provided that such indemnity shall not, as to any Indemnitee, be available to the extent that such losses, claims, damages, liabilities or related expenses are determined by a court of competent jurisdiction by final and non-appealable judgment to have resulted from the gross negligence or willful misconduct of such Indemnitee.

(c) To the extent that any Borrower fails to pay any amount required to be paid by it to the Administrative Agent, any Issuing Bank or the Swingline Lender under paragraph (a) or (b) of this Section, each Lender severally agrees to pay to the Administrative Agent, the applicable Issuing Bank or the Swingline Lender, as the case may be, such Lender's Revolving Credit Commitment Percentage (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent, the applicable Issuing Bank or the Swingline Lender in its capacity as such.

(d) To the extent permitted by Applicable Law, the Borrowers shall not assert, and hereby waives, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement or any agreement or instrument contemplated hereby, the Transactions, any Loan or Letter of Credit or the use of the proceeds thereof.

(e) All amounts due under this Section shall be payable promptly after written demand therefor.

SECTION 9.04. Successors and Assigns. The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), except that (i) a Borrower may not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by a Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of an Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph (b)(ii) below, any Lender may assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and the Loans at the time owing to it) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Company; provided that no consent of the Company shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if an Event of Default has occurred and is continuing, any other assignee; provided further that the Company shall be deemed to have given its consent five Business Days after the date written notice thereof has been delivered by the assigning Lender (through the Administrative Agent) unless such consent is expressly refused by the Company prior to such fifth Business Day;

(B) the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment of any Revolving Credit Commitment to an assignee that is a Lender with a Revolving Credit Commitment or an Affiliate of such a Lender immediately prior to giving effect to such assignment; and

(C) with respect to any assignment of Revolving Credit Commitments, each Issuing Bank and each Swingline Lender.

Notwithstanding anything to the contrary in this Agreement, a Lender may not assign all or any portion of its rights and obligations under this Agreement to a Borrower or any of their respective Affiliates, a natural Person or a Defaulting Lender.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Revolving Credit Commitment or Loans of any Class, the amount of the Revolving Credit Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 unless the Company and the Administrative Agent otherwise consent; provided that no such consent of the Company shall be required if an Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; provided that this clause shall not be construed to prohibit the assignment of a proportionate part of all the assigning Lender's rights and obligations in respect of one Class of Revolving Credit Commitments or Loans;

(C) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Assumption, together with a processing and recordation fee of $3,500; and

(D) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more Credit Contacts to whom all syndicate-level information (which may contain material non-public information about the Borrowers, the Loan Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and Applicable Laws, including Federal and state securities laws.

For the purposes of this Section 9.04(b), the term "Approved Fund" has the following meaning:

"Approved Fund" means any Person (other than a natural person or a holding company, investment vehicle or trust for, or owned and operated for, the primary benefit of a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to paragraph (b)(iv) of this Section, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 2.15, 2.16, 2.17 and 9.03). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 9.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with paragraph (c) of this Section.

(iv) The Administrative Agent, acting for this purpose as an agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Revolving Credit Commitment of, and principal amount of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive, and the Borrowers, the Administrative Agent, the Issuing Banks and the Lenders may treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, any Issuing Bank and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of a duly completed Assignment and Assumption executed by an assigning Lender and an assignee, the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in paragraph (b) of this Section and any written consent to such assignment required by paragraph (b) of this Section, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to Section 2.05(c), 2.06(d) or (e), 2.07(b), 2.18(d) or 9.03(c), the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this paragraph.

(c) (i) Any Lender may, without the consent of the Borrowers, the Administrative Agent, the Issuing Banks or the Swingline Lender, sell participations to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Revolving Credit Commitment and the Loans owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged, (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations and (C) the Borrowers, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in the first proviso to Section 9.02(b) that affects such Participant. Subject to paragraph (c)(ii) of this Section, the Borrowers agree that each Participant shall be entitled to the benefits of Sections 2.15, 2.16 and 2.17 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 9.08 as though it were a Lender, provided such Participant agrees to be subject to Section 2.18(c) as though it were a Lender. Notwithstanding anything to the contrary in this Agreement, a Lender may not sell a participation to a Borrower or any of their respective Affiliates or a natural Person.

(ii) A Participant shall not be entitled to receive any greater payment under Section 2.15 or 2.17 than the applicable Lender would have been entitled to receive with respect to the participation sold to such Participant, unless the sale of the participation to such Participant is made with the Company's prior written consent. A Participant that would be a Foreign Lender if it were a Lender shall not be entitled to the benefits of Section 2.17 unless the Borrowers are notified of the participation sold to such Participant and such Participant agrees, for the benefit of the Borrower, to comply with Section 2.17(e) as though it were a Lender.

(d) Any Lender may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including without limitation any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Section shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

SECTION 9.05. Survival. All covenants, agreements, representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that the Administrative Agent, any Issuing Bank or any Lender may have had notice or knowledge of any Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any Loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Revolving Credit Commitments have not expired or terminated. The provisions of Sections 2.15, 2.16, 2.17 and 9.03 and Article VIII shall survive and remain in full force and effect regardless of the consummation of the transactions contemplated hereby, the repayment of the Loans, the expiration or termination of the Letters of Credit and the Revolving Credit Commitments or the termination of this Agreement or any provision hereof.

SECTION 9.06. Counterparts; Integration; Effectiveness. This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to fees payable to the Administrative Agent constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 4.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Delivery of an executed counterpart of a signature page of this Agreement by telecopy or electronic means shall be effective as delivery of a manually executed counterpart of this Agreement.

SECTION 9.07. Severability. Any provision of any Loan Document held to be invalid, illegal or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such invalidity, illegality or unenforceability without affecting the validity, legality and enforceability of the remaining provisions thereof; and the invalidity of a particular provision in a particular jurisdiction shall not invalidate such provision in any other jurisdiction. In the event that any provision is held to be so prohibited or unenforceable in any jurisdiction, the Administrative Agent, the Lenders and the Borrowers shall negotiate in good faith to amend such provision to preserve the original intent thereof in such jurisdiction (subject to the approval of the Required Lenders).

SECTION 9.08. Right of Setoff. If an Event of Default shall have occurred and be continuing, each Lender and each of its Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by law, to set off and apply any and all deposits (general or special, time or demand, provisional or final) at any time held and other obligations at any time owing by such Lender or Affiliate to or for the credit or the account of any Borrower or any Guarantor against any of and all the Obligations held by such Lender, irrespective of whether or not such Lender shall have made any demand under the Loan Documents and although such obligations may be unmatured. The rights of each Lender under this Section are in addition to other rights and remedies (including other rights of setoff) which such Lender may have.

SECTION 9.09. Governing Law; Jurisdiction; Consent to Service of Process. (a) This Agreement shall be construed in accordance with and governed by the law of the State of New York.

(b) Each Borrower hereby irrevocably and unconditionally submits, for itself and its property, to the exclusive jurisdiction of any state or federal court sitting in New York, and any appellate court from any thereof, in any action or proceeding arising out of or relating to this Agreement, or for recognition or enforcement of any judgment, and each of the parties hereto hereby irrevocably and unconditionally agrees that all claims in respect of any such action or proceeding may be heard and determined in such courts in New York. Each of the parties hereto agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Agreement shall affect any right that the Administrative Agent, any Issuing Bank or any Lender may otherwise have to bring any action or proceeding relating to this Agreement against any Borrower or its properties in the courts of any jurisdiction.

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

(d) Each party to this Agreement irrevocably consents to service of process in the manner provided for notices in Section 9.01. Nothing in this Agreement will affect the right of any party to this Agreement to serve process in any other manner permitted by law.

SECTION 9.10. WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED THEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

SECTION 9.11. Headings. Article and Section headings and the Table of Contents used herein are for convenience of reference only, are not part of this Agreement and shall not affect the construction of, or be taken into consideration in interpreting, this Agreement.

SECTION 9.12. Confidentiality. Each of the Administrative Agent, the Issuing Banks and the Lenders agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed (a) to its and its Affiliates' directors, officers, employees and agents, including accountants, legal counsel and other advisors (it being understood that the Persons to whom such disclosure is made will be informed of the confidential nature of such Information and instructed to keep such Information confidential), (b) to the extent requested by any regulatory authority, (c) to the extent required by any Requirement of Law or by any subpoena or similar legal process, (d) to any other party to this Agreement, (e) in connection with the exercise of any remedies hereunder or any suit, action or proceeding relating to this Agreement or the enforcement of rights hereunder, (f) subject to an agreement containing provisions substantially the same as those of this Section, to (i) any assignee of or Participant in, or any prospective assignee of or Participant in, any of its rights or obligations under this Agreement or (ii) any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to any Borrower and its obligations, (g) with the consent of the Borrowers or (h) to the extent such Information (i) becomes publicly available other than as a result of a breach of this Section or (ii) becomes available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis from a source other than a Borrower. For the purposes of this Section, "Information" means all information received from any Borrower relating to any Borrower or its business, other than any such information that is available to the Administrative Agent, any Issuing Bank or any Lender on a non-confidential basis prior to disclosure by a Borrower; provided that, in the case of information received from a Borrower after the date hereof, such information is clearly identified at the time of delivery as confidential. Any Person required to maintain the confidentiality of Information as provided in this Section shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

SECTION 9.13. Interest Rate Limitation. Notwithstanding anything herein to the contrary, if at any time the interest rate applicable to any Loan, together with all fees, charges and other amounts which are treated as interest on such Loan under Applicable Law (collectively the "Charges"), shall exceed the maximum lawful rate (the "Maximum Rate") which may be contracted for, charged, taken, received or reserved by the Lender holding such Loan in accordance with Applicable Law, the rate of interest payable in respect of such Loan hereunder, together with all Charges payable in respect thereof, shall be limited to the Maximum Rate and, to the extent lawful, the interest and Charges that would have been payable in respect of such Loan but were not payable as a result of the operation of this Section shall be cumulated and the interest and Charges payable to such Lender in respect of other Loans or periods shall be increased (but not above the Maximum Rate therefor) until such cumulated amount, together with interest thereon at the Federal Funds Rate to the date of repayment, shall have been received by such Lender.

SECTION 9.14. Joint and Several Obligations: Contribution Rights; Savings Clause. (a) Notwithstanding anything to the contrary set forth herein or in any other Loan Document, the Secured Obligations of the Borrowers and any other obligations under the other Loan Documents are joint and several.

(b) If any Borrower makes a payment in respect of the Secured Obligations it shall have the rights of contribution set forth below against the other Borrowers; provided that such Borrower shall not exercise its right of contribution until all the Secured Obligations shall have been finally paid in full in cash. If any Borrower makes a payment in respect of the Secured Obligations that is smaller in proportion to its Payment Share (as hereinafter defined) than such payments made by the other Borrowers are in proportion to the amounts of their respective Payment Shares, the Borrower making such proportionately smaller payment shall, when permitted by the preceding sentence, pay to the other Borrowers an amount such that the net payments made by such Borrower in respect of the Secured Obligations shall be shared among the Borrowers pro rata in proportion to their respective Payment Shares. If any Borrower receives any payment that is greater in proportion to the amount of its Payment Shares than the payments received by the other Borrowers are in proportion to the amounts of their respective Payment Shares, the Borrower receiving such proportionately greater payment shall, when permitted by the second preceding sentence, pay to the other Borrowers an amount such that the payments received by the Borrowers shall be shared among the Borrowers pro rata in proportion to their respective Payment Shares. Notwithstanding anything to the contrary contained in this paragraph or in this Agreement, no liability or obligation of any Borrower that shall accrue pursuant to this paragraph shall be paid nor shall it be deemed owed pursuant to this paragraph until all of the Secured Obligations shall be finally paid in full in cash.

For purposes hereof, the "Payment Share" of each Borrower shall be the sum of (a) the aggregate proceeds of the Secured Obligations received by such Borrower plus (b) the product of (i) the aggregate Secured Obligations remaining unpaid on the date such Secured Obligations become due and payable in full, whether by stated maturity, acceleration, or otherwise (the "Determination Date") reduced by the amount of such Secured Obligations attributed to all or such Borrowers pursuant to clause (a) above, times (ii) a fraction, the numerator of which is such Borrower's net worth on the effective date of this Agreement (determined as of the end of the immediately preceding fiscal reporting period of such Borrower), and the denominator of which is the aggregate net worth of all Borrowers on such effective date.

(c) It is the intent of each Borrower, the Administrative Agent and the Lenders that each Borrower's maximum Secured Obligations shall be in, but not in excess of:

(i) in a case or proceeding commenced by or against such Borrower under the Bankruptcy Code on or within one year from the date on which any of the Secured Obligations are incurred, the maximum amount that would not otherwise cause the Secured Obligations (or any other obligations of such Borrower to the Administrative Agent and the Lenders) to be avoidable or unenforceable against such Borrower under (A) Section 548 of the Bankruptcy Code or (B) any state fraudulent transfer or fraudulent conveyance act or statute applied in such case or proceeding by virtue of Section 544 of the Bankruptcy Code; or

(ii) in a case or proceeding commenced by or against such Borrower under the Bankruptcy Code subsequent to one year from the date on which any of the Secured Obligations are incurred, the maximum amount that would not otherwise cause the Secured Obligations (or any other obligations of such Borrower to the Administrative Agent and the Lenders) to be avoidable or unenforceable against such Borrower under any state fraudulent transfer or fraudulent conveyance act or statute applied in any such case or proceeding by virtue of Section 544 of the Bankruptcy Code;

(iii) in a case or proceeding commenced by or against such Borrower under any law, statute or regulation other than the Bankruptcy Code (including, without limitation, any other bankruptcy, reorganization, arrangement, moratorium, readjustment of debt, dissolution, liquidation or similar Debtor Relief Laws, including, but not limited to, a Bail-In Action), the maximum amount that would not otherwise cause the Secured Obligations (or any other obligations of such Borrower to the Administrative Agent and the Lenders) to be avoidable or unenforceable against such Borrower under such law, statute or regulation including, without limitation, any state fraudulent transfer or fraudulent conveyance act or statute applied in any such case or proceeding.

(d) The Borrowers acknowledge and agree that they have requested that the Lenders make credit available to the Borrowers with each Borrower expecting to derive benefit, directly and indirectly, from the loans and other credit extended by the Lenders to the Borrowers.

SECTION 9.15. Consents to Renewals; Modifications and Other Actions and Events. This Agreement and all of the obligations of the Borrowers hereunder shall remain in full force and effect without regard to and shall not be released, affected or impaired by: (a) any amendment, assignment, transfer, modification of or addition or supplement to the Obligations, this Agreement or any other Loan Document; (b) any extension, indulgence, increase in the Obligations or other action or inaction in respect of any of the Loan Documents or otherwise with respect to the Obligations, or any acceptance of security for, or guaranties of, any of the Obligations or Loan Documents, or any surrender, release, exchange, impairment or alteration of any such security or guaranties including without limitation the failing to perfect a security interest in any such security or abstaining from taking advantage or of realizing upon any guaranties or upon any security interest in any such security; (c) any default by any Borrower under, or any lack of due execution, invalidity or unenforceability of, or any irregularity or other defect in, any of the Loan Documents; (d) any waiver by the Lenders or any other Person of any required performance or otherwise of any condition precedent or waiver of any requirement imposed by any of the Loan Documents, any guaranties or otherwise with respect to the Obligations; (e) any exercise or non-exercise of any right, remedy, power or privilege in respect of this Agreement or any of the other Loan Documents; (f) any sale, lease, transfer or other disposition of the assets of any Borrower or any consolidation or merger of any Borrower with or into any other Person, corporation, or entity, or any transfer or other disposition by any Borrower or any other holder of any Equity Interest of any Borrower; (g) any bankruptcy, insolvency, reorganization or similar proceedings involving or affecting any Borrower; (h) the release or discharge of any Borrower from the performance or observance of any agreement, covenant, term or condition under any of the Obligations or contained in any of the Loan Documents by operation of law; or (i) any other cause whether similar or dissimilar to the foregoing which, in the absence of this provision, would release, affect or impair the obligations, covenants, agreements and duties of any Borrower hereunder, including without limitation any act or omission by the Administrative Agent, or any Lender or any other any Person which increases the scope of such Borrower's risk; and in each case described in this paragraph whether or not any Borrower shall have notice or knowledge of any of the foregoing, each of which is specifically waived by each Borrower. Each Borrower warrants to the Lenders that it has adequate means to obtain from each other Borrower on a continuing basis information concerning the financial condition and other matters with respect to the Borrowers and that it is not relying on the Administrative Agent or the Lenders to provide such information either now or in the future.

SECTION 9.16. Waivers, Etc. Each Borrower unconditionally waives: (a) notice of any of the matters referred to in Section 9.15 above; (b) all notices which may be required by statute, rule or law or otherwise to preserve any rights of the Administrative Agent, or any Lender, including, without limitation, presentment to and demand of payment or performance from the other Borrowers and protect for non-payment or dishonor; (c) any right to the exercise by the Administrative Agent, or any Lender of any right, remedy, power or privilege in connection with any of the Loan Documents; (d) any requirement that the Administrative Agent, or any Lender, in the event of any default by any Borrower, first make demand upon or seek to enforce remedies against, such Borrower or any other Borrower before demanding payment under or seeking to enforce this Agreement against any other Borrower; (e) any right to notice of the disposition of any security which the Administrative Agent, or any Lender may hold from any Borrower or otherwise; and (f) all errors and omissions in connection with the Administrative Agent, or any Lender's administration of any of the Obligations, any of the Loan Documents, or any other act or omission of the Administrative Agent, or any Lender which changes the scope of the Borrower's risk, except as a result of the gross negligence or willful misconduct of the Administrative Agent, or any Lender. The obligations of each Borrower hereunder shall be complete and binding forthwith upon the execution of this Agreement and subject to no condition whatsoever, precedent or otherwise, and notice of acceptance hereof or action in reliance hereon shall not be required.

SECTION 9.17. Several Obligations; Non-Reliance; Violation of Law. The respective obligations of the Lenders hereunder are several and not joint and the failure of any Lender to make any Loan or perform any of its obligations hereunder shall not relieve any other Lender from any of its obligations hereunder. Each Lender hereby represents that it is not relying on or looking to any margin stock for the repayment of the Borrowings provided for herein. Anything contained in this Agreement to the contrary notwithstanding, no Issuing Bank nor any Lender shall be obligated to extend credit to any Borrower in violation of any Requirement of Law.

SECTION 9.18. Disclosure. Each Borrower and each Lender hereby acknowledges and agrees that the Administrative Agent and/or its Affiliates from time to time may hold investments in, make other loans to or have other relationships with any of the Borrowers, their respective Subsidiaries and their respective Affiliates.

SECTION 9.19. USA PATRIOT Act; Anti-Money Laundering Laws. Each Lender that is subject to the requirements of the USA PATRIOT Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "Act") or any other Anti-Money Laundering Laws hereby notifies each Loan Party that pursuant to the requirements of the Act and any such other Anti-Money Laundering Laws, it is required to obtain, verify and record information that identifies such Loan Party, which information includes the name and address of such Loan Party and other information that will allow such Lender to identify such Loan Party in accordance with the Act or such Anti-Money Laundering Laws.

SECTION 9.20. Conversion of Currencies. (a) If, for the purpose of obtaining judgment in any court, it is necessary to convert a sum owing hereunder in one currency into another currency, each party hereto agrees, to the fullest extent that it may effectively do so, that the rate of exchange used shall be that at which in accordance with normal banking procedures in the relevant jurisdiction the first currency could be purchased with such other currency on the Business Day immediately preceding the day on which final judgment is given.

(b) The obligations of each Borrower in respect of any sum due to any party hereto or any holder of the obligations owing hereunder (the "Applicable Creditor") shall, notwithstanding any judgment in a currency (the "Judgment Currency") other than the currency in which such sum is stated to be due hereunder (the "Agreement Currency"), be discharged only to the extent that, on the Business Day following receipt by the Applicable Creditor of any sum adjudged to be so due in the Judgment Currency, the Applicable Creditor may in accordance with normal banking procedures in the relevant jurisdiction purchase the Agreement Currency with the Judgment Currency; if the amount of the Agreement Currency so purchased is less than the sum originally due to the Applicable Creditor in the Agreement Currency, such Borrower agrees, as a separate obligation and notwithstanding any such judgment, to indemnify the Applicable Creditor against such loss. The obligations of the Borrowers contained in this Section 9.20 shall survive the termination of this Agreement and the payment of all other amounts owing hereunder.

SECTION 9.21. Certain ERISA Matters.

(a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Company or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of ~~29 CFR § 2510.3-101, as modified by~~ Section 3(42) of ERISA or otherwise) of one or more Benefit Plans ~~in connection~~ with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit or the Revolving Credit Commitments;

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement;

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement; or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(b) In addition, unless either (1) sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or ~~such~~(2) a Lender has ~~not~~ provided another representation, warranty and covenant ~~as provided~~ in accordance with sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Arranger and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Company or any other Loan Party, that~~: (i)~~ none of the Administrative Agent, the Arranger ~~nor any of~~and their respective Affiliates is a fiduciary with respect to the assets of such Lender involved in such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related ~~to~~ hereto or thereto)~~;~~.

~~(ii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement is independent (within the meaning of 29 CFR § 2510.3-21) and is a bank, an insurance carrier, an investment adviser, a broker-dealer or other person that holds, or has under management or control, total assets of at least $50 million, in each case as described in 29 CFR § 2510.3-21(c)(1)(i)(A)-(E);~~

(iii) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement is capable of evaluating investment risks independently, both in general and with regard to particular transactions and investment strategies (including in respect of the Secured Obligations);

(iv) the Person making the investment decision on behalf of such Lender with respect to the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement is a fiduciary under ERISA or the Code, or both, with respect to the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement and is responsible for exercising independent judgment in evaluating the transactions hereunder, and

(v) no fee or other compensation is being paid directly to the Administrative Agent, the Arranger or their respective Affiliates for investment advice (as opposed to other services) in connection with the Loans, the Letters of Credit, the Revolving Credit Commitments or this Agreement.

(c) The Administrative Agent and the Arranger hereby informs the Lenders that each such Person is not undertaking to provide impartial investment advice, or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Revolving Credit Commitments and this Agreement, (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Revolving Credit Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Revolving Credit Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

SECTION 9.22. Acknowledgement and Consent to Bail-In of EEA Financial Institutions.

Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any EEA Financial Institution arising under any Loan Document, to the extent such liability is unsecured, may be subject to the write-down and conversion powers of an EEA Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by an EEA Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an EEA Financial Institution; and

(b) the effects of any Bail-in Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such EEA Financial Institution, its parent undertaking, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of any EEA Resolution Authority.

SECTION 9.23. Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Hedge Agreements or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and, each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the FDIC under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

(a) In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

(b) As used in this Section 9.23, the following terms have the following meanings:

"BHC Act Affiliate" of a party means an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. 1841(k)) of such party.

"Covered Entity" means any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"QFC" has the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

[signature pages ~~follow~~omitted]

~~IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed by their respective authorized officers as of the day and year first above written.~~

~~SPARTAN MOTORS, INC.~~

~~By:____________________~~
~~Name:~~
~~Title:~~

~~SPARTAN MOTORS USA, INC.~~

~~By:____________________~~
~~Name:~~
~~Title:~~

~~SPARTAN MOTORS GLOBAL, INC.~~

~~By:____________________~~
~~Name:~~
~~Title:~~

~~UTILIMASTER SERVICES, LLC~~

~~By:____________________~~
~~Name:~~
~~Title:~~

~~SMEAL HOLDING, LLC~~

~~By:~~ ______________________

~~Name:~~

~~Title:~~

~~SMEAL SFA, LLC~~

~~By:~~ ______________________

~~Name:~~

~~Title:~~

~~SMEAL LTC, LLC~~

~~By:~~ ______________________

~~Name:~~

~~Title:~~

~~WELLS FARGO BANK, N.A., as Administrative Agent, a Swingline Lender, an Issuing Bank and a Lender~~

~~By:______________________________~~
~~Name:~~
~~Title:~~

~~JPMORGAN CHASE BANK, N.A., as a Swingline Lender, an Issuing Bank and a Lender~~

~~By:______________________________~~
~~Name:~~
~~Title:~~

~~PNC BANK, NATIONAL ASSOCIATION, as a Lender~~

~~By:______________________________~~
~~Name:~~
~~Title:~~

Document comparison by Workshare 9.5 on Wednesday, November 6, 2019 10:04:44 AM

Input:	
Document 1 ID	interwovenSite://dmsproxy.mwllp.dom/ACTIVE/120135942/1
Description	Annex A to Second Amendment (Conformed Credit Agreement) - Spartan (2019)#ACTIVEv120135942<dmsproxy.mwllp.dom>
Document 2 ID	C:\Users\lfbenavi\Downloads\Annex A to Second Amendment (Conformed Credit Agreement) - Spartan (2019) (1).docx
Description	C:\Users\lfbenavi\Downloads\Annex A to Second Amendment (Conformed Credit Agreement) - Spartan (2019) (1).docx
Rendering set	Standard

Legend:	
Insertion	
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Style change	
Format change	
~~Moved deletion~~	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
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Deletions	225
Moved from	6
Moved to	6
Style change	0
Format changed	0
Total changes	495

Annex B

Schedule 1.01 (Existing Floorplan Swingline Loans) to the Credit Agreement

See attached.

10,434,550.23, consisting of $10,423,602.40 in principal and $10,947.83 in interest

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Annex C

Amended Schedule 2.01 (Commitments) to the Credit Agreement
(as of the Second Amendment Effective Date)

Commitments

Lender	Revolving Credit Commitment	Revolving Credit Commitment Percentage
Wells Fargo Bank, National Association	$87,500,000.00	50.000000000%
JPMorgan Chase Bank, N.A.	$49,500,000.00	28.285714286%
PNC Bank, National Association	$38,000,000.00	21.714285714%
Total	**$175,000,000.00**	**100.000000000%**

Annex D

Schedules to the Collateral Agreement (New Borrower)

See attached.

Exhibit 10.3

EXECUTION VERSION

THIRD AMENDMENT TO CREDIT AGREEMENT

This THIRD AMENDMENT TO CREDIT AGREEMENT (this "Amendment") is dated as of September 25, 2019, and effective in accordance with Section 3 below, by and among SPARTAN MOTORS, INC. (the "Company"), SPARTAN MOTORS USA, INC., SPARTAN MOTORS GLOBAL, INC., UTILIMASTER SERVICES, LLC, SMEAL HOLDING, LLC, SMEAL SFA, LLC, SMEAL LTC, LLC, and FORTRESS RESOURCES, LLC (collectively, with the Company, the "Borrowers"), the Guarantors (as defined in the Credit Agreement referred to below) party hereto, the Lenders referred to below and WELLS FARGO BANK, NATIONAL ASSOCIATION, a national banking association, as administrative agent for the Lenders ("Administrative Agent").

STATEMENT OF PURPOSE:

WHEREAS, the Borrowers, certain financial institutions party thereto (the "Lenders") and the Administrative Agent have entered into that certain Credit Agreement dated as of August 8, 2018 (as amended, restated, supplemented or otherwise modified from time to time prior to the date hereof, the "Existing Credit Agreement", and as amended by this Amendment, the "Credit Agreement");

WHEREAS, the Borrowers have requested, and subject to the terms and conditions set forth herein, the Administrative Agent and the Lenders party hereto have agreed, to amend the Existing Credit Agreement as more specifically set forth herein;

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

Section 1. Capitalized Terms. All capitalized undefined terms used in this Amendment (including, without limitation, in the introductory paragraph and the statement of purpose hereto) shall have the meanings assigned thereto in the Credit Agreement (as amended by this Amendment).

Section 2. Amendment to Existing Credit Agreement. Effective as of the Amendment Effective Date (as defined below), the parties hereto agree that Section 2.05(a) of the Existing Credit Agreement is amended and restated to read as follows:

"General. Subject to the terms and conditions set forth herein, the Swingline Lender agrees to make Swingline Loans to the Borrowers from time to time during the Availability Period, in an aggregate principal amount at any time outstanding that will not result in (i) the aggregate principal amount of outstanding Swingline Loans exceeding $30,000,000, (ii) the sum of the total Revolving Credit Exposures exceeding the total Revolving Credit Commitments, (iii) the aggregate principal amount of outstanding Floorplan Swingline Loans exceeding $25,000,000 (the "Floorplan Swingline Commitment"), and (iv) the aggregate principal amount of outstanding W/C Swingline Loans exceeding $5,000,000; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Notwithstanding anything herein to the contrary, for purposes of determining the amount of the Loans and Letters of Credit that may be made under this Agreement, the Administrative Agent may assume that the aggregate amount of the Swingline Loans made by the Swingline Lender is $30,000,000, absent a written agreement to the contrary among the Company, the Swingline Lender and the Administrative Agent. Within the foregoing limits and subject to the terms and conditions set forth herein, the Borrowers may borrow, prepay and re-borrow Swingline Loans."

Section 3. Conditions to Effectiveness. This Amendment shall be deemed to be effective upon the Administrative Agent's receipt of this Amendment duly executed by each of the Borrowers, the Guarantors, the Administrative Agent, the Required Lenders and the Swingline Lenders (such date, the "Amendment Effective Date").

Section 4. Representations and Warranties. By its execution hereof, each Borrower hereby represents and warrants to the Administrative Agent and the Lenders that, as of the date hereof after giving effect to this Amendment:

(a) each of the representations and warranties made by the Borrowers in or pursuant to the Loan Documents is true and correct in all material respects (except to the extent that such representation and warranty is subject to a materiality or Material Adverse Effect qualifier, in which case it shall be true and correct in all respects), in each case, on and as of the date hereof as if made on and as of the date hereof, except to the extent that such representations and warranties relate to an earlier date, in which case such representations and warranties are true and correct in all material respects as of such earlier date;

(b) it has the right and power and is duly authorized and empowered to enter into, execute and deliver this Amendment and to perform and observe the provisions of this Amendment;

(c) this Amendment has been duly authorized and approved by such Borrower's board of directors or other governing body, as applicable, and constitutes a legal, valid and binding obligation of such Borrower, enforceable against such Borrower in accordance with its terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium or other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law; and

(d) the execution, delivery and performance of this Amendment do not conflict with, result in a breach in any of the provisions of, constitute a default under, or result in the creation of a Lien upon any assets or property of any of the Borrowers, or any of their respective Subsidiaries, under the provisions of, such Borrower's or such Subsidiary's organizational documents or any material agreement to which such Borrower or Subsidiary is a party.

Section 5. Effect of this Amendment. On and after the Amendment Effective Date, references in the Credit Agreement to "this Agreement" (and indirect references such as "hereunder", "hereby", "herein", and "hereof") and in any Loan Document to the "Credit Agreement" shall be deemed to be references to the Credit Agreement as modified hereby. Except as expressly provided herein, the Credit Agreement and the other Loan Documents shall remain unmodified and in full force and effect. Except as expressly set forth herein, this Amendment shall not be deemed (a) to be a waiver of, or consent to, a modification or amendment of, any other term or condition of the Credit Agreement or any other Loan Document, (b) to prejudice any other right or rights which the Administrative Agent or the Lenders may now have or may have in the future under or in connection with the Credit Agreement or the other Loan Documents or any of the instruments or agreements referred to therein, as the same may be amended, restated, supplemented or otherwise modified from time to time, (c) to be a commitment or any other undertaking or expression of any willingness to engage in any further discussion with the Borrowers or any other Person with respect to any waiver, amendment, modification or any other change to the Credit Agreement or the Loan Documents or any rights or remedies arising in favor of the Lenders or the Administrative Agent, or any of them, under or with respect to any such documents or (d) to be a waiver of, or consent to or a modification or amendment of, any other term or condition of any other agreement by and among the Loan Parties, on the one hand, and the Administrative Agent or any other Lender, on the other hand.

Section 6. Costs and Expenses. The Borrowers hereby reconfirm their obligations pursuant to Section 9.03 of the Credit Agreement to pay and reimburse the Administrative Agent and its Affiliates in accordance with the terms thereof.

Section 7. Acknowledgments and Reaffirmations. Each Loan Party (a) consents to this Amendment and agrees that the transactions contemplated by this Amendment shall not limit or diminish the obligations of such Person under, or release such Person from any obligations under, any of the Loan Documents to which it is a party, (b) confirms and reaffirms its obligations under each of the Loan Documents to which it is a party and (c) agrees that each of the Loan Documents to which it is a party remains in full force and effect and is hereby ratified and confirmed.

Section 8. Governing Law. This Amendment shall be governed by, and construed in accordance with, the law of the State of New York.

Section 9. Counterparts. This Amendment may be executed in any number of counterparts, and by different parties hereto in separate counterparts and by facsimile signature, each of which counterparts when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute but one and the same agreement.

Section 10. Electronic Transmission. Delivery of this Amendment by facsimile or pdf shall be effective as delivery of a manually executed counterpart hereof; provided that, upon the request of any party hereto, such facsimile or pdf shall be promptly followed by the original thereof.

Section 11. Entire Agreement. This Amendment is the entire agreement, and supercedes any prior agreements and contemporaneous oral agreements, of the parties concerning its subject matter. This Amendment is a Loan Document and is subject to the terms and conditions of the Credit Agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed as of the date and year first above written.

BORROWERS:

SPARTAN MOTORS, INC.
SPARTAN MOTORS USA, INC.
SPARTAN MOTORS GLOBAL, INC.
UTILIMASTER SERVICES, LLC
SMEAL SFA, LLC
SMEAL LTC, LLC
SMEAL HOLDING, LLC
FORTRESS RESOURCES, LLC

By: /s/ Frederick J. Sohm
Name: Frederick J. Sohm
Title: Treasurer

GUARANTORS:

SPARTAN UPFIT SERVICES, INC.
SPARTAN MOTORS GTB, LLC

By: /s/ Frederick J. Sohm
Name: Frederick J. Sohm
Title: Treasurer

ADMINISTRATIVE AGENT AND LENDERS:

WELLS FARGO BANK, NATIONAL ASSOCIATION, as Administrative Agent, a Swingline Lender, an Issuing Bank and Lender

By: /s/ Dustin Sentz
Name: Dustin Sentz
Title: Vice President

JPMORGAN CHASE BANK, N.A., AS LENDER

By: /s/ Michael Hall
Name: Michael Hall
Title: Authorized Officer

PNC BANK, NATIONAL ASSOCIATION, AS LENDER

By: /s/ Scott Neiderheide

Name: Scott Neiderheide

Title: Vice President

EXHIBIT 31.1

CERTIFICATION

I, Daryl M. Adams, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Spartan Motors, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2019

/s/ Daryl M. Adams
Daryl M. Adams
President and Chief Executive Officer
Spartan Motors, Inc.

EXHIBIT 31.2

CERTIFICATION

I, Frederick J. Sohm, certify that:

1. I have reviewed this quarterly report on Form 10-Q of Spartan Motors, Inc.;

2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;

3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;

4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:

   a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

   b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;

   c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and

   d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting; and

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of registrant's board of directors (or persons performing the equivalent functions):

   a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and

   b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: November 12, 2019

/s/ Frederick J. Sohm
Frederick J. Sohm
Chief Financial Officer and Treasurer
Spartan Motors, Inc.

EXHIBIT 32

CERTIFICATION

Each of the undersigned hereby certifies in his capacity as an officer of Spartan Motors, Inc. (the "Company"), pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, 18 U.S.C. Section 1350 that:

1. The Quarterly Report on Form 10-Q of the Company for the period ended September 30, 2019 (the "Report") fully complies with the requirements of Section 13(a) of the Securities and Exchange Act of 1934 (15 U.S.C. 78m); and

2. The information contained in the Report fairly presents, in all material respects, the financial condition at the end of such period and results of operations of the Company for such period.

Dated: November 12, 2019

/s/ Daryl M. Adams
Daryl M. Adams
President and Chief Executive Officer

Dated: November 12, 2019

/s/ Frederick J. Sohm
Frederick J. Sohm
Chief Financial Officer and Treasurer